



REQUEST FOR QUALIFICATIONS
For The
DESIGN OF A TOWN CENTER
For the
TOWN OF ATHERTON
March 2010

CLOSING DATE FOR RECEIVING Statement of Qualifications:

Friday, April 16, 2010 – 2:00 p.m.

Questions:

Jerry Gruber, City Manager
(650) 752-0504

jgruber@ci.atherton.ca.us

REQUEST FOR QUALIFICATIONS

Professional Architectural / Engineering Consultant Services

The Town of Atherton seeks Statements of Qualifications (SOQ) from licensed firms to design and supervise the construction of all or part of the needed facilities for a new Town Center complex.

Overview:

A Blue Ribbon Task Force (BRTF), appointed by Town of Atherton in 2008, found that the Town needs about 25,000 square feet of enclosed offices, conference rooms and specialty space. The estimated costs of new facilities would be approximately \$15M as of late 2008-early 2009. About half of that total is for its police force, dispatch and emergency operations center.

At present, Atherton has about 13,700 square feet of offices and facilities from which it serves its approximately 7,400 population. For reasons of both residents' demand as well as state and federal laws, Atherton's public employment in the past 45 years has essentially doubled to approximately 53 Full Time Equivalents (FTE).

In 2006 Edward Gee, Architects prepared an estimate of space needs. The BRTF report updates and expands that report.¹ Figure 1 of this RFQ was constructed using that report as a baseline, but recalculating the needs through repetitive interviews with department and general managers. The Figure 1 shows space available in 2008, the department-by-department space needs, those needs including 22% for circulation and mechanical plant, as well as an additional 5% recommended by BRTF for growth of FTEs.

Figure 1 also estimates the costs of architectural, engineering, construction and landscape; including assumptions concerning enclosed parking for police vehicles and surface parking for visitors and other employees.

Appendices A-I are the details of each department's needs, with reference to the Gee Report.

Statement of Qualifications Format:

Atherton seeks statements of qualifications from licensed firms to design and supervise the construction of all or part of these needed facilities. The submittal is to be prepared in a wire or plastic-bound 8 ½" X 11" format limited to 30 pages including brochures. Covers, dividers and resumes or disclosures will not be included in the page count. 11" X 17" sheets may be used for specialized graphics. Any information that needs to be returned should not be submitted. The Proposal should include the following:

¹ The Gee Report was one of two submitted over the past 15 years measuring the needs for space. On 13 July 1995, G4 Architects Research & Planning, reported to City Council called, Police & Administration Building, Space Needs & Master Plan. Edward J. Gee & Associates submitted Preliminary Master Plan Study, Town Of Atherton Civic Center on October 24, 2006.

- A. FIRM INTRODUCTION, including information such as length of time in business, office location(s) within 50 miles of the project location, number of staff and a general summary of qualifications documenting the strengths of the firm, areas of expertise and licensing. List services provided by prime firm and sub-consultants anticipated.
- B. APPROACH, the firm's design principles and uniqueness of approach, including meeting 'Green' or LEED building standards for essential service facilities.
- C. PROJECT EXPERIENCE, listing specific project experience that is related to the type of services required by the Town. The project experience should reference similar public sector essential service buildings and complexes and list the client contact information for each project. The experience should include:
- 1) A reference list including the names of public agencies where the consultant has provided services and contact information.
 - 2) A reference list of building projects similar to the proposed town center, including the construction contract initial and final value, the project size/scope, and the year of the project.
 - 3) A reference list of projects including essential service facilities and sustainable design / green elements designed or accomplished
 - 4) A demonstration of specific in-depth knowledge of and experience with:
 - a) Design implementation of projects that include occupied buildings
 - b) Public projects including city halls, police stations, council chambers, libraries and areas of public assembly.
- D. KEY STAFF, including the identification of the Principal-in-Charge, Project Manager and key staff. Key Staff/Project Principals shall be licensed professionals in the State of California (Professional Engineer or Registered Architect).
- E. RESUMES should demonstrate experience in architectural/engineering seismic retrofit services including those tasks described above, including registrations
- F. LITIGATION - A list of any current litigation to which the consultant(s) and/or key sub consultants(s) are parties by virtue of their professional service, in addition to a list of any such litigation from the past ten years
- G. DISCLOSURE of any past, ongoing, or potential conflicts of interest that the consultants(s) may have as a result of performing the anticipated work.
- H. CONTRACT & INSURANCE CONFIRMATION, confirming your firm's ability to meet the Town's contract & insurance requirements. Exceptions to the contract and insurance requirements shall be specifically noted in the statements of qualifications. A sample of the Town's standard Master Service Agreement is attached for your review.

Submittal of Proposal:

Proposals are due no later than **4:00 p.m. Friday, April 16, 2010.**

Provide Three (3) copies of the document, which should be enclosed in a sealed envelope and identified clearly with the words “Statement of Qualifications – Professional Services Atherton Town Center”.

Submit proposals to:

Mr. Jerome D. Gruber
City Manager
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

Proposals submitted after the deadline will not be accepted for consideration.

The Town reserves the right to accept or reject any or all statements of qualifications, or to alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any defects in the statements of qualifications. The Town also reserves the right to accept or reject any individual sub-consultant that a candidate proposes to use.

The Town is seeking to engage the most qualified consultant, based on the evaluation criteria described above. The Town reserves the right to negotiate with other qualified firms or solicit additional statements of qualifications at any point in the project should it later fail to negotiate a reasonable fee with the selected consultant.

Short-List Selection Process:

Firms supplying their qualifications can expect the following process, resulting in the selection of three finalists to submit and defend conceptual designs for the Town Center, and finally the award of a design and supervision contract to one firm.

Qualifications shall be received no later than close of business on April 30, 2010 at the Town of Atherton’s Administrative Building.

The Town Center Task Force and the Blue Ribbon Task Force will review all submissions and make a decision which three firms seems most qualified during its meeting scheduled for Tuesday, April 20, 2010. Those two Task Forces shall recommend to the Atherton Town Council a total of five firms, so as to allow Council flexibility in such case as members of Council’s opinions may differ from that of the Town Center Task Force and the Blue Ribbon Task Force.

The Atherton Town Council, during its regular meeting scheduled for April 21, 2010 shall review the Town Center Task Force and the Blue Ribbon Task Force’s five selections and make its final recommendations as to which three firms to ask for conceptual designs.

The three firms selected to present conceptual designs shall, upon completion and presentation of those conceptual designs, each be awarded \$5,000.00 (five thousand dollars).

Final Selection Process:

The three firms selected to present conceptual designs shall prepare their conceptual designs and be ready to present and defend these at both of two scheduled town-wide meetings, one in June 2010 and a second in July 2010. Exact dates of these meetings are to be determined later. The conceptual designs are expected to include, basic floor plans, elevations, a drawing or drawings showing their concept in three dimensions. Models of the conceptual design, while not required, would help Atherton residents better select which they see as meeting their needs.

The Town Center Task Force and the Blue Ribbon Task Force will, during a duly noticed joint meeting in mid to late July, choose which design and design firm they will recommend receive the commission for the new Town Center.

During its regular meeting of August 18, 2010 the Atherton City Council will hear the recommendations of The Town Center Task Force and the Blue Ribbon Task Force and choose which firm it wishes to negotiate with for a contract to design Atherton's new Town Center.

Contract Terms and Conditions

It is anticipated that the selected consultant(s) will work under a Consultant Services Agreement with the Town (Exhibit A). Payment for services for the conceptual designs shall be on a "lump sum" basis, and for final design and construction services provided will be on a "time and materials" reimbursable basis. Once an Agreement is negotiated, the following documents will be required by your firm prior to the commencement of any work:

- Signed contract by both the Town and your firm
- Proof of insurance in the following amounts:

Workers' Compensation Coverage as required by the State of California
Commercial General Liability in an amount not less than \$2,000,000
Automobile Liability in an amount not less than \$1,000,000
Professional Liability in an amount not less than \$2,000,000

A separate Additional Insured Endorsement naming the Town as additional insured is required. Please call if you have any questions related to the insurance required by the Town.

- Proof of payment of the Atherton Business License Fee. An Atherton Business License is required of any person who transacts or carries on any business, trade, profession, calling, or occupation in the Town of Atherton.

Being selected under this solicitation will not preclude the consultant from being considered for any other projects advertised by the Town.

Questions:

For questions regarding this Request for statements of qualifications, please contact Jerry Gruber, City Manager at (650) 752-0504, jgruber@ci.atherton.ca.us

Attachments:

Figure 1 – 2008 Space Needs and Cost Estimate

Appendices A-I – Project Program

Exhibit A – Sample Consultant Services Agreement

Figure 1²

Late 2008 Space & Cost Estimates For The Town Of Atherton's Public Services Spaces				
	Estimated 2008 Space Used (sq. ft)	Details Of Enclosed Space Needed (sq. ft)	2008 Space Needs by Dept (includes 22% for circulation)	Late 2008 Estimated Costs (includes equipment and utilities)
Town Council	966		2,196	\$878,400
Council Chambers		1,600		
Council Members Work Space		200		
Town Mgmt & Administration	1,250		5,934	\$1,652,800
Management & Finance		1,800		
Post Office		400		
Lobbies & Common Areas	1,700	2,664		
Police Department	6,900		11,834	\$4,733,600
Chief, Officers & Administration		1,250		
Patrol & Investigation		3,800		
Dispatch (w/EOC compliant areas)		1,650		
Commons Areas		3,000		
Building Department	1,200	1,750	2,135	\$854,000
Planning Department	650	800	976	\$390,400
Public Works Management	1,100	1,275	1,556	\$622,200
Active Records Storage		650	793	\$237,900
Subtotal-Enclosed Space	13,766	20,839		
		Enclosed Space Needs	25,424	(includes 22% for circulation)
		Total Space Needs - 2008-09	26,695	(includes 5% for expansion)
Construction Costs-Enclosed Space				\$9,837,765
Constructed Parking at \$50K per space			# spaces	
Secured Police Vehicles			18	\$900,000
Town Employees			25	\$1,250,000
Deconstruction, Above Ground Parking, & Landscaping				\$500,000
Estimated Subtotal of Construction Costs				\$12,487,765
		Total Costs	(includes 15% for A&E fees)	\$14,360,930

² Costs calculations are based on office space at \$400/sq.ft: public spaces at \$350/sq.ft, and active storage at \$300/sq.ft. This estimate does not include the costs of seismically retrofitting or bringing up to code other aspects of the 1920's building now used as Council Chambers.

Appendix A

Council Chambers And Members Offices

(as of 10 Nov 2008)

Function/Position	Appx. Sq. Ft Needed
Council Chambers	1,600
Council Members' Work Space	200
	1,800

Council Chambers, including public official dias, is presently 966 sq. ft. including bathrooms.

This seats 15 public officials and 40 residents via a vis code				
Proposed Chambers would include dias, AV and equipment storage, two bathrooms at 125 sq.ft per				

Proposed Chambers would include dias, AV and equipment storage, two bathrooms at 125 sq.ft per and seating for 120 residents.

Using 10 sq.ft./ per for 120 residents,* and counting six Council members, Town Clerk, legal counsel, Town Manager and six staff (total of 15 public officials) design estimates would equal 1600 sq. ft		
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* Architectural Graphic Standards, page 726

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(as of 10 Nov 2008)

Function not counted in 2006 Gee Report
Possible double counted or shared function

	(as of 10 Nov 2008)			
Function/Position	Appx. Sq. Ft Needed			
City Management				
City Manager	325			
Asst. Manager & HR	200			
City Clerk	150			
Finance Director	150			
Asst. Finance Director	125			
Data Entry (Finance)	100			
Asst. Finance	100			
Office Assistant	100			
Conference Room	300			
Female Employee Restroom	75			
Male Employee Restroom	75			
Vault - Secure Storage	100			
TOTAL – CITY MANAGEMENT	1,800			
		Function not counted in 2006 Gee Report		
		Possible shared function		

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Appendix D					
POLICE ADMINISTRATION, PATROL & INVESTIGATION					
(as of 30 October 2008)					
	Function/Position	Appx. Sq. Ft Needed			
	Police Administration				
1	Chief of Police	300			
2	Admin Assistant	150			
3	Lieutenant	250			
4	Administrative Sergeant	150			
5	Conference Room	250			
6	Community Services Officer	150			
	Subtotal – Police Administration	1,250			
	Patrol & Investigation				
7	Report Writing	150			
8	Briefing & Training Room	600			
9	Sergeants (4) Offices	300			
10	Investigation	300			
11	Inside 'Hard' Interview	100			
12	Audio Equip Room for Interviews	100			
13	Inside 'Soft' Interview	150			
14	Armory + Gun Cleaning	150			
15	General Evidence, Packaging + Property	900			
	Evidence Processing	100			
16	Evidence Vehicle	300			
17	Narcotics, Weapons, Evidence Storage	100			
18	General Supplies Storage	200			
19	Holding & Booking Rm	150			
20	Rest Room (1) in Holding Rm	100			
21	Officers' Resting Room	100			
	Subtotal – Patrol & Investigation	3,800			
22	ADMINISTRATION & PATROL	5,050			
	Police Vehicle Parking (exterior)	4,000	15 autos, 5 motorcycles		
			Function not counted in 2006 Gee Report		

Appendix E					
POLICE DISPATCH & COMMON AREAS					
(as of 30 October 2008)					
	Function/Position	Appx. Sq. Ft Needed			
	Dispatch				
23	Dispatch Station & Records	500			
24	Supervisor	200			
25	Emergency Ops Ctr-Break Room (EOC compliant)	600			
26	Telecom+Radio Equipment Storage(EOC compliant)	100			
27	Kitchen (EOC compliant)	100			
	Restrooms (EOC compliant)	150			
	Subtotal – Dispatch	1,650			
	Support & Common				
28	Lobby	200			
29	Staff Lounge (used by all police functions)	500			
30	Fitness Room	500			
31	Male Rest/Locker/Shower	500			
32	Female Rest/Locker/Shower	300			
33	Central Reproduction	200			
34	Central Storage	60			DoJ requires separate I/Telecom location
35	Computer Equipment	300			DoJ requires separate I/Telecom location
36	Mechanical Equipment	200			DoJ requires separate I/Telecom location
37	Electrical/Telephone Equipment	100			
38	Janitorial	40			Non secure - possibly Live Scan
39	Fingerprint/Interview	100			
	Subtotal - Support & Common	3,000			
	ADMIN+INVESTIGATE+DISPATCH+ SUPPORT	9,700			
					Function not counted in 2006 Gee Report

(as of 10 Nov 2008)

* Following recommendations of a Grand Jury, in 2005 the Atherton Town Council separated the Building and Planning functions

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EXHIBIT A

DESIGN PROFESSIONAL AGREEMENT

THIS AGREEMENT is entered into as of the ____ day of _____ 20__, by and between the TOWN OF ATHERTON, herein called the "Town" and _____, herein called the "Consultant."

Recitals

WHEREAS, Town desires to obtain professional land surveying services in connection with _____, and

WHEREAS, Consultant hereby represents to the Town that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, Town desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

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. The Consultant shall assign _____, Project Manager, to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services

A. Scope of Services. Subject to such policy direction and approvals as the Town through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than _____, 20__, and be completed not later than _____, 20__. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit B, and incorporated herein by reference. Any changes to these dates in either this Section 3 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 both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit C, and incorporated herein by reference. However, in no event shall the amount Town pays Consultant exceed _____ Dollars (\$_____.00). Payment by Town under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the Town at the time of payment.

B. Timing of Payment. Consultant shall submit itemized monthly statements for work performed. Town shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

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 or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at Town's request if litigation is brought against Town in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, Town will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by Town and not part of the litigation brought by Town against Consultant.

5. Amendment to Scope of Work. Town shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the Town. Failure of the 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 due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate Town authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. 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.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in Town, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the 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 during the term of this Agreement, unless required by law.

9. 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 the Town.

10. 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, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the 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 the Town. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the Town 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 the Town or of any Town official, other than normal contract monitoring; 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).)

11. Liability of Members and Employees of Town. No member of the Town and no other officer, employee or agent of the Town shall be personally liable to Consultant or otherwise in the event of any default or breach of the Town, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the Town), indemnify, and hold harmless the Town, its officers, agents, employees, from and against any and all claims, damages, and liabilities, but only to the extent actually caused by the negligent acts, errors, or omissions of Consultant, its officers and employees undertaken pursuant to this Agreement excepting liabilities due to the negligence or willful misconduct of Town. 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 § 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.

13. Consultant Not an Agent of Town. Consultant, its officers, employees and agents shall not have any power to bind or commit the Town to any decision.

14. Independent Contractor. *It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of Town; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to Town's employees, and Consultant hereby expressly waives any claim it may have to any such rights.*

15. 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 represents 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. The Town is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which 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 the Town's Public Works Department office.

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 and Agreement.

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 which arise from the work performed by Consultant for the Town.

16. 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 the Town, or as required by law.

17. 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 the Town's prior written consent. Any assignment without such approval shall be void and, at the Town's option, shall immediately cause this Agreement to terminate.

18. 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 also 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 respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the Town may possess, including any self-insured retention the Town may have, and any other insurance the Town does possess shall be considered excess insurance only and shall not contribute with 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 paragraph. 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 the Town. At the Town's

option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

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

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the 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 herein provided or otherwise violate 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 hereunder by Consultant bear to the total services otherwise required to be performed for such total fee.

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 prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant, after final payment, shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the Town. Consultant, however, shall not be liable for the Town's use of incomplete materials nor for the Town's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. *The Town shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.*

21. Merger; Amendment. *This Agreement constitutes the complete and exclusive statement of the agreement between the Town and Consultant and shall supersede all prior*

negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the Town and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to Town: City Clerk
Town of Atherton - Town Hall
91 Ashfield Road
Atherton, CA 94027

If to Consultant:

25. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the Town and all documents and records which demonstrate performance under this Agreement 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 the 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. The Town may, by written request by any of the above-named officers, require that custody of the records be given to the Town and that the records and documents be maintained in the City Manager's office.

26. 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.*

27. 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.*

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

29. 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 party may have hereunder.*

30. 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.*

31. 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

32. 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.

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

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

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

TOWN OF ATHERTON

CONSULTANT

By: _____
City Manager

By: _____
Title: _____

Date:

Date:

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

EXHIBIT A

Scope of Work

[to be inserted]

EXHIBIT B

Schedule of Performance

[to be inserted]

EXHIBIT C

Compensation

[to be inserted]

