



**Item No. XX  
Town of Atherton**

**CITY COUNCIL STAFF REPORT – ACTION ITEM**

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

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

**FROM: MARTY HANNEMAN, CITY ENGINEER**

**DATE: SEPTEMBER 6, 2017**

**SUBJECT: ADOPT A RESOLUTION TO ENTER INTO A COOPERATIVE IMPLEMENTATION AGREEMENT WITH CALTRANS; AUTHORIZE THE CITY MANAGER TO SIGN A COOPERATIVE IMPLEMENTATION AGREEMENT WITH CALTRANS; AND AUTHORIZE STAFF TO ISSUE A REQUEST FOR QUALIFICATIONS FOR AN ENGINEERING DESIGN CONSULTANT**

**RECOMMENDATION**

- Adopt the attached Resolution No. 17-XX for the Town of Atherton to enter in to a Cooperative Implementation Agreement (CIA) with the California Department of Transportation (Caltrans); and
- Authorize the City Attorney to review and the City Manager to sign a CIA with Caltrans to receive State funds to construct a stormwater capture facility at Las Lomas Elementary School; and
- Authorize staff to issue a request for qualifications (RFQ) for an engineering design consultant

**BACKGROUND**

At the May 3, 2017 Council meeting, Council adopted a Resolution for the Town of Atherton to enter in to a Cooperative Implementation Agreement (CIA) with the California Department of Transportation (Caltrans); and authorize the City Attorney to review and the City Manager to sign a CIA with Caltrans to receive State funds to construct a stormwater capture facility at Las Lomas Elementary School.

On Tuesday June 27, 2017 the Las Lomas School District (District) Board, in a special meeting, unanimously approved a memorandum of understanding (MOU) with the Town of Atherton to address project management, funding, and responsibilities for the proposed Las Lomas

**ADOPT A RESOLUTION TO ENTER INTO A COOPERATIVE IMPLEMENTATION AGREEMENT WITH CALTRANS; AUTHORIZE THE CITY MANAGER TO SIGN A COOPERATIVE IMPLEMENTATION AGREEMENT WITH CALTRANS; AND AUTHORIZE STAFF TO ISSUE A REQUEST FOR QUALIFICATIONS FOR AN ENGINEERING DESIGN CONSULTANT**

**September 6, 2017**

**Page 2 of 4**

Elementary School storm water capture facility. At the July 19, 2017 Council meeting, and after much discussion with representatives from the District, the City Council authorize the City Attorney to review and the City Manager to sign the MOU approved by the Las Lomas School District Board with the amendments that reduced the \$750,000 Town contribution to \$500,000 and clarified the need for a public outreach process for the proposed traffic signal instead of an automatic approval by the Town. During the meeting, the Council also expressed concern for an exit strategy for the project given the unknowns related to ongoing maintenance and operational costs of the Project. These changes were incorporated into the MOU and returned to the District.

On July 25, 2017, the District advised staff that given the changes proposed by the Town, the revised MOU would not be returned to their Board for consideration. However, the District advised that they would continue with the project under the original proposed MOU.

The District also advised that they had already contacted representatives of Menlo Park and San Mateo County to gauge their interest in partnering with the District to build the water capture facility at the school site using the \$13.6M Caltrans Cooperative Implementation Agreement (CIA) funds.

Following this feedback from the District, staff reconnected with Tom Rutsch, P.E., Watershed Manager-North Division of Environmental Analysis, California Department of Transportation to confirm that the CIA funds are not transferable to another local agency. Staff also wanted to explore further the possibility of a change in project site to a similar facility at Holbrook-Palmer Park if the Town and District could not reach agreement on the MOU. Mr. Rutsch stated that CIA with the Town of Atherton is not transferrable to another agency and that Caltrans would be open to amending the CIA to fund a similar project at the Holbrook-Palmer Park site.

At the August 1, 2017 Special Council Meeting, Council reviewed the response from the District for the proposed Las Lomas storm water capture facility and directed staff to begin discussions Caltrans to amend the Cooperative Implementation Agreement (CIA) to relocate the water capture facility project to an alternate location, i.e., Holbrook-Palmer Park.

**ANALYSIS**

To receive these Caltrans funds, the Town is required to enter into a Cooperative Implementation Agreement (CIA) with Caltrans. Since the project site location has changed to Holbrook-Palmer Park, a new CIA with Caltrans is required.

**ADOPT A RESOLUTION TO ENTER INTO A COOPERATIVE IMPLEMENTATION AGREEMENT WITH CALTRANS; AUTHORIZE THE CITY MANAGER TO SIGN A COOPERATIVE IMPLEMENTATION AGREEMENT WITH CALTRANS; AND AUTHORIZE STAFF TO ISSUE A REQUEST FOR QUALIFICATIONS FOR AN ENGINEERING DESIGN CONSULTANT**

**September 6, 2017**

**Page 3 of 4**

A consultant will be hired to through a request for qualifications (RFQ) (Attachment 3) process to prepare all necessary geotechnical investigations, assist with the environmental review process, community outreach, permitting, preliminary and final designs, and construction management.

The construction of the project is expected to begin in early 2019 and completed in the spring of 2020.

**POLICY ISSUES**

The Town has a unique opportunity to receive \$13.6 million in Caltrans funds to implement the Water Capture Facility at the Holbrook-Palmer Park site, an identified Tier 1 project in the 2015 Townwide Drainage Study Update. Council approval is required to authorize the City Manager to sign the Cooperative Implementation Agreement (CIA) with Caltrans to receive these funds.

**FISCAL IMPACT**

When the CIA is fully executed, Caltrans agrees to contribute an amount not to exceed thirteen million six hundred thousand Dollars (\$13,600,000) to the Town to design and construct the Water Capture Facility at the Holbrook-Palmer Park site. These State funds do not require any matching funds from the Town.

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

**PUBLIC NOTICE**

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

**ADOPT A RESOLUTION TO ENTER INTO A COOPERATIVE IMPLEMENTATION AGREEMENT WITH CALTRANS; AUTHORIZE THE CITY MANAGER TO SIGN A COOPERATIVE IMPLEMENTATION AGREEMENT WITH CALTRANS; AND AUTHORIZE STAFF TO ISSUE A REQUEST FOR QUALIFICATIONS FOR AN ENGINEERING DESIGN CONSULTANT**

**September 6, 2017**

**Page 4 of 4**

districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

**ATTACHMENTS**

1. Cooperative Implementation Agreement – Amended August 11, 2017
2. Resolution No. 17-XX
3. Request for Qualifications

## ATTACHMENT 1

### COOPERATIVE IMPLEMENTATION AGREEMENT – AMENDED AUGUST 11, 2017

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

#### **RECITALS**

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

an interest and expertise in the best way to protect, manage, and enhance water quality in the watershed; (iii) allows for implementation of Best Management Practices (BMPs) and other creative solutions not typically available to CALTRANS; (iv) allows for larger watershed-scale projects; and (v) leverages resources from other entities.

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

8. Project funding is as follows:

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

## **SECTION I**

All sections of this agreement including the recitals are enforceable.

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

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

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

**SECTION II – GENERAL PROVISIONS.**

**1. TERMINATION**

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

**2. BUDGET CONTINGENCY CLAUSE**

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

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

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

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

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

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

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

2) Invoice and Supports

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

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

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

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

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

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

3) Progress Reports

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

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

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

**4. COST PRINCIPLES**

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

**5. INDEMNIFICATION**

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

**6. RETENTION OF RECORDS/AUDITS**

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

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

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

**7. DISPUTES**

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

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

**8. RELATIONSHIP OF PARTIES**

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

**9. NOTIFICATION OF PARTIES**

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

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

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

**SECTION III - ATTACHMENTS**

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

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

**SECTION IV- SIGNATURES**

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

**STATE OF CALIFORNIA  
DEPARTMENT TRANSPORTATION**

**AGENCY**

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

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

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

**ATTACHMENT II**

**AMENDED SCOPE SUMMARY**  
**Town of Atherton Water Capture Project**

**Introduction**

The original Cooperative Implementation Agreement (CIA) was signed with Caltrans on May 25, 2017, for a water capture project at Las Lomas Elementary School, located at 299 Alameda de las Pulgas, Atherton, CA. The location of this project was on a school owned site and required a memorandum of understanding (MOU) between the Town of Atherton and Las Lomas School District. However, after much negotiation between the two agencies an agreement on the MOU could not be reached. Thus, on August 1, 2017 City Council directed staff to begin discussions with Caltrans to amend the CIA to relocate the water capture facility project to an alternate location, i.e., Holbrook-Palmer Park.

This amended Scope Summary is to relocate the proposed water capture project to Holbrook-Palmer Park located at 150 Watkins Avenue, in Atherton, CA.

**Background**

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

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

These reductions will largely be accomplished through the implementation of green infrastructure, including stormwater capture and use and/or infiltration to groundwater. SMCWPPP developed a countywide Storm Water Resource Plan (SWRP) that focuses primarily on stormwater capture

with a multi-benefit approach to overall water resources planning, including water quality. This plan is being followed by local Green Infrastructure Plans (GI Plans) to meet MRP requirements. Development of the GI Plans will be a multi-year effort that includes preparation of a reasonable assurance analysis (RAA) to demonstrate that long-term GI Plan implementation by all MRP permittees will reduce PCB loads by three kilograms per year by 2040.

### **Proposed Project**

The Holbrook–Palmer Park (Figure 1), located at 150 Watkins Avenue, in Atherton, CA. The water capture facility is proposed to be located near the southwest corner of the park in a lawn area beyond an existing baseball diamond. The project would include a diversion structure to re-direct all dry-weather urban runoff and the first flush of wet-weather runoff from the Atherton Channel through a pre-treatment device to remove trash, debris, and sediment before conveying the water into a buried multi-chambered storage/infiltration facility with a targeted storage capacity of eight (8) to ten (10) acre-feet. Depending on the results of a geotechnical analysis, engineered dry well(s) on the bottom of the storage chamber are proposed to be constructed to facilitate infiltration. The density, depth, and diameter of these drains (dry wells) will be determined during the site evaluation stage of project design.

The proposed project will initially involve an evaluation of how to best achieve the multiple objectives of 1) capturing dry weather runoff in order to eliminate the transport of mercury, PCBs, trash and other pollutants to San Francisco Bay during dry weather; 2) capturing at least the first flush of wet-weather runoff to reduce the load of pollutants transported downstream to the Bay during wet weather, 3) diverting potential flood flows from the Atherton Channel that flows parallel to the park, 4) minimizing the on-going operations and maintenance costs, and 5) Reusing storm water for park irrigation, i.e., purple pipe systems.

The Holbrook–Palmer Park site would capture discharges from a tributary area of approximately 2,875 acres (see Figure 2). The drainage area is split between four jurisdictions: Atherton, Menlo Park, Woodside, and Unincorporated San Mateo County. A water capture facility at this site could greatly assist Caltrans and the municipalities to come into compliance with the Mercury and PCBs TMDLs by reducing the transport of these pollutants downstream to San Francisco Bay. It will also help Caltrans comply with Part 2 of Attachment V of the Caltrans Statewide MS4 Permit by capturing discharges from approximately 14 acres of I-280 drainage and 10 acres of El Camino Real (SR 82).

The project involves initial engineering and geotechnical assessments, detailed design, environmental compliance, permitting, construction of a diversion structure and piping, construction of a pre-treatment facility, excavation and construction of a high void underground storage/infiltration chamber), disposal of excavated soil, and reconstruction of disturbed portions of the site. Details of the diversion structure will be determined during the design phase through coordination with the San Mateo County Flood Control District. In addition, the project includes a potential Memorandum of Understanding (MOU) among the benefitting municipalities for the long-term operation and maintenance of the constructed water capture facility.

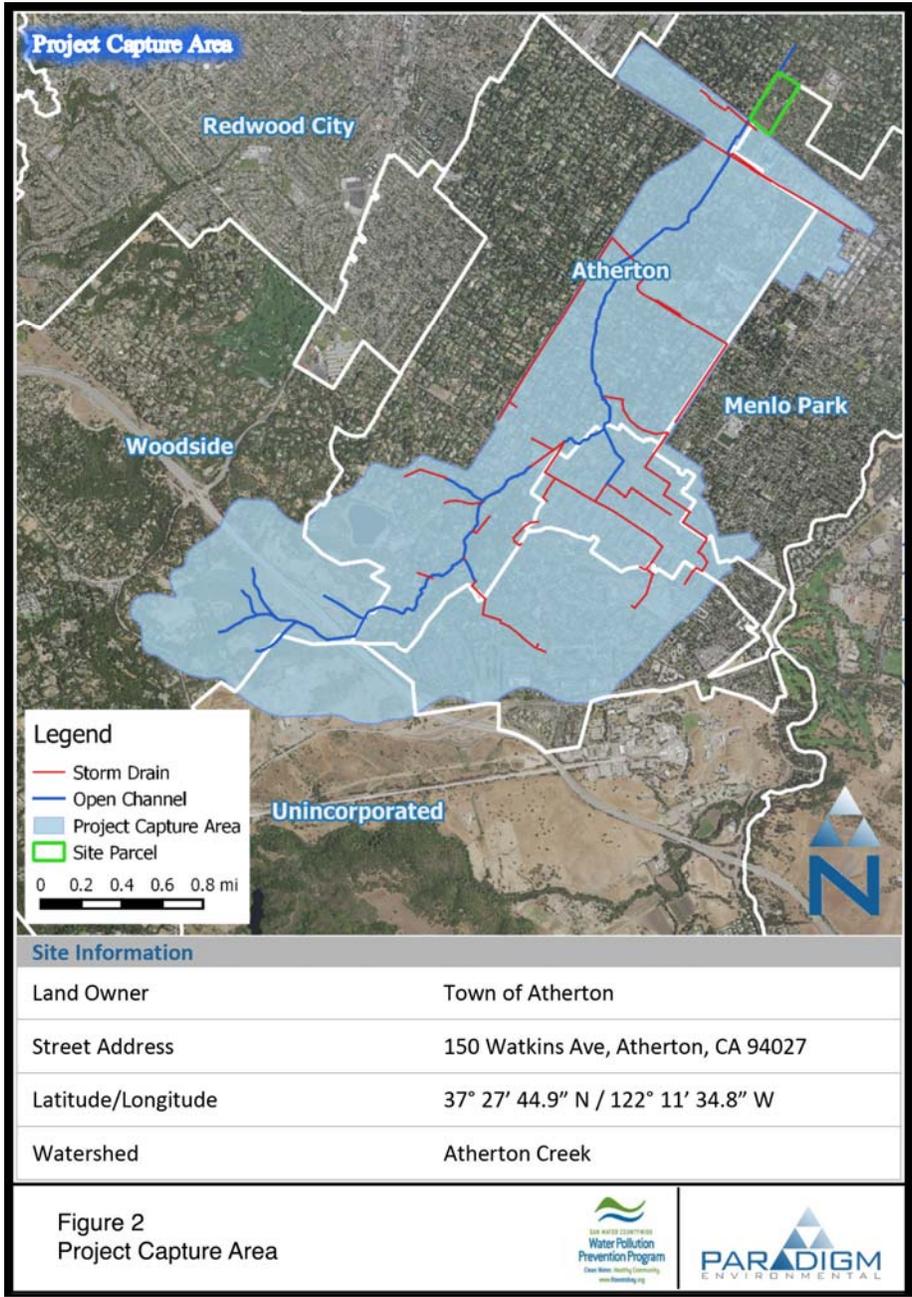
The Town of Atherton will enter into a Cooperative Implementation Agreement with Caltrans, and consultants will be hired to manage the project, conduct engineering and geotechnical investigations, and assist with environmental clearance, permitting, design, and construction management. Annually, during the term of the PROJECT, CALTRANS and AGENCY will agree upon the amount CALTRANS will encumber each year for the PROJECT. Encumbered funds are to be expended within

three Fiscal Years (FY). The FY in which the funds are encumbered is considered year number one. Any funds not expended by the end of the third FY, will be deducted from RECITALS, Section 2 “not to exceed amount.” Contractors will be selected through the Town of Atherton procurement procedures. Consultants and Town staff assigned to manage the project will charge hours to the project in accordance with the Caltrans requirements under this agreement.



Figure 1  
 HOLBROOK-PALMER PARK MASTER PLAN 2014

**Figure 2**



## Cost Estimate

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

## Preliminary Budget

• Bonding and mobilization	\$585,190.00
• Site Preparation	\$1,431,930.00
• Construction	\$7,258,270.00
• Commissioning	\$55,000.00
<b>Construction Subtotal:</b>	<b>\$9,320,390.00</b>
• Construction Contingency	\$1,866,078.00
<b>Construction Total:</b>	<b>\$11,196,468.00</b>
• Project Confirmation	\$250,000.00
• Plans and Permitting	\$1,670,470.00
<b>Project Confirmation, Plans and Permitting Subtotal:</b>	<b>\$1,920,470.00</b>
• Plans and Permitting Contingency	\$384,092.00
<b>Plans and Permitting Total:</b>	<b>\$2,304,562.00</b>
<b>Project Total:</b>	<b>\$13,501,030.00</b>

## **Preliminary Timeline**

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

<b>Release of Engineering Design RFQ</b>	<b>09/7/17</b>
<b>Award of Engineering Consultant Agreement by Council</b>	<b>10/18/17</b>
<b>Geotechnical Permits and Investigation</b>	<b>11/16/17– 2/08/18</b>
<b>Prepare Preliminary Engineering Concept Design Report (20%)</b>	<b>11/16/17– 02/08/18</b>
<b>Commence CEQA Process</b>	<b>01/09/18</b>
<b>Council Approval for Preparation of the Construction Drawings</b>	<b>01/17/18</b>
<b>Construction Drawings – 30% Milestone</b>	<b>03/13/18</b>
<b>Council Determines Type of Design</b>	<b>03/21/18</b>
<b>Release General Contractor RFQ to Prequalify</b>	<b>03/21/18</b>
<b>Construction Drawings – 60% Milestone</b>	<b>05/15/18</b>
<b>Council approves list of Pre-qualified GC's</b>	<b>05/16/18</b>
<b>Select Prefabricated Underground Cistern Components</b>	<b>06/03/18</b>
<b>Order Prefabricated Cistern Components</b>	<b>07/01/18</b>
<b>Complete CEQA Process</b>	<b>07/10/18</b>
<b>Construction Drawings – 95% Milestone</b>	<b>07/17/18</b>
<b>Construction Drawings – 100% Complete</b>	<b>09/11/18</b>
<b>Advertise for Bids</b>	<b>09/19/18</b>
<b>Award Construction Contract</b>	<b>11/21/18</b>
<b>Commence Site Construction (16 months)</b>	<b>01/13/19</b>
<b>*Deadline to Bill Caltrans for FY16-17 Funding Allocation</b>	<b>04/30/19</b>
<b>Complete Construction</b>	<b>04/16/20</b>
<b>*Deadline to Bill Caltrans for FY17-18 funding allocation</b>	<b>04/30/20</b>
<b>*Deadline to Bill Caltrans for FY18-19 funding allocation</b>	<b>04/30/21</b>

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

**ATTACHMENT 2**

**RESOLUTION NO. 17-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO  
ENTER INTO A COOPERATIVE IMPLEMENTATION AGREEMENT WITH  
CALTRANS TO RECEIVE FUNDS TO CONSTRUCT THE WATER CAPTURE  
FACILITY AT HOLBROOK-PALMER PARK**

---

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

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

WHEREAS, the Town's 2015 Townwide Drainage Study Update conceptually analyzed three possible detention facilities to reduce peak stormwater flows in the Atherton Channel, which would reduce the incidence of flooding. One of these, Holbrook-Palmer Park, located at 150 Watkins Ave. in Atherton could be constructed.

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

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

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

**PASSED AND ADOPTED**, at a meeting of the City Council of the Town of Atherton held on the 6th day of September, 2017 by the following vote:

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

---

Michael Lempres, Mayor  
Town of Atherton

ATTEST:

---

Theresa N. DellaSanta, City Clerk

APPROVED AS TO FORM:

---

William B. Conners, City Attorney

# TOWN OF ATHERTON

Last Revised: 9-6-17 mh



## Request for Qualifications

From

Engineering Design Consultants

For The

Atherton Water Capture Project

City Clerk  
91 Ashfield Road  
Atherton, CA 94027

Statement of Qualifications due by 2:00 pm on October 5th, 2017

## **TABLE OF CONTENTS**

<b>SECTION I.....</b>	Overview
<b>SECTION II.....</b>	Background Project Funding Drainage Study Update 2015
<b>SECTION III.....</b>	Site Location
<b>SECTION IV.....</b>	Project Description
<b>SECTION V.....</b>	Submittal and Review Process
<b>SECTION VI.....</b>	Proposed Timeline
<b>SECTION VII.....</b>	SOQ Content
<b>SECTION VIII.....</b>	Evaluation Criteria
<b>ATTACHMENTS</b>	

## **I. OVERVIEW**

---

The Town of Atherton (Town) seeks statements of qualifications (SOQs) for professional services, specifically engineering and specialty sub-consultants, to prepare plans, specifications and estimates (PS&E) and provide services through construction management to implement the Atherton Water Capture Project. The project involves initial engineering and geotechnical assessments, detailed design, environmental compliance, permitting, construction of a diversion structure and piping, construction of a pre-treatment facility, excavation and construction of a high void underground storage/infiltration chamber, disposal of excavated soil, and reconstruction of disturbed portions of the site. Details of the diversion structure will be determined during the design phase through coordination with the San Mateo County Flood Control District. Ultimately, the Town of Atherton, City Council will decide what type of project, if any, is constructed.

## **II. BACKGROUND**

---

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

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

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

### **Project Funding**

The Town of Atherton has entered into a Cooperative Implementation Agreement (CIA) with the California Department of Transportation (Caltrans), to hire consultants to manage the project, conduct engineering and geotechnical investigations, and assist with environmental clearance,

permitting, design, and construction management. With the CIA, Caltrans agrees to contribute an amount not to exceed thirteen million six hundred thousand Dollars (\$13,600,000) to the Town to design and construct the Water Capture Facility at Holbrook-Palmer Park. These funds do not require any matching funds from the Town. All ongoing operations and maintenance costs will be the Town's responsibility, although the Town may enter into an MOU with other water shed beneficiaries to share the O&M costs.

### **Drainage Study Update**

The Town prepared a Drainage Study Update in April 2015. This report is available on the Town's Web site at: <http://www.ci.atherton.ca.us/DocumentCenter/View/2330>.

### **Holbrook-Palmer Park Master Plan**

As part of the Holbrook-Palmer Park site assessment for the water capture project, the Consultant shall review the park master plan to minimize any potential conflicts. This report is available on the Town's Web site at: <http://www.ci.atherton.ca.us/index.aspx?nid=322>

## **III. SITE LOCATION**

---

Holbrook–Palmer Park (Attachment 1) is located at 150 Watkins Avenue in the Town of Atherton. The water capture facility is proposed to be located near the southwest corner of the park in a lawn area beyond an existing baseball diamond. The project would include a diversion structure to re-direct all dry-weather urban runoff and the first flush of wet-weather runoff from the Atherton Channel through a pre-treatment device to remove trash, debris, and sediment before conveying the water into a buried multi-chambered storage/infiltration facility with a targeted storage capacity of eight (8) to ten (10) acre-feet. Depending on the results of a geotechnical analysis, engineered dry well(s) on the bottom of the storage chamber are proposed to be constructed to facilitate infiltration. The density, depth, and diameter of these drains (dry wells) will be determined during the site evaluation stage of project design.

## **IV. PROJECT DESCRIPTION**

---

The proposed project will initially involve an evaluation of how to best achieve the multiple objectives of 1) capturing dry weather runoff in order to eliminate the transport of mercury, PCBs, trash and other pollutants to San Francisco Bay during dry weather; 2) capturing at least the first flush of wet-weather runoff to reduce the load of pollutants transported downstream to the Bay during wet weather, 3) diverting potential flood flows from the Atherton Channel that flows parallel to the park, 4) minimizing the ongoing operations and maintenance costs, and 5) reusing storm water for park irrigation, i.e., purple pipe systems.

The Holbrook–Palmer Park site would capture discharges from a tributary area of approximately 2,875 acres (Attachment 2). The drainage area is split between four jurisdictions: Atherton, Menlo Park, Woodside, and Unincorporated San Mateo County. A water capture facility at this site could greatly assist Caltrans and the municipalities to come into compliance with the Mercury and PCBs TMDLs by reducing the transport of these pollutants downstream to San Francisco Bay. It will also help Caltrans comply with Part 2 of Attachment V of the Caltrans Statewide MS4 Permit by capturing discharges from approximately 14 acres of I-280 drainage and 10 acres of El Camino Real (SR 82).

## V. SUBMITTAL AND REVIEW PROCESS

---

1. Applicant questions: All questions regarding this RFQ shall be submitted in writing to Marty Hanneman, City Engineer/Project Manager, at [mhanneman@ci.atherton.ca.us](mailto:mhanneman@ci.atherton.ca.us) Questions and responses will be posted on the Town of Atherton website at: <http://www.ci.atherton.ca.us/>
2. Non-mandatory Pre-SOQ meeting: **September 19, 2017, 11 am**, Town Hall Chambers, 94 Ashfield Rd, Atherton.
3. Submittal Deadline: **Thursday October 5, 2017 at 2 PM**. Late submittals will not be accepted.
4. Provide an email address, a physical address, and a phone number for the person to be contacted regarding the SOQ.
5. Format and Delivery: SOQ is limited to 25 double-sided pages, not including resumes. 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

An e-mailed copy of the PDF to Marty Hanneman at [mhanneman@ci.atherton.ca.us](mailto:mhanneman@ci.atherton.ca.us) is required.

The Town reserves the right to accept or reject any or all submissions, 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 RFQ or the submittals.

## VI. PROPOSED TIMELINE

---

September 7, 2017	RFQ available on Town of Atherton website
September 19, 2017, 11 am	Non-mandatory Pre-Bid Meeting, Town Hall Chambers, 94 Ashfield Rd, Atherton
September 22, 2017	Submission deadline for written questions
September 27, 2017	Responses to written questions available on Town website
<b>October 5, 2017, 2 pm</b>	<b>Statements of Qualification due</b>
Week of October 9, 2017	Ranking of SOQ's, Interviews if needed, and Negotiate Consultant Agreement with top firm
October 18, 2017	City Council award of Consultant Services Agreement

## **VII. SOQ CONTENT**

---

Statement of Qualification (SOQ) submittals should provide straightforward, concise information that satisfies the requirements and is submitted in the order specified in the RFQ. Expensive binding, color displays, and the like are discouraged. Emphasis should be placed on brevity, conformity to the Town's instructions, selection criteria of this RFQ, and completeness and clarity of content.

Each Proposer's SOQ should clearly and accurately demonstrate specialized knowledge and experience required for consideration. In a sealed envelope clearly marked "**Pre-qualification submittal – (firm name), Atherton Water Capture Project**", submit the following:

### Cover Letter

Provide a cover letter that references this RFQ and confirms that all elements of the RFQ have been read and that there is a clear understanding of the project. The Proposer takes no exception to the materials provided. The cover letter shall be signed by an individual authorized to bind the Proposer contractually.

### The SOQ must include the following:

- A. A general description of your firm's experience, size, financial capacity, location, general staffing, insurance coverage, and list of references.
- B. A description, including specific project examples, of your firm's experience with:
  - Pre-treatment for water capture facilities to capture trash, debris, and sediment
  - Designing water capture projects, including which types of systems and which vendor's systems have been designed
  - Designing systems to minimize on-going operations and maintenance costs
  - Post-capture treatment for irrigation purposes, including which types of post-capture systems and which vendor's systems have been designed
  - Caltrans funded projects
  - Time constrained projects, including experience with design-build projects
  - Working with the San Mateo County, Department of Public Works, Flood Resilience Program
  - Designing water-tight water capture facilities where the water is used for future irrigation, i.e., purple pipe applications
  - Design of wick drains to facilitate improved infiltration
  - Design of storm drain or open channel diversion structures and piping

- Design of landscape and park restoration as part of a stormwater capture project
  - Principles for minimizing impacts to Park users
- C. A summary of your firm’s understanding of the Project.
- D. A discussion of your firm’s proposed approach to this Project.
- E. Identification of the various disciplines involved in this type of project, such as geotechnical or water quality engineering, and a statement of how those disciplines are to be provided - by your in-house personnel or by sub-consultants.
- F. An indication of your firm’s availability to begin work immediately upon approval of a contract and to meet the time frames indicated in the attached Preliminary Timeline.
- G. An indication of which office would be the primary location where the work for this project would be done.
- H. Resumes for the principle engineer who would be in charge of this project and other key staff members who will be assigned to the project.
- I. Comments or Requested Changes to the Consultant Services Agreement (Attachment 3). A typical Town of Atherton Consultant Services Agreement is included as an attachment to the RFQ. 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.

**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 SOQ. The cost proposal of the highest-ranked consultant based on the evaluation criteria for the SOQ’s will be opened and will serve as the starting point for fee negotiations with the consultant.

**VIII. EVALUATION CRITERIA**

---

- Firm Experience.....30%
- Key Project Personnel .....30%
- Proposed Approach, availability and Understanding.....30%
- Quality of References.....10%

**ATTACHMENT**

---

1. Holbrook-Palmer Park Master Plan 2014
2. Atherton Water Capture Area
3. Preliminary Timeline
4. Town of Atherton Example Consultant Services Agreement. This agreement is an example only and is subject to change.

# ATTACHMENT 1



Figure 1  
HOLBROOK-PALMER PARK MASTER PLAN 2014

ATTACHMENT 2

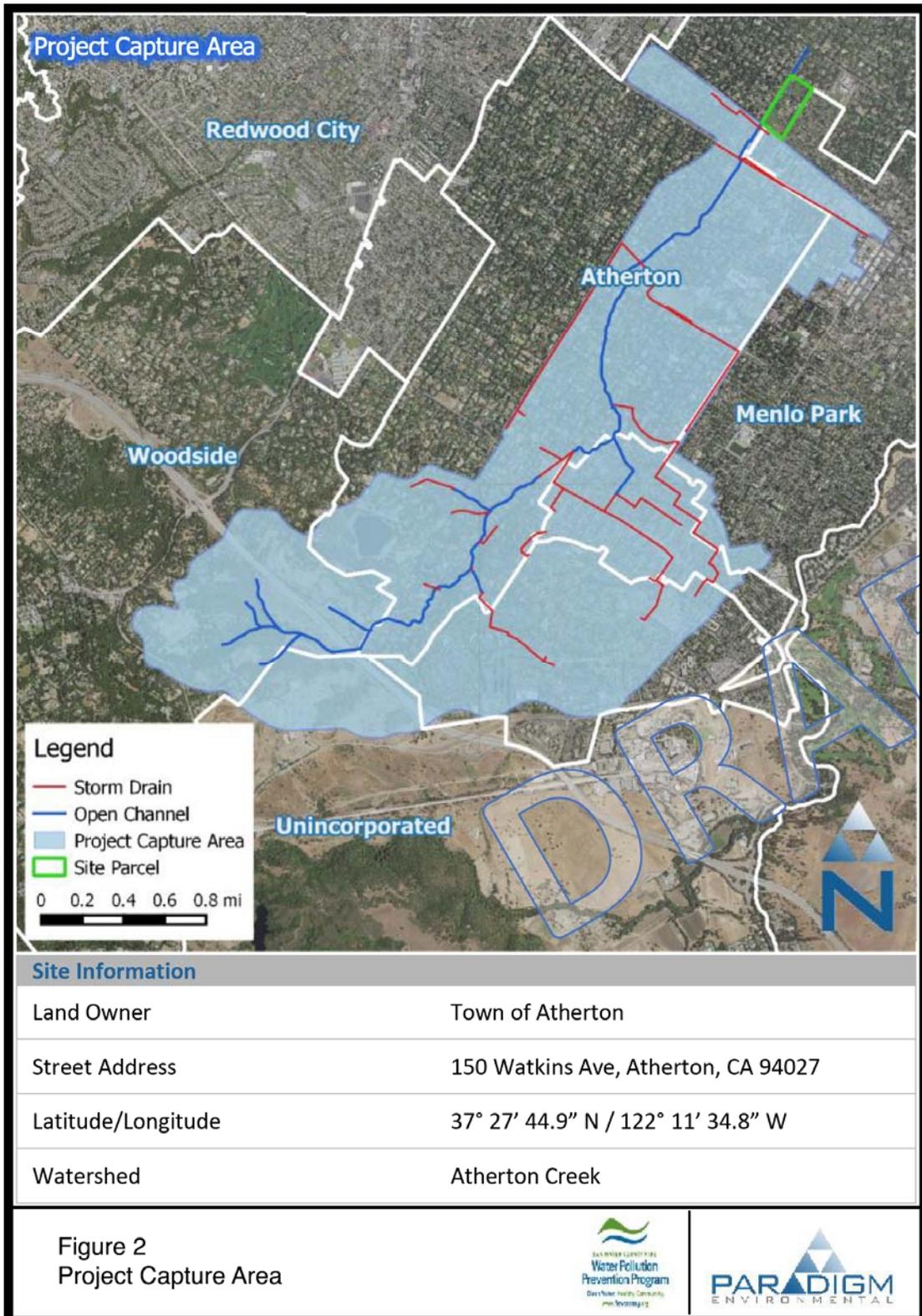


Figure 2  
Project Capture Area



## **ATTACHMENT 3**

### **Preliminary Timeline**

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

<b>Release of Engineering Design RFQ</b>	<b>09/7/17</b>
<b>Award of Engineering Consultant Agreement by Council</b>	<b>10/18/17</b>
<b>Geotechnical Permits and Investigation</b>	<b>11/16/17– 2/08/18</b>
<b>Prepare Preliminary Engineering Concept Design Report (20%)</b>	<b>11/16/17– 02/08/18</b>
<b>Commence CEQA Process</b>	<b>01/09/18</b>
<b>Council Approval for Preparation of the Construction Drawings</b>	<b>01/17/18</b>
<b>Construction Drawings – 30% Milestone</b>	<b>03/13/18</b>
<b>Council Determines Type of Design</b>	<b>03/21/18</b>
<b>Release General Contractor RFQ to Prequalify</b>	<b>03/21/18</b>
<b>Construction Drawings – 60% Milestone</b>	<b>05/15/18</b>
<b>Council approves list of Pre-qualified GC's</b>	<b>05/16/18</b>
<b>Select Prefabricated Underground Cistern Components</b>	<b>06/03/18</b>
<b>Order Prefabricated Cistern Components</b>	<b>07/01/18</b>
<b>Complete CEQA Process</b>	<b>07/10/18</b>
<b>Construction Drawings – 95% Milestone</b>	<b>07/17/18</b>
<b>Construction Drawings – 100% Complete</b>	<b>09/11/18</b>
<b>Advertise for Bids</b>	<b>09/19/18</b>
<b>Award Construction Contract</b>	<b>11/21/18</b>
<b>Commence Site Construction (16 months)</b>	<b>01/13/19</b>
<b>*Deadline to Bill Caltrans for FY16-17 Funding Allocation</b>	<b>04/30/19</b>
<b>Complete Construction</b>	<b>04/16/20</b>
<b>*Deadline to Bill Caltrans for FY17-18 funding allocation</b>	<b>04/30/20</b>
<b>*Deadline to Bill Caltrans for FY18-19 funding allocation</b>	<b>04/30/21</b>

**ATTACHMENT 4**

**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.