



Item No. 1 Town of Atherton

CITY COUNCIL STAFF REPORT – ACTION ITEM

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GEORGE RODERICKS, CITY MANAGER

DATE: SEPTEMBER 4, 2019

SUBJECT: DISCUSSION OF SELECTION PROCESS FOR CITY ATTORNEY; AND, APPROVE AND AUTHORIZE RELEASE OF A REQUEST FOR PROPOSAL FOR CITY ATTORNEY SERVICES FOR THE TOWN

RECOMMENDATION

It is recommended discuss the selection process for City Attorney; and approve and authorize release of a Request for Proposal for City Attorney Services for the Town.

BACKGROUND

William B. Connors & Associates has served as the Town's City Attorney since FY 2010/11. On August 6, 2019 the City Council received a Letter of Resignation from the City Attorney and Assistant City Attorney, effective December 31, 2019.

The Mayor formed a City Council Ad Hoc Subcommittee of the Mayor and Vice Mayor to work with the City Attorney and City Manager to develop a Request for Proposal (RFP) for City Attorney Services for the Town. An RFP has been prepared by staff. The Ad Hoc Subcommittee and staff have reviewed and now provide the attached RFP for Council's consideration and release.

If approved on September 4, 2019, the timeline provides that proposals would be due on October 7, 2019. Interviews would be conducted the week of October 14 with a tentative award of contract on November 6. This would allow for a transition period of at 30-45 days.

The *Scope of Work* proposed within the RFP provides for general responsibilities of the City Attorney (as well as other individuals serving as City Attorney personnel), to include but not be limited to the following – covered by retainer:

- Provide clear and concise legal advice and consultation on a daily basis as requested or required to members of the City Council, the City Manager, Committees and Town Staff.

Contacts are usually made via telephone and email, and generally same or next day response is expected.

- The City Attorney is required to be present in the City Attorney's Office in City Hall and available to meet with staff, Councilmembers, or members of the public unless excused by the City Manager or Mayor in advance. Office hours shall generally be for a period of at least 4-6 hours a week as established and negotiated as part of any contract and the City Manager or Mayor may adjust the schedule upon a showing of good cause. Office hours may be coordinated with days of attendance at Council meetings.
- Attendance at City Council and Planning Commission meetings is expected, unless excused.
- Attend City Council meetings and be prepared to advise the Council and Staff on matters on the agenda as well as parliamentary procedure and substantive issues that arise during the meeting. Attendance at City Council subcommittee meetings or joint meetings with outside agencies may be requested from time to time.
- Provide guidance concerning requirements of the Brown Act, Conflict of Interest, the Political Reform Act, the Public Records Act, CEQA, tort liability and risk, due process and other legal requirements imposed by statute and common law, as well as a working knowledge of municipal employment practice and public administration.
- Prepare, review, and revise Staff documents, including, but not limited to, initiation of memoranda concerning legal issues, contracts, agreements, ordinances, resolutions, land use decisions including appeals, public improvements, easements, dedications, rights-of-way, and City Council Staff reports. Clear, concise, well-organized writing in plain English is a pre-requisite.
- Represent, coordinate and/or advise the Town in litigation not covered by PLAN JPA (which provides coverage for tort claims) and Cities Group (which provides coverage for workers' compensation) or otherwise handled by outside counsel.
- Represent the Town in inter-agency projects and other legal matters.
- Oversee coordination with special legal counsel on all Town litigation including oversight of the Town's risk management program and general liability claims – litigation shall be handled by the City Attorney or sent to an outside firm specializing in litigation, but may not be handled by a litigation department within the City Attorney's own firm.
- Provide legal advice and assistance to operating departments.
- Review compliance with public records for public records requests, records destruction and assist with contract development.
- Counsel the Town regarding taxes, assessments, fees, Proposition 218, and other financial advice.
- Designing, drafting, and updating the Town's Municipal Code and Zoning Code, including regulations for state and federal housing legislation and Accessory Dwelling Units.
- Monitor pending and current state and federal legislation and court decisions, as appropriate, and provide written updates on those that have the potential to affect the Town. Provide suggested action or changes in operations or procedures to assure compliance.

POLICY ISSUES

The City Attorney role is one of the two roles hired directly by the City Council, with the other role being the City Manager.

Careful consideration should be given to the role of the City Attorney, the scope of services, the fee method, and fit for the Council and organization.

Before release of the RFP, the City Council should also review and discuss the process for vetting and/or screening of potential applicants and the process to be used for selection. The City Attorney can advise on this process.

FISCAL IMPACT

None at this time.

PUBLIC NOTICE

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

ATTACHMENTS

1. Request for Proposal for City Attorney Services
2. Current Agreement for City Attorney Services



Request for Proposal

City Attorney Services

**Town of Atherton
150 Watkins Avenue
Atherton, CA 94027**

Issue Date: September 5, 2019
Submission Deadline: October 7, 2019

OVERVIEW AND BACKGROUND

Background

The Town of Atherton is a scenic, semi-rural, thickly wooded residential area, with approximately 7,000 residents and 2,500 single-family homes. The Town is mainly residential, with no commercial establishments. Although the Town is largely developed and therefore has a stable population, it experiences redevelopment as older residential buildings are demolished or significantly renovated, and its numerous schools make changes to their campus. Atherton was incorporated in 1923 and is approximately 5.06 square miles in size. The Town's annual revenue is approximately \$16.5 million and maintains a conservative positive general reserve.

Atherton is a general law city, comprised of a Council-Manager form of government. The voters elect five City Councilmembers to serve four-year terms on the City Council. The City Council appoints a professional City Manager to serve as the Chief Administrative Officer. Under the direction of the City Council, the City Manager is responsible for the day-to-day functions of the Town and the administration of Town services. The City Council meets on the first and third Wednesday of each month at 4 pm and 7 pm, respectively and the selected City Attorney should anticipate attendance at all City Council meetings. The City Council meets at the Pavilion at Holbrook Palmer Park while the new City Hall is constructed. The Town anticipates the new City Hall to be completed in 2021.

Atherton provides services to its residents either directly or by working with other agencies and/or consultant services. It is through these partnerships that Atherton is able to provide high quality services that are economically efficient. The Town provides administrative services, police, building permits/inspections, planning, engineering/public works, City Clerk/election services, and finance. Fire services are provided by the Menlo Park Fire Protection District. Water services are provided by CalWater. Sewer services are generally provided by West Bay Sanitary Services. Waste collection and processing is currently provided by Recology and the South Bayside Waste Management Authority (JPA).

Purpose of Request for Proposal

The purpose of this Request for Proposal (RFP) is to identify and select an experienced attorney or legal services firm to serve as City Attorney for the Town. The Scope of Work section further details required services and performance conditions. The Qualifications section provides prerequisites for the application.

Town Objectives

The Town seeks to obtain high-quality legal counsel on a contract basis. The City Attorney will serve at the pleasure of the City Council as a directly appointed position. The Town intends to select an attorney or firm that specializes in municipal law, with specific experience practicing as City Attorney in other jurisdictions.

SELECTION PROCESS

The evaluation of proposals will allow the Town to identify a list of qualified applicants. This RFP

provides the criteria that serves as the basis for review of qualified applicants. Qualified applicants that best meet the needs of the Town will be invited to an on-site interview and presentation.

After all evaluation of proposals and on-site interviews are complete, the City Council will select the finalist in its sole discretion. The Town and the finalist Applicant will enter into contract negotiations. In the event the Town determines, in its sole discretion, that a satisfactory agreement cannot be reached, the Town reserves the right to enter into contract negotiations with an alternate applicant.

RFP Schedule of Events

RFP Event	Date
1 Town Issues RFP	September 5, 2019
2 Deadline for Letter of Intent to Propose (Encouraged – Not Required)	September 20, 2019
2 Deadline to Submit Questions and/or Comments	September 20, 2019
3 Town Issues Responses to Written Questions/Comments	September 27, 2019
3 Deadline for Receipt of Proposal	October 7, 2019
4 Tentative Interviews/Presentation Week	October 14, 2019
5 Town Determines Finalist for Contract Negotiations	October 28, 2019
5 Tentative Award of Contract	November 6, 2019
6 Targeted Contract Start Date	December 2, 2019

The Town reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the RFP Schedule of Events will be provided to all Applicants that submitted a Letter of Intent to Propose.

RFP Coordinator

All communications, requests of additional information or clarification concerning this RFP should be sent via email to the City Clerk, Anthony Suber. The RFP Coordinator will be the sole point of contact for this RFP. The coordinator can be reached via email at:

Coordinator Anthony Suber	Email asuber@ci.atherton.ca.us	Phone 650-752-0529
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The Town is not responsible for delayed or lost e-mail, regardless of the cause.

RFP Amendment and Cancellation

The Town reserves the unilateral right to amend this RFP in writing at any time. The Town also reserves the right to cancel or reissue all or any part of the RFP at its sole discretion. Applicants are required to respond to the final written RFP including any exhibits, attachments, and amendments issued by the Town.

Questions Pertaining to the RFP

Specific questions and/or comments concerning the RFP should be submitted via email to the RFP

Coordinator not later than the Deadline for Receipt of Questions and/or Comments identified in the RFP Schedule of Events. Applicant questions should clearly identify the relevant section of the RFP and page number(s) related to the question being asked. All questions and/or comments and the Town's responses will be emailed to any Applicants who submit a Notice of Intent to Propose.

Notice of Intent to Propose

Prospective applicants who anticipate submitting a proposal should register by submitting an email indicating their intent to respond to this RFP. The notice of intent should be emailed to the RFP Coordinator. The following information should be included in the Notice of Intent to Propose:

- Attorney or Firm Name
- Name, title, and contact information of main contact
- A general statement of interest in providing legal counsel services

Submittal of a Notice of Intent to Propose, by the specified deadline, is highly desirable for submitting a proposal, and is necessary to ensure Applicants receive RFP amendments and other communications regarding the RFP. The Notice of Intent does not bind prospective Applicants to submitting a proposal. Not submitting a Notice of Intent to Proposal does not preclude submission of a proposal by the required deadline.

SCOPE OF WORK

The City Attorney reports to, and serves at the pleasure of, the City Council. The City Attorney will work directly with the City Manager and Town Staff in performance of his/her daily duties in the operation of Town business. The general responsibilities of the City Attorney (or other City Attorney personnel) include, but are not limited to, the following and shall be considered to be services covered by the retainer:

- Provide clear and concise legal advice and consultation on a daily basis as requested or required to members of the City Council, the City Manager, Committees and Town Staff. Contacts are usually made via telephone and email, and generally same or next day response is expected.
- During the Office Hours, as described below, the City Attorney will be present in the City Attorney's Office in City Hall and available to meet with staff, Councilmembers, or members of the public unless excused by the City Manager or Mayor in advance. Office hours shall generally be for a period of 4-6 hours a week as established and negotiated as part of any contract and the City Manager or Mayor may adjust the schedule upon a showing of good cause. Office hours may be coordinated with days of attendance at Council meetings.
- Attendance at City Council and Planning Commission meetings is expected, unless excused.
- Attend City Council meetings and be prepared to advise the Council and Staff on matters on the agenda as well as parliamentary procedure and substantive issues that arise during the meeting. Attendance at City Council subcommittee meetings or joint meetings with outside agencies may be requested from time to time.
- Provide guidance concerning requirements of the Brown Act, Conflict of Interest, the Political Reform Act, the Public Records Act, CEQA, tort liability and risk, due process and other legal requirements imposed by statute and common law, as well as a working knowledge of municipal employment practice and public administration.

- Prepare, review, and revise Staff documents, including, but not limited to, initiation of memoranda concerning legal issues, contracts, agreements, ordinances, resolutions, land use decisions including appeals, public improvements, easements, dedications, rights-of-way, and City Council Staff reports. Clear, concise, well-organized writing in plain English is a pre-requisite.
- Represent, coordinate and/or advise the Town in litigation not covered by PLAN JPA (which provides coverage for tort claims) and Cities Group (which provides coverage for workers' compensation) or otherwise handled by outside counsel.
- Represent the Town in inter-agency projects and other legal matters.
- Oversee coordination with special legal counsel on all Town litigation including oversight of the Town's risk management program and general liability claims – litigation shall be handled by the City Attorney or sent to an outside firm specializing in litigation, but may not be handled by a litigation department within the City Attorney's own firm, unless otherwise approved by the City Council.
- Provide legal advice and assistance to operating departments.
- Review compliance with public records for public records requests, records destruction and assist with contract development.
- Counsel the Town regarding taxes, assessments, fees, Proposition 218, and other financial advice.
- Designing, drafting, and updating the Town's Municipal Code and Zoning Code, including regulations for state and federal housing legislation and Accessory Dwelling Units.
- Monitor pending and current state and federal legislation and court decisions, as appropriate, and provide written updates on those that have the potential to affect the Town. Provide suggested action or changes in operations or procedures to assure compliance.

The Town may propose additional tasks as deemed necessary to complete the assignment. Any additional work shall be compensated, as agreed upon in the Legal Services Agreement between the successful applicant and the Town.

QUALIFICATIONS

The Applicant must be a licensed and active member of the California State Bar. Qualified applicants will preferably have five (5) or more years of municipal legal experience in California as a Municipal Attorney. Further, it is required that the City Attorney have experience in the following areas:

- Designing, drafting, and updating Municipal Code sections and regulations.
- Providing support to Staff and the Council during land use appeals to the Council; and in code enforcement actions.
- Experience with and knowledge of the law governing general law.
- Experience regarding land use regulations related to public land use and planning, environmental law including the California Environmental Quality Act (CEQA), general plans, code enforcements and other related areas of law, administrative law, personnel law, and other areas of municipal law.
- Experience with public sector employment, pension law, and general personnel matters.
- The City Attorney should have litigation experience or experience monitoring or supervising litigation activity within a firm.
- The City Attorney must demonstrate abilities to speak clearly, concisely and effectively in public.
- The City Attorney must have the ability to relate easily and effectively with all members of the City Council, Staff, and the public.

- Applicant must supply appropriate references that may be contacted by the Town for background information and qualification.

PROPOSAL SUBMISSION REQUIREMENTS

Proposal Submittal

Proposals must be delivered in person, by U.S. Postal Service, or by a courier service such as Federal Express, UPS, etc. and must be received no later than October 7, 2019, 4:30 p.m. PST, at the address listed below. Applicants must submit one (1) completed hard copy of the proposal, as well as one (1) electronic copy. All proposals must be submitted in a sealed envelope clearly marked on lower left-hand corner “Legal Services – RFP”, and electronic submittals must be identified in the subject area as relating to the Legal Services RFP.

Mailing Address

Anthony Suber, City Clerk
Town of Atherton
150 Watkins Avenue, Atherton, CA 94027

General Instructions

Proposals should be prepared simply and economically and provide a straightforward, concise description of the Applicant’s firm, background, qualifications, proposed legal services, and capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content. Glossy sales and marketing brochures are not necessary or desired. Proposing parties are responsible for all costs incurred in preparation and submittal of proposals.

Proposals should be organized consistent with the outline provided below under Proposal Format.

Proposal Format

Proposal must be structured, presented, and labeled in the following manner:

1. Cover Letter
2. Executive Summary
3. Applicant/Firm Information
4. Applicant/Firm Background
5. Applicant/Firm Qualifications
6. Principal Attorneys
7. References
8. Pricing
9. Additional Information

Failure to follow the specific format, to label the responses correctly, or to address all of the subsections may, at the Town’s sole discretion, result in the rejection of the Proposal.

Proposals shall not contain extraneous information. All information presented in the Proposal must be

relevant in response to a requirement of this RFP, must be clearly labeled, and, if not incorporated into the body of the proposal itself, must be referenced to the appropriate place within the body of the proposal.

Cover Letter

The Proposal must include a cover letter which references and responds to each of the following bulleted items.

- Signature of an officer empowered to bind the Applicant to the provisions of this RFP and any contract awarded pursuant to it.
- A high-level statement of credentials qualifying for delivery of the services sought under the RFP.
- A statement indicating the proposal remains valid for at least 90 days from the Deadline for Receipt of Proposal, with automatic extension should the proposer be selected for negotiation.
- A statement that the Applicant, or any individual who will perform work, is free of any conflict of interest (e.g., employment by the Town or a competing corporate or agency interest).

Please limit the Cover Letter to three pages.

Executive Summary

This section of the proposal should provide a concise synopsis of Applicant’s proposal and credentials to deliver the services sought under the RFP. Provide a general overview of the Applicant’s philosophy for City Attorney services and approach to mitigating risk to cities.

Applicant/Firm Information

This section of the proposal must include the following company Information:

- Provide the legal entity name, Federal Employer Identification Number (EIN), and form of business (i.e. Corporation, LLP, etc.).
- Identify if the Applicant is a subsidiary of a larger firm. If so, whom and from where will services be provided?
- Provide the Proposal contact name, address, phone number, and email address.
- Identify the principal attorney who will serve as the City Attorney and any other functions requested under Scope of Services.
- Identify the location of company headquarters and office which will support the project.

Applicant/Firm Background

This section should identify the following:

- A description of the Applicant’s background, nature of business, and organizational history.
- A statement of how long the Applicant has been providing legal services to municipalities.
- Location of office that will be providing services to the Town.
- Staff services available (clerical support, paralegals, other non-attorney staff).

- Awards, honors or public recognition of you, your firm, or both, concerning the provision of legal services.

Applicant/Firm Qualifications

In this section of the proposal, the Applicant should identify firm/staff qualifications and experience in the scope of work. More specifically, this section should identify the following:

- Experience, in detail, of providing government/municipal legal services.
- Experience, in detail, working with California local government agencies.
- List all public clients for whom you currently provide services under a fee for service or retainer basis. Indicate the meeting dates and schedules for any public bodies for the prospective lead attorney.

References

The Applicant must provide three to five (3-5) references. At least two of the references should be for similar services provided in the last three years. The Town prefers references from local government agencies with populations of 10,000 or less if possible. For each reference, Applicant should provide the following information and permission to contact each reference:

- Entity name
- Customer contact information (name, title, phone, and email)
- Scope of work performed identifying the services provided
- Start date
- Summary of any problems and solutions to those problems

Fee Schedule/Pricing

The selected applicant will be required to provide services under a monthly retainer fee format for regular attendance at regular City Council meetings, special City Council meetings, weekly staff meetings, Planning Commission meetings, office hours on site at the Town, communications with the Town, and other general legal work. Routine travel expenses would be the responsibility of the applicant.

- Please describe what is included in the retain (including the proposed number of office hours on site each week.
- Please provide an hourly rate for all of the individuals that may be working with the Town from the Applicant's office for services not included in the retainer. In addition, please provide an hourly rate for any specialized legal services.
- Please provide the retainer fee and rates in a tabular format.
- Please define what type of work you would consider to be extra or specialized that would be billed in addition to basic servicer and state the hourly rates for the designated legal staff for such services.

The Town anticipates that the vast majority of work required under the Scope of Work fall under the monthly retainer service fee. Such services are to be provided in-house by the City Attorney within the retainer, other than specialized services that may be outsourced.

PROPOSAL EVALUATION

The Town shall review all proposals to determine which Applicants are qualified for consideration. The initial review will evaluate all submissions for conformance to stated specifications and to eliminate all responses that deviate substantially from the basic intent and/or fail to satisfy the mandatory requirements. Following the initial review, the Town will complete a detailed review of Applicant proposals. Proposals will be evaluated based on the following evaluation criteria:

Demonstrated understanding of Town’s needs
Quality, clarity, and responsiveness of proposal
Anticipated value and price
Results of interviews, presentations
References
Ability to prepare and execute a contract in a timely manner

The Town reserves the right, at its sole discretion, to request clarifications of proposals or to conduct discussions for the purpose of clarification with any or all Applicants. The purpose of any such discussions shall be to ensure full understanding of the proposal. Discussions shall be limited to specific sections of the proposal identified by the Town and, if held, shall be after initial evaluation of proposals is complete. If clarifications are made as a result of such discussion, the Applicant agrees to put such clarifications in writing.

After review of all applicants, the Town will select the best qualified applicant to move forward to contract negotiations.

GENERAL REQUIREMENTS

Collusion

By submitting a response to the RFP, each Applicant represents and warrants that its response is genuine and is not made in the interest of or on behalf of any person not named therein; that the Applicant has not directly induced or solicited any other person to submit a sham response or any other person to refrain from submitting a response; and that the Applicant has not in any manner sought collusion to secure any improper advantage over any other person submitting a response.

Gratuities

No person will offer, give or agree to give any Town employee or its representatives any gratuity, discount or offer of employment in connection with the award of contract by the Town. No Town official, employee, agent, or its representatives will solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a Town contract.

Required Review and Waiver of Objections by Applicant

Applicants should carefully review this RFP for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called “comments”). Comments concerning RFP objections must be made in writing and received by the Town no later than the "Deadline for Written

Questions and/or Comments" detailed in the RFP Schedule of Events. This will allow issuance of any necessary amendments and help prevent the opening of defective proposals upon which contract award could not be made.

Protests based on any objection will be considered waived and invalid if these faults have not been brought to the attention of the Town, in writing, by the Deadline for Written Questions and/or Comments.

Proposal Withdrawal

To withdraw a proposal, any Applicant must submit a written request, signed by an authorized representative, to the RFP Coordinator not later than 24 hours before the Deadline for Receipt of Proposals. After withdrawing a previously submitted proposal, the Applicant may submit another proposal at any time up to the Deadline for Receipt of Proposals.

Proposal Errors

Applicants are liable for all errors or omissions contained in their proposals. Applicants will not be allowed to alter proposal documents after the Deadline for Receipt of Proposals.

Incorrect Proposal Information

If the Town determines that an Applicant has provided, for consideration in the evaluation process or contract negotiations, incorrect information which the Applicant knew or should have known was materially incorrect, that proposal will be determined non-responsive, and the proposal will be rejected.

Proposal of Additional Services

If an Applicant indicates an offer of services in addition to those required by and described in this RFP, these additional services may be added to the contract before contract signing at the sole discretion of the Town.

Licensure

At all times while serving as City Attorney or as an attorney providing services to the Town under the City Attorney contract, each such attorney shall be a member in good standing of the California State Bar, and shall be required to maintain that license to practice law in full force and effect while so employed.

Conflict of Interest and Proposal Restrictions

Applicants should identify any other public agency or private representation that may have a conflict of interest with the Town of Atherton.

By submitting a response to the RFP, the Applicant certifies that no amount will be paid directly or indirectly to an employee or official of the Town as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or Firm to the Applicant in connection with the procurement under this RFP.

Notwithstanding this restriction, nothing in this RFP will be construed to prohibit another governmental entity from making a proposal, being considered for award, or being awarded a contract under this RFP. Any individual, company, or other entity involved in assisting the Town in the development, formulation, or drafting of this RFP or its scope of services will be considered to have been given information that would afford an unfair advantage over other Applicants, and said individual, company, or other entity may not submit a proposal in response to this RFP.

Contract Negotiations

After a review of the proposals and completion of the reference checks, and interviews, the Town intends to enter into contract negotiations with the selected Applicant. These negotiations could include all aspects of services and fees. If a contract is not finalized in a reasonable period of time, the Town will open negotiations with the next ranked Applicant.

Right of Rejection

The Town reserves the right, at its sole discretion, to reject any and all proposals or to cancel this RFP in its entirety.

Any proposal received which does not meet the requirements of this RFP may be considered to be nonresponsive, and the proposal may be rejected. Applicants must comply with all of the terms of this RFP and all applicable State laws and regulations.

If an applicant seeks to restrict the rights of the Town or otherwise qualify their proposal, the Town may determine the proposal to be a nonresponsive counteroffer, and the proposal may be rejected.

The Town reserves the right, at its sole discretion, to waive variances in technical proposals provided such action is in the best interest of the Town. Where the Town waives minor variances in proposals, such waiver does not modify the RFP requirements or excuse the Applicant from full compliance with the RFP. Notwithstanding any minor variance, the Town may hold any Applicant to strict compliance with the RFP.

Disclosure of Proposal Contents

All proposals and other materials submitted in response to this RFP procurement process become the property of the Town. Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process; however, names of persons or firms submitting proposals may be disclosed as a public record upon request. Upon the completion of the evaluation of proposals, the proposals and associated materials will be open for review by the public to the extent allowed by the California Public Records Act, (Government Code Section 6250-6270 and 6275-6276.48). By submitting a proposal, the Applicant acknowledges and accepts that the contents of the proposal and associated documents will become open to public inspection.

Each Applicant should be aware that although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the Town is not in a position to

establish that the information, which an Applicant submits, is a trade secret. If a request is made for information marked “confidential”, the Town will provide the Applicant who submitted such information with reasonable notice to allow the Applicant to seek protection from disclosure by a court of competent jurisdiction.

Severability

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the Town and Applicants will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

RFP and Proposal Incorporated into Final Contract

This RFP and the successful proposal may be incorporated into the final contract, at the discretion of the Town.

Proposal Amendment

The Town will not accept any amendments, revisions, or alterations to proposals after the Deadline for Receipt of Proposals unless such is formally requested, in writing, by the Town.

Warranty

The selected Applicant will warrant that the proposal will conform in all material respects to the requirements and specifications as stated in this RFP and as demonstrated during the evaluation process. In addition, the requirements as stated in this RFP will become part of the subsequent agreements.

Rights of the Town

The Town reserves the right to:

- Make the selection based on its sole discretion.
- Reject any and all proposals.
- Issue subsequent Requests for Proposals.
- Postpone opening proposals if necessary, for any reason.
- Remedy errors in the Request for Proposal process.
- Approve or disapprove the use of particular subcontractors.
- Negotiate with any, all, or none of the Applicants.
- Accept other than the lowest monetary offer.
- Waive informalities and irregularities in the proposals.
- Enter into an agreement with another Applicant in the event the originally selected Applicant defaults or fails to execute an agreement with the Town.
- Include provisions in the contract allowing the City Council to terminate the agreement at its sole and entire discretion upon the provision of thirty day (30) written notice.

AGREEMENT FOR CITY ATTORNEY SERVICES TOWN OF ATHERTON

This Agreement (“Agreement”) is effective as of the first day of February, 2012, by and between the law firm of WILLIAM B. CONNERS & ASSOCIATES (“Attorney”) a California law firm and consultant association and the TOWN OF ATHERTON, a municipal corporation (“Town”).

1. APPOINTMENT.

City Council hereby appoints Attorney to render such legal services as are customarily rendered by City Attorneys as further specified herein, including attending meetings of the City Council, Planning Commission, and other bodies of Town as directed by the City Council. The City Council and Attorney agree that the position of City Attorney shall be filled by William B. Connors, and the position of Assistant City Attorney shall be filled by Jennifer Larson. Any changes to such persons in such positions shall be approved by the City Council.

Notwithstanding the foregoing, the position of City Attorney may appoint the Assistant City Attorney to serve as acting City Attorney in his absence, or a qualified acting City Attorney to serve in his absence when the Assistant City Attorney is unavailable to serve. Such acting City Attorney shall serve for no longer than 7 days without permission from the City Manager, and for no longer than 14 days without permission from the City Council.

All such persons serving in as Assistant City Attorney or Acting City Attorney shall be compensated by the City Attorney as his sole cost.

2. TERM.

A. The term of this Agreement shall begin on February 1, 2012, and shall remain in effect for two (2) years, however, it shall continue in effect indefinitely from year-to-year thereafter unless either party gives written notice of its intention not to renew at least 90 days before expiration of the current term. A request by either party to revise specific terms or provisions of the Agreement shall not serve as intention not to renew, and either party may seek revisions at any time upon 90 days written notice to the other.

B. Either party may terminate this Agreement at any time by providing 90 days written notice to the other party, except that such termination may not be terminated by Town within 120 days following any municipal election at which any seat on the Council is changed. The purpose of this provision is to allow the Council adequate time to objectively evaluate Attorney’s performance.

3. DUTIES.

Town employs Attorney to provide any and all work necessary for the provision of City Attorney services to Town, including without limitation, the following:

A. Attendance at City Council and Planning Commission meetings, and such other bodies of the Town as the City Council may request, either in person or through the Assistant

City Attorney unless excused by the City Manager or the Mayor. Attendance at weekly staff meetings as requested by the City Manager.

B. Provide legal advice, written legal opinions, and consultation on all matters affecting the Town to the City Council, City Manager, commissions and other bodies of the Town, and officers and employees.

C. Be available for telephone or email consultation with Town staff as needed on legal matters, and to maintain office hours and attendance at meetings at City Hall an average of 14 hours weekly as mutually agreed to by the City Manager and Attorney except during periods when excused by the City Manager resulting from vacations, illness, training, or similar legitimate reasons to absent from the Town.

D. Prepare or review necessary legal documents such as ordinances, resolutions, contracts, bid documents including RFP's, construction documents, memoranda, and similar legal documents as requested by Town.

E. Represent and advise Town on pending and potential litigation as requested by Town, except regarding liability matters handled by ABAG or other outside insurance providers, matters where Attorney has a conflict, or matters beyond the technical expertise of Attorney who shall, with approval of the City Council, employ such outside counsel as is necessary.

F. With respect to matters referred to outside counsel or ABAG, monitor pending litigation matters, and assist in facilitating early resolution of such matters.

G. Monitor pending and current legislation and case law as appropriate.

H. Such other normal City Attorney functions as assigned by the City Council or City Manager.

4. COMPENSATION.

Town shall pay a fixed inclusive monthly retainer of Twelve thousand eight hundred dollars (\$12,800) for all legal services as set forth above. This payment shall cover all costs of provision of legal services under this Agreement, including costs for City Attorney and all other members of his legal team in delivering such services as discussed in City Attorney's Response to the City's RFP for legal services in 2011. It is anticipated that this retainer will cover all of the usual and customary general and special City Attorney services; however, if Town shall request additional services beyond the scope of this Agreement, such services shall be billed at the rate of \$175 per hour.

Attorney expects that virtually all costs expected to be incurred in provision of these services will be included in the monthly retainer. Reasonable additional costs, if any, incurred by Attorney on behalf of Town while providing legal services shall be reimbursed by Town.

Attorney shall bill Town on a monthly basis for services rendered in the prior month. Any additional fees or costs will be itemized and explained in detail to demonstrate why the amount is a legitimate addition to the monthly retainer.

5. INDEPENDENT CONTRACTOR STATUS.

Attorney shall perform all legal services required under this Agreement as an independent contractor and law firm, and shall remain at all times as to Town a wholly independent contractor with only such obligations as are required under this Agreement. Neither Town nor any of its employees shall have any control over the manner, mode, or means by which Attorney, his agents and employees, render the legal services required under this Agreement except as otherwise set forth. Attorney shall not receive any benefits beyond the compensation set forth herein.

6. INSURANCE COVERAGE.

Town agrees that Attorney, including the Assistant City Attorney and any other acting City Attorney provided by Attorney, are excused from carrying errors and omissions professional liability coverage, and because Attorney has the authority of the office of City Attorney pursuant to Government Code section 36505, the Town agrees to extend the protections of Government Code section 825 to Attorney and defend and hold harmless Attorney, and other attorney's working on behalf of Attorney in carrying out the terms and conditions of this Agreement, from any action resulting from provision of legal services under this Agreement.

7. PROFESSIONAL DEVELOPMENT.

Attorney agrees that he, and all persons working on behalf of him in provision of legal services under this Agreement, shall remain licensed to practice law in the State of California, and Attorney will ensure that he and all attorney's acting under this Agreement shall maintain compliance with continuing education requirements and maintain competence with respect to the field of municipal law at all times while carrying out the terms of this Agreement.

8. ENTIRE AGREEMENT.

The parties agree that this Agreement contains all of the agreements of the parties and cannot be amended or modified except by written amendment or agreement. The prior written agreement by and between the Town and Attorney regarding legal services is hereby terminated as of the effective date and time of this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by written amendment.

9. NOTICES.

Any notices pursuant to this Agreement shall be sent by regular mail addressed as follows:

- A. Town: City Manager, 91 Ashfield Road, Atherton, CA 94027
- B. Attorney: William B. Connors, P. O. Box 1521, Pebble Beach, CA 93953

10. INTERPRETATION OF AGREEMENT AND FORUM.

This Agreement shall be construed and interpreted in accordance with the laws of California. In the event of any dispute arising from this Agreement, the forum for judicial review shall be the Superior Court, San Mateo County.

11. SEVERABILITY.

If any provision or portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder shall be deemed severable and shall not be affected and shall remain in full force and effect insofar as possible.

12. CONFLICTS.

Attorney has no known present or contemplated employment which is adverse to the Town. Attorney agrees that he will not represent clients in matters against the Town. In such instances, Attorney shall make such potential conflict known to Town and offer to withdraw from representing either client and assist in obtaining suitable outside counsel to represent Town.

Dated: February _____, 2012

TOWN OF ATHERTON

Mayor

ATTORNEY

William B. Conners