



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL DRAINAGE
DISTRICT
August 2, 2010
9:00 A.M.
Town Council Chambers
94 Ashfield Road
Atherton, California
Special Meeting

9:00 A.M. ROLL CALL Lewis, Dobbie, Marsala, McKeithen, Carlson

9:02 P.M. PUBLIC COMMENTS

9:15 A.M. REGULAR

- 1. ADOPTION OF RESOLUTION REJECTING CLAIM SUBMITTED BY MCNEILL LAW OFFICES ON BEHALF OF PACIFIC PENINSULA GROUP**

Report: Assistant City Manager Eileen Wilkerson

Recommendation: Adopt Resolution No. 10-42 rejecting claim of Pacifica Peninsula Group

- 2. REVIEW AND GIVE DIRECTION TO STAFF IN REGARD TO THE CITY ATTORNEY SERVICES AND ESTABLISH: 1) A POTENTIAL REQUEST FOR PROPOSAL (RFP) PROCESS AND; 2) A POTENTIAL AD-HOC COMMITTEE TO ASSIST IN THE RFP PROCESS**

Report: Verbal from City Manager Gruber

Recommendation: To Be Determined

11:00 A.M. ADJOURN

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk's Office at (650) 752-0500. Notification of 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: EILEEN M. WILKERSON, ASSISTANT CITY MANAGER

DATE: CITY COUNCIL MEETING OF AUGUST 2, 2010

SUBJECT: ADOPTION OF RESOLUTION REJECTING CLAIM SUBMITTED BY MCNEILL LAW OFFICES ON BEHALF OF PACIFIC PENINSULA GROUP

RECOMMENDATION

Adopt Resolution 10-42 rejecting claim of Pacific Peninsula Group.

BACKGROUND

The Town received a correspondence from McNeill Law Offices on July 1, 2010 who represent Pacific Peninsula Group.

[A copy of the claim is available in the City Clerks Office.]

At the regular meeting of July 21, 2010 the City Attorney reported out of closed session that council directed staff to prepare a resolution rejecting the claim of Pacific Peninsula Group and bring it back to council in compliance with statutory procedures.

FISCAL IMPACT

No fiscal impact.

Attachment: Resolution 10-42 rejecting claim of Pacific Peninsula Group

RESOLUTION 10-42

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
REJECTING THE CLAIM OF
Pacific Peninsula Group
[Re: Road impact fees]**

BE IT RESOLVED by the City Council of the Town of Atherton that the Claim submitted by Pacifica Peninsula Group for refund of road impact fees totaling \$298,144.91 received July 1, 2010 is hereby rejected.

DULY AND REGULARLY ADOPTED this 2nd day of August, 2010.

TOWN OF ATHERTON

Kathy McKeithen, Mayor

ATTEST

Theresa N. DellaSanta, Deputy City Clerk

Wynne S. Furth
Attorney at Law

1901 Harrison St., 9th Floor
Oakland, CA 94612
(510) 273-8780

July 28, 2010

Eileen Wilkerson
Assistant City Manager
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

Re: Burke, Williams & Sorensen LLP

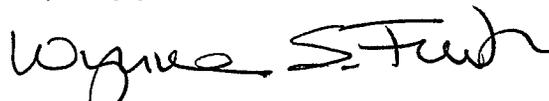
Dear Ms. Wilkerson:

As requested by City Manager, Jerry Gruber, enclosed is a proposed Agreement between Burke, Williams & Sorensen LLP, the law firm that Ben Winig and I will be joining, and the Town of Atherton. The proposed rates are the same as those charged by McDonough Holland & Allen PC.

Because we have a financial interest in our future firm, we are not able to provide legal advice to the Town on this contract. However, we can answer questions about the Burke proposal. We are also enclosing background information on the firm of Burke, Williams & Sorensen and Timothy Davis. Mr. Davis is resident in the Menlo Park office and would be the principal Labor and Employment lawyer under the proposed agreement.

Please let me know if you have any questions or need any further information. Thank you.

Very truly yours,



Wynne S. Furth

WSF:sh
Enclosures

DRAFT

AGREEMENT

This AGREEMENT, dated _____, 2010, is made and entered into by and between the Town of Atherton, a municipal corporation ("Town"), with offices at 91 Ashfield Road, Atherton, California 94027, and Burke, Williams & Sorensen LLP, ("Burke") a California limited liability partnership, with offices at 1901 Harrison Street, 9th Floor, Oakland, California 94612.

RECITALS

In October of 2008, McDonough Holland & Allen P.C. ("McDonough") responded to a Request for Proposals issued by Town for legal services.

In February of 2009, McDonough began providing legal services to Town under a contract dated February 13, 2009 ("the McDonough Agreement.")

Under the terms of the McDonough Agreement, McDonough is required to give the Town sixty (60) days advance notice before terminating the agreement. The Town may terminate the McDonough Agreement at any time by giving written notice.

McDonough is winding up its business as a law firm and gave notice to Town on July 1, 2010 of the termination of the McDonough Agreement as of August 31, 2010.

Wynne S. Furth and Benjamin D. Winig, who presently serve as the Town's City Attorney and Assistant City Attorney, and Leah Castella, who provides litigation services to the Town, are joining Burke. It is the desire of the parties to enter into this Agreement, providing for continuity of legal services and compensation practices to the extent possible.

Now, therefore, it is mutually agreed as follows:

Section 1. Legal Services.

Town hereby retains Burke as its legal counsel effective September 1, 2010 and Burke agrees to faithfully represent the legal interests of Town during the term of this Agreement.

Wynne S. Furth shall serve as City Attorney for Town, Benjamin D. Winig as Assistant City Attorney, and Timothy Davis as Special Personnel Counsel. Other Burke attorneys shall provide services as necessary.

Burke's duties shall be that of City Attorney to Town, as described generally in Government Code sections 41081 through 41085. Burke shall perform any and all legal duties and functions entrusted to it by Town including, without limitation, attendance at City Council and Planning Commission meetings and other bodies as requested, provision of legal advice on

Town matters to Town staff, attendance at a weekly staff meeting and weekly office hours at the Town Hall, preparation of ordinances, resolutions, contracts and other legal documents pertaining to Town affairs, preparation of opinions regarding Town matters as requested by appropriate Town officials, and code enforcement. Burke shall provide representation to Town in all personnel and litigation matters involving Town unless, upon consultation with Burke, Town authorizes retention of separate counsel. The City Attorney's duties shall include the supervision of outside counsel.

Legal services will not include matters in which Burke has a conflict of interest that precludes Burke from representing the Town, members of the City Council, or Town officers or employees. If Burke lacks expertise to handle a particular assignment, Burke shall provide the City Council with a recommendation to hire outside counsel.

Section 2. Compensation.

In consideration for the rendition of legal services, Town shall compensate Burke as follows:

A. Town shall pay a fixed monthly retainer of \$11,000 to Burke for up to 50 hours per month of general counsel services as described in Exhibit "A." The 50 hours of legal services includes up to 5 hours of employment law consultation.

B. If the Town uses fewer than 50 hours of general counsel services in any month, the unused hours will be added to the retainer hours available in the following month.

C. For general counsel services in excess of retainer hours, Burke shall bill the Town at the rates for additional general counsel services set forth in Exhibit "B" attached to this Agreement and a part of it.

D. For special services provided in connection with litigation (including arbitration and mediation) legal services chargeable to third parties, or matters requiring extraordinary time commitments or which are of unusual complexity, and employment law beyond the retainer, Burke shall bill the town at the rates for special services described in Exhibit "B."

E. Costs (other than those covered by the administrative charge described in Exhibit "A") incurred by Burke on behalf of Town shall be reimbursed by Town. Provided, Town shall not be charged for travel expenses between the Oakland or Menlo Park offices of Burke and Town.

Section 3. Monthly Billings.

Burke shall bill the Town on a monthly basis. Each bill shall indicate the date of the work done, the work that was accomplished, the attorney or paralegal who performed the work, and the fee for the work done. Expenses not covered by the administrative charge described in Exhibit "B" shall be itemized. Fees and costs shall become payable to Burke upon receipt of the monthly statement for them.

Section 4. Amendment; Annual Review.

This Agreement may be amended from time to time by written agreement of the parties. The Town and Burke agree that there shall be an annual review of the provisions contained in this Agreement to ensure that its terms and conditions are mutually satisfactory to both parties.

Section 5. Termination.

This Agreement may be terminated by the Town at any time upon written notice to Burke and by Burke upon sixty (60) days written notice to Town. In the event of termination, Town shall be responsible only for pro rata portion of the retainer as well as for fees and costs incurred as of the effective date of the termination.

Section 6. Professional Liability Coverage.

During the term of this Agreement, Burke shall at all times maintain insurance coverage for professional liability. A certificate of insurance shall be provided to Town upon request.

Section 7. Indemnification.

Burke agrees to defend, indemnify and hold Town harmless from and against claims or liabilities arising out of the negligent errors or omissions of Burke discharging its obligations under this Agreement, excluding claims or liabilities arising out of the Town's active negligence or wrongful conduct.

TOWN OF ATHERTON

Date: _____

By: _____
Kathy McKeithen, Mayor

BURKE, WILLIAM & SORENSEN, LLP

Date: _____

By: _____

EXHIBIT A

<p>Retainer</p>	<p>\$11,000 for up to 50 hours of general counsel services per month, including up to 5 hours of employment law counseling.*</p>
<p>Services included in monthly retainer (including estimated weekly office hours on-site in Atherton)</p>	<p>Representation of and advice to the City Council, Boards, Commissions, and all town officials and staff in legal matters of municipal government. This includes attendance at one City Council and one Planning Commission meeting each month, and a minimum of four hours of on-site office hours each week, if requested by City Manager. It also includes additional hours of legal services each month including, but not limited to, preparation and/or review of ordinances, resolutions, contracts, record retention schedules, and other documents pertaining to the Town's business; research and legal opinions on matters as requested; updates on State or Federal legislation or judicial decisions impacting the Town with suggested action to assure compliance; guidance on personnel matters; legal work pertaining to land use issues, including review under the California Environmental Quality Act ("CEQA"); code enforcement prior to litigation; coordination and management of outside legal counsel; and communicating with the press as requested. The retainer covers a total of 50 hours of legal services per month, including up to 5 hours per month of employment law consultation. Hours not used in one month will roll over to the following month.</p>
	<p>(A 4% administrative charge is added to these hourly rates to cover the cost of normal photocopying, long distance telephone calls, regular mail postage, and telecopy charges.)</p>

EXHIBIT B

Retainer	\$11,000 for up to 50 hours of general counsel services per month, including up to 5 hours of employment law counseling.*
Additional General Counsel Services, including pre-litigation code enforcement.	<p>Wynne Furth and other shareholders and "of counsel:" \$275</p> <p>Benjamin Winig \$200</p> <p>Susanne Brown \$240</p> <p>Leah Castella \$240</p> <p>Other senior associates \$240</p> <p>Junior associates \$200</p> <p>Paralegals \$145-\$165</p> <p>(A 4% administrative charge is added to these hourly rates to cover the cost of normal photocopying, long distance telephone calls, regular mail postage, and telecopy charges.)</p>
Special Services (Litigation, including arbitration and mediation, legal services chargeable to third parties, and matters requiring extra-ordinary time commitments or which are of unusual complexity, and employment law beyond the retainer.)	<p>Wynne Furth \$295</p> <p>Timothy Davis \$295</p> <p>Benjamin Winig \$225</p> <p>Leah Castella \$255</p> <p>Other partners and "of counsel" \$295</p> <p>Other senior associates \$255</p> <p>Junior associates \$210</p> <p>Paralegals \$155-\$175</p> <p>(A 4% administrative charge will be added.)</p>

*Unused retainer hours will be added to the retainer hours available in the following month.