



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
JULY 15, 2009
5:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Closed Session

5:00 P.M. ROLL CALL Lewis, Dobbie, Marsala, McKeithen, Carlson

5:02 P.M. PUBLIC COMMENTS

5:15 P.M. CLOSED SESSION

**A. CONFERENCE WITH LEGAL COUNSEL – EXISTING
LITIGATION (Subsection (a) of Government Code Section 54956):**

*John P. Johns v. the Town of Atherton, San Mateo County Superior Court
Case No. CIV 479972*

**B. CONFERENCE WITH LEGAL COUNSEL – EXISTING
LITIGATION (Subsection (a) of Government Code Section 54956):**

*Ortiz v. Town of Atherton, et al., San Mateo County Superior Court Case
No. CIV 483525*

**C. CONFERENCE WITH LEGAL COUNSEL – EXISTING
LITIGATION (Subsection (a) of Government Code Section 54956):**

*Buckheit v. Town of Atherton, et al., San Mateo County Superior Court
Case No. CIV 485502*

**D. CONFERENCE WITH LEGAL COUNSEL – PENDING
LITIGATION**

Significant exposure to litigation pursuant to subsection (b) of
Government Code Section 54956.9: three (3) potential cases

- Buckheit Tort Claim *April 9, 2009*
- Pacific Peninsula Claim *January 21, 2009*
- Carol Flaherty Claim *October 15, 2008*

E. CONFERENCE WITH LABOR NEGOTIATOR – Labor negotiations pursuant to Government Code Section 54957.6

Agency Negotiators: Council Member Dobbie, Council Member Lewis

Unrepresented Employee: City Manager

F. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Subsection (a) of Government Code Section 54956):

Atherton et al v. High Speed Rail Authority Case No. 34-2008-80000022

RECONVENE TO OPEN SESSION

Report of action taken.

6:00 P.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)



AGENDA
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
JULY 15, 2009
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California
REGULAR MEETING

PLEASE NOTE:

Times listed on the Agenda are an approximation and not a time certain. The Council may take up items out of order. Please arrive well in advance of the time listed for any item in which you are interested.

- 7:00 P.M. 1. **PLEDGE OF ALLEGIANCE**
- 7:02 P.M. 2. **ROLL CALL** Lewis, Dobbie, Marsala, McKeithen, J. Carlson
- 7:03 P.M. 3 **PRESENTATIONS**
- OATH OF POLICE OFFICER KRYSTAL PRONSKE**
- RECOGNITION OF ETHAN BANICH - EAGLE SCOUT**
- 7:15 P.M. 4. **PUBLIC COMMENTS** *(This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the Agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the Council from acting on items not listed on the Agenda except by special action of the City Council under specified circumstances. Speakers' time is limited to three minutes.)*
- 7:20 P.M. 5. **REPORT OUT OF CLOSED SESSION**
- 7:25 P.M. 6. **CITY MANAGER'S REPORT**
- 7:30 P.M. 7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** (Directed by Resolution No. 99-6)
- None
- 7:30 P.M. **CONSENT CALENDAR** (Items 8-23)

(Consent Calendar items are routine in nature and are generally considered in one motion and adopted by a single vote of the City Council. If discussion regarding a Consent Calendar item is desired, the member(s) of the City Council, public, and/or staff wishing to pull the item should so indicate at the time the Mayor calls for consideration of the Consent Calendar.)

- 8. APPROVAL OF MAY 28TH SPECIAL MEETING MINUTES, JUNE 17TH REGULAR MEETING MINUTES, JUNE 23RD SPECIAL MEETING MINUTES AND JUNE 25TH SPECIAL MEETING MINUTES.**
Recommendation: Approve May 28th Special Minutes, June 17th Regular Minutes, June 23rd Special Minutes and June 25th Special Minutes
- 9. APPROVAL OF BILLS AND CLAIMS FOR JUNE 2009 IN THE AMOUNT OF \$839,912**
Recommendation: Approve Bills and Claims in the amount of \$839,912
- 10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE MONTH ENDED JUNE 30, 2009**
Recommendation: Accept Monthly Financial Report
- 11. AGREEMENT FOR INFORMATION TECHNOLOGY SUPPORT WITH CITY OF REDWOOD CITY FOR FY2009-10**
Report: Finance Director Louise Ho
Recommendation: Approve the agreement for information technology support between the City of Redwood City and the Town of Atherton and authorize the City Manager to execute the agreement
- 12. ADOPTION OF A STREET ADDRESS ASSIGNMENT POLICY**
Report: Deputy Planner Lisa Costa Sanders
Recommendation: Adopt Street Address Assignment Policy
- 13. AWARD OF WATER TOWER LAWN PROJECT AT HOLBROOK PALMER PARK FOUNDATION**
Report: Public Works Director Duncan Jones
Recommendation: Award the contract for the Water Tower Lawn Project, project number 08-026 to the low bidder to be determined by the July 14th bids, for an amount to be determined by City Council at its meeting, based on the bid results and to authorize the City Manager to execute the contract on behalf of the Town
- 14. AWARD OF CONTRACT TO G. BORTOLOTTO & COMPANY, INC. FOR THE STREET RECONSTRUCTION PHASE 6 PROJECT NUMBER 08-025 IN AN AMOUNT NOT TO EXCEED \$390,264.65 PLUS A TEN PERCENT CONSTRUCTION CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$429,291.11**
Report: Public Works Director Duncan Jones
Recommendation: Award the contract for Street Reconstruction Phase 6 Project, project number 08-025 to G. Bortolotto & Company, the low bidder on the July 9, 2009 bids, for \$390,264.65, with a 10% construction contingency of \$39,026.46, for a total authorization of \$429,291.11 and to authorize the City Manager to sign the contract on behalf of the Town

- 15. APPROVE A CONTRACT CHANGE ORDER FOR INDEPENDENT CONSTRUCTION CO. FOR THE STREET RECONSTRUCTION PHASE 5 PROJECT NUMBER 08-023 IN THE AMOUNT OF \$48,798.58**
Report: Public Works Director Duncan Jones
Recommendation: Approve a Contract Change Order for Independent Construction Co. for Street Reconstruction Phase 5 Project, project number 08-023 in the amount of \$48,798.58
- 16. APPROVAL OF AGREEMENT WITH CSG CONSULTANTS FOR CODE ENFORCEMENT IN AN AMOUNT NOT TO EXCEED \$45,188**
Report: Building Official Mike Wasmann
Recommendation: Approve a Professional Services Agreement with CSG Consultants, Inc. to provide Code Enforcement Services to the Town of Atherton in the amount of \$45,188.00, with a 20% contingency for a total of \$54,250.00 for the fiscal year 2009-010
- 17. APPROVE SECOND AMENDMENT FOR SERVICES OF USPTA TEACHING TENNIS PROFESSIONAL ALAN MARGOT**
Report: Public Works Director Duncan Jones
Recommendation: Approve second amendment to contract for services of Tennis Professional Alan Margot
- 18. RESOLUTION REJECTING CLAIM OF JONATHAN B. BUCKHEIT**
Report: City Attorney Wynne Furth
Recommendation: Adopt Resolution 09-20 rejecting claim of Jonathan B. Buckheit
- 19. ABAG EMPLOYEE PRACTICES LIABILITY INSURANCE**
Report: Assistant City Manager Eileen Wilkerson
Recommendation: Authorize the City Manager to enter into an agreement with Steadfast Insurance Company (Zurich) to provide Employee Practices Liability Coverage effective July 17, 2009 through June 30, 2010 in an amount not to exceed \$36,000
- 20. APPOINTMENT OF PAUL SKEEN JONES TO THE ATHERTON RAIL COMMITTEE**
Report: City Manager Jerome D. Gruber
Recommendation: Appoint Paul Skeen Jones to the Atherton Rail Committee for term commencing immediately and expire on April 30, 2011
- 21. REAPPOINTMENT OF DIANE CRITTENDON AND APPOINTMENT OF RICHARD MOORE TO THE ATHERTON PARKS AND RECREATION COMMITTEE AS THE HOLBROOK PALMER PARK FOUNDATION REPRESENTATIVE**
Report: City Manager Jerome D. Gruber
Recommendation: Reappoint Diane Crittendon and Appoint Richard Moore to the Atherton Parks and Recreation Committee as the Holbrook Palmer

Park Foundation Representative commencing immediately and expiring on April 30, 2013

22. **STATUS UPDATE ON ROAD IMPACT FEE STUDY**
Report: Public Works Director Duncan Jones
Recommendation: Accept Status Report from Staff and provide possible direction
23. **FAMILY DAY PROCLAMATION – A DAY TO EAT DINNER WITH YOUR FAMILY**
Report: City Manager Jerry Gruber
Recommendation: Approve Proclamation for Family Day

PUBLIC HEARINGS (24)

- 7:50 P.M. 24. **AN ORDINANCE OF THE TOWN OF ATHERTON CALLING AN ELECTION TO SUBMIT TO THE VOTERS TWO ORDINANCES PROVIDING FOR (1) RENEWAL OF THE PARCEL TAX FOR AN ADDITIONAL FOUR YEARS AND (2) INCREASING THE APPROPRIATION LIMIT TO PERMIT SPENDING THE PROCEEDS OF THE PARCEL TAX FOR THE SAME PERIOD**
Report: City Manager Jerry Gruber
Recommendation: Hold a Public Hearing and adopt the following ordinance: An Ordinance of the Town of Atherton calling an election to submit to the voters (1) an ordinance authorizing the renewal of the parcel tax for and additional four years and (2) an Ordinance increasing the Appropriations Limit for the Same Period

REGULAR AGENDA (Items 25-31)

- 8:15 P.M. 25. **ADOPTION OF THE APPROPRIATIONS LIMITS FOR FY 2009-10 AND REVISING THE GANN APPROPRIATIONS LIMIT FOR FY 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, AND 2008-09**
Report: City Manager Jerry Gruber, Finance Director Louise Ho
Recommendation: Adopt Resolution 09-22 approving the Appropriations Limit for Fiscal Year 2009-2010 and for revising the GANN Appropriations Limit for FY 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08,
- 8:25 P.M. 26. **(1) RESOLUTION SETTING PRIORITIES FOR FILING WRITTEN PRIMARY ARGUMENT(S) REGARDING THE MEASURES AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS TO BE PRINTED IN THE SAMPLE BALLOT AND (2) RESOLUTION PROVIDING FOR THE FILING OF REBUTTAL ARGUMENT(S)**
Report: City Manager Jerry Gruber
Recommendation: (1) Adopt a resolution setting priorities for filing written primary argument(s) regarding the measure and directing the City Attorney to prepare an impartial analysis to be printed in the sample ballot; and

(2) Adopt a resolution providing for the filing of rebuttal arguments

- 8:45 P.M. 27. **POLICY DIRECTION ON THE 2007-14 HOUSING ELEMENT UPDATE**
Report: Deputy Planner Lisa Costa Sanders
Recommendation: To Be Determined
- 9:00 P.M. 28. **ENVIRONMENTAL PROGRAMS COMMITTEE RECOMMENDS APPROVAL OF RECOLOGY (FORMERLY NORCAL WASTE INC.) AS THE COLLECTION CONTRACTOR**
Report: City Manager Jerry Gruber
Recommendation: Consider the Environmental Programs Committee recommendation to approve Recology (Formerly Norcal Waste Inc.) as the Collection Contractor for the Town of Atherton
- 9:20 P.M. 29. **ENVIRONMENTAL PROGRAMS COMMITTEE RECOMMENDS APPROVAL OF AN APPROPRIATE SURVEY TO GAUGE RESIDENT PREFERENCES FOR SERVICE LEVELS AS THE COLLECTION CONTRACT IS NEGOTIATED**
Report: City Manager Jerry Gruber
Recommendation: Consider the Environmental Programs Committees recommendation for approving an appropriate survey to gauge resident preferences for service levels as the collection contract is negotiated
- 9:40 P.M. 30. **ENVIRONMENTAL PROGRAMS COMMITTEE RECOMMENDS CITY COUNCIL RECONSIDER THEIR VOTE AND APPROVE BOND FINANCING FOR THE SHOREWAY FACILITY IN VIEW OF BETTER COST NUMBERS THAT ADDRESS COUNCIL'S CONCERNS**
Report: City Manager Jerry Gruber
Recommendation: Consider the Environmental Programs Committee recommendation to reconsider City Council vote and approve bond financing for the Shoreway Facility
- 10:00 P.M. 31. **REQUEST TO ISSUE A REQUEST FOR PROPOSALS (RFP) FOR PROFESSIONAL PUBLIC INFORMATION CONSULTING SERVICES**
Report: City Manager Jerry Gruber
Recommendation: Authorize the City Manager to solicit Requests for Proposals (RFP) from qualified consultants, firms, and consulting teams to provide professional public information consulting services related to public education of services, policy, and programs provided by the Town
- 10:05 P.M. 32. **COUNCIL REPORTS**
- 10:10 P.M. 33. **FUTURE AGENDA ITEMS**
- 10:20 P.M. 34. **PUBLIC COMMENTS**

10:30 P.M. 35. ADJOURN

PLEASE NOTE THE FOLLOWING INFORMATION:

If you challenge a Town zoning, planning, or any other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this agenda, or in written correspondence delivered to the City Council at, or prior to, the public hearing. Judicial review of any Town administrative decision may be had only if a petition is filed with the court not later than the 90th day following the date upon which the decision becomes final. Judicial review of environmental determinations may be subject to a shorter time period.

Copies of all staff reports and documents subject to disclosure that relate to each item of business referred to on the agenda are available for public inspection by 5:00 p.m. the Friday before each regularly scheduled City Council meeting at the Atherton Library, 2 Dinklespiel, Station Lane, and the Town Administrative Offices, 91 Ashfield Road, Atherton, CA 94027. Additionally, agendas and staff reports may be accessed on the town website at: www.ci.atherton.ca.us

In compliance with SB 343, materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the Town Administrative Offices, 91 Ashfield Road, during normal business hours.

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Draft Minutes

**Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
JUNE 17, 2009
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California
REGULAR MEETING**

Mayor Carlson called the meeting to order at 7:00 p.m.

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL** Lewis, Dobbie, Marsala, McKeithen, J. Carlson
3. **PRESENTATIONS**

Tree Committee Presentation – Tree Awards

Kathy Hughes Anderson gave a presentation on the Tree awards and handed out certificates to:

- Wajih and Nayla Sleiman
 - Paul and Lorna Marsili
 - Tom and Terri Bailard
 - Phil and Margaret Winters
4. **PUBLIC COMMENTS** -None
 5. **REPORT OUT OF CLOSED SESSION**

City Attorney Wynne Furth reported that there was no reportable action from closed session

6. **CITY MANAGER'S REPORT**

City Manager Jerry Gruber informed Council that a special meeting will be held on June 23rd to discuss possible consideration of a parcel tax from the residential telephone interviews conducted by GODBE. Gruber added that a special meeting will be held on June 25th to discuss and review the draft master fee schedule provided by NBS.

City Manager Gruber reported that an Eagle Scout took all the old benches from the Park and restored them. A presentation will be given at the July meeting.

City Manager Gruber stated that the Holbrook Palmer Park fountain is completed and the pedestrian walk bridge on Watkins.

City Manager Gruber thanked Council and staff for the time spent on the fiscal year 2009/2010 budget preparation.

Mayor Jerry Carlson asked for an update on the Encinal traffic light. Gruber deferred to Public Works Director Duncan Jones. Jones said the MOU has been sent to the City of Menlo Park and he is awaiting comment.

Mayor Carlson asked about the siren installation on West Atherton Avenue. City Manager Gruber said staff is moving forward with it and the tower is anticipated to be delivered within a week.

7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** - None

(Directed by Resolution No. 99-6)

CONSENT CALENDAR (Items 8-19)

Mayor Carlson removed Item 19 from the Agenda. Council had no objections.

Council Member Marsala stated that Item 13 should be removed and that he will recuse himself because he lives within 500 feet of the property.

Council removed items 11, 13, 14 and 16 to vote on individually.

8. **APPROVAL OF SPECIAL CITY COUNCIL MINUTES OF MAY 20, JUNE 1 AND JUNE 10**

Recommendation: Approve May 20th special minutes, May 20th regular minutes, June 1st special minutes and June 10th special minutes

Council Member James Dobbie stated that there is a typographical error in the May 20th Council meeting minutes. The error was noted and changed.

9. **APPROVAL OF BILLS AND CLAIMS FOR MAY 2009 IN THE AMOUNT OF \$1,267,993**

Recommendation: Approve Bills and Claims in the amount of \$1,267,933

10. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE MONTH ENDED MAY 31, 2009**

Recommendation: Accept Monthly Financial Report

12. **APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE THE WATER TOWER LAWN PROJECT NUMBER 08-026**

Report: Public Works Director Duncan Jones

Recommendation: Approve the plans and specifications and authorize advertisement for bids for the Water Tower Lawn Project No. 08-026

15. **AWARD OF CONTRACT FOR THE MAIN HOUSE AND PLAYSCHOOL ROOFS PROJECT NUMBER 08-023 TO SHELTON ROOFING CO. IN AN AMOUNT NOT TO EXCEED \$51,080 PLUS A TEN PERCENT CONSTRUCTION CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$56,188**

Report: Public Works Director Duncan Jones

Recommendation: Approve the award of a contract to Shelton Roofing Co. for re-roofing the Main House and Playschool at Holbrook-Palmer Park at a cost not to exceed \$51,080 with a 10% contingency bringing the total to \$56,188

Vice Mayor Kathy McKeithen asked if the playschool contract has been reviewed to see if there is any potential for reimbursement. Public Works Director Jones said he will look into it.

17. REQUEST FOR INCREASE IN LEGAL SERVICES BUDGET FOR FISCAL YEAR 2008-2009

Report: City Manager Jerry Gruber, City Attorney Wynne Furth

Recommendation: Accept legal transaction ad-hoc Committees recommendation to fund legal services for the remainder of fiscal year 2008/2009 for the sum of \$120,000

18. ACCEPTANCE OF DONATION FROM PRIVATE DONOR OF \$14,286.25 TO OFFSET COST OF NEW POLICE DOG

Report: Chief of Police Glenn Nielsen

Recommendation: Approve the acceptance of a private donation of \$14,286.25 to offset the FY 2009/2010 cost of replacing a retiring police dog and authorize the Town to provide a charitable cost letter to the donor

19. RESOLUTION REJECTING CLAIM OF JONATHAN B. BUCKHEIT

Report: City Attorney Wynne Furth

Recommendation: Adopt Resolution 09-20 rejecting claim of Jonathan B. Buckheit

MOTION by Dobbie, second by McKeithen to approve the Consent Calendar except for Items 11, 13 and 14 and 16 and with the edits made to the May 20th minutes in Item 8. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

PUBLIC HEARINGS

None.

REGULAR AGENDA (Items 20-26)

11. UPDATE OF THE TOWN'S CONFLICT OF INTEREST CODE AND ADOPTION OF RESOLUTION APPROVING APPENDIX "A" DESIGNATING POSITIONS IN THE CONFLICT OF INTEREST CODE

Report: City Manager Jerry Gruber

Recommendation: Adopt the attached Resolution No. 09-18 approving Appendix "A" dated June 2009 designating positions and describing disclosure categories in the Conflict of Interest Code

Vice Mayor McKeithen gave edits to the Resolution. Staff took note and the change will be made.

City Attorney Wynne Furth stated that State requires review of the Conflict of Interest Code every two years to update positions with authority.

MOTION by McKeithen, second by Dobbie to approve Resolution No. 09-18 approving Appendix “A” dated June 2009 designating positions and describing disclosure categories in the Conflict of Interest Code.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

13. APPROVAL OF FINAL PARCEL MAP FOR 50 VALPARAISO AND 1000 EL CAMINO REAL (MENLO SCHOOL AND MENLO COLLEGE)

Report: Deputy Planner Lisa Costa Sanders

Recommendation: Determine that the Parcel Map is in conformity with the approved Tentative Parcel Map, the requirements of Title 16 (Subdivisions) of the Atherton Municipal Code and the California Subdivision Map Act and approve the Parcel Map

Council Member Marsala stated that he lives within 500 feet of the property and recused himself.

MOTION by McKeithen, second by Lewis to approve determination that the Parcel Map is in conformity with the approved Tentative Parcel Map, the requirements of Title 16 (Subdivisions) of the Atherton Municipal Code and the California Subdivision Map Act and approve the Parcel Map. The motion passed.

Ayes: 4 Nays: 0 Abstain: 0 Absent: 1 (Marsala)

16. APPROVE SECOND AMENDMENT FOR SERVICES OF USPTA TEACHING TENNIS PROFESSIONAL ALAN MARGOT

Report: City Manager Jerry Gruber

Recommendation: Approve second amendment to contract for services of Tennis Professional Alan Margot

Vice Mayor McKeithen stated that the second amendment has the wrong dates. Staff took note and changes will be made.

Council Member Elizabeth Lewis said that she has received comments from residents who have tried to buy tennis keys and haven't been able to reach Alan Margot over the weekend. Lewis suggested including office hours and a fee schedule on the office window with instructions on how to contact Margot if he isn't in his office. Council agreed that language should be added to the contract.

Mayor Carlson said that there is a list of provisions in the contract that are not being followed and should be reviewed by staff.

MOTION by Carlson, second by Lewis to table Item 16 to the July Council meeting. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

14. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR TRAFFIC ENGINEERING

SERVICES FOR THE VALPARAISO CROSSWALK AT HOOVER OR VICTORIA TRAFFIC STUDY IN AN AMOUNT NOT TO EXCEED \$11,770 PLUS A TEN PERCENT CONTINGENCY FOR A TOTAL AUTHORIZATION OF \$12,947

Report: City Manager Jerry Gruber, Public Works Director Duncan Jones

Recommendation: Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Kimley-Horn and Associates, Inc to provide traffic engineering services for the Valparaiso Crosswalk at Hoover or Victoria Traffic Study in an amount not exceed \$11,770, plus a 10% contingency of \$1,177, for a total authorization of \$12,947

Vice Mayor McKeithen suggested foregoing the study and utilizing the money that would have been spent on the study to get the work done. McKeithen added that she contacted Andrea Luskin, an Atherton resident, to confirm where they wanted the crosswalk and Luskin said at Hoover and not at Victoria.

Mayor Carlson asked City Attorney Furth if there are any legal considerations. Furth stated that when public improvements are made on streets you need assurance from your Engineers that they are properly designed for safety.

Public Works Director Duncan Jones said he talked with the City of Menlo Park and they are not certain that this is the safer alternative and they want to see a study to make sure it is.

Council Member Marsala said that having something that justifies the Towns decision protects the Town from any legal consequences.

Laura Boat, Atherton resident, stated that the issue is not the safety of crossing El Camino, its actually getting to El Camino. Boat said there is no safe way to get to El Camino. Boat added that there are shrubs in the way and you have to walk in a single file line. Boat concluded that she uses Hoover and feels that would be the safest place for a crosswalk.

Council Member Marsala asked if it would make more sense to install a walking path at El Camino for people who walk to the Menlo Park train station. Boat said wherever the residents need to go in Menlo Park they use Hoover.

Council Member Lewis asked if anybody has contacted the homeowner who owns the house on the corner of Valparaiso and El Camino to see if they would cut back their shrubs on the corner. Public Works Director said that the homeowner is very adamant about not letting anyone touch their property.

Andrea Luskin, Atherton resident, stated that she had presented a petition to the Council and said that the issues are how to get to El Camino and how to cross four lanes of traffic to get from one side of Valparaiso to the other.

Council Member Marsala asked if there are any laws for distance between crosswalks. Public Works Director Jones said there are no restrictions and that the study would determine whether it would be too close and if it would cause a queue of traffic.

Council Member Dobbie asked if written permission is required by Menlo Park. Jones said yes. Council Member Dobbie suggested getting the written permission before beginning the study.

City Attorney Furth said that crosswalks are very controversial and it is very important to have professional advice so the Town could rely on the study and have “design immunity,” and a legal backing.

Andrea Luskin said that she spoke to the Menlo Park Transportation Committee and they do not require traffic studies if more than 50% of the neighborhood agree to the crosswalk.

Jan MacKenzie, Atherton resident, said she is disappointed to see that the Town wants to spend money on a study. MacKenzie said the residents have put in every effort to present this to the Transportation Committee and Council. MacKenzie concluded that she doesn't feel an accurate study can not be done because residents are avoiding it and driving instead.

Vice Mayor McKeithen suggested directing staff to work with the Victoria Manor residents to approach Menlo Park for a lighted crosswalk at the intersection of Valparaiso and Hoover.

Marsala said he is in favor of going ahead with a study because it would protect the Town.

Council Member Lewis asked how long the study would take and would it delay the process and is it in the budget. Lewis concluded that she agrees with the residents on where to install the crosswalk but thinks it is appropriate to follow the City Attorneys advice that a study would protect the Town.

Public Works Director Jones said the study would take about 60 days and it is in the FY2009/10 budget. Jones concluded that if we go to Menlo Park without the study the process may take longer.

Vice Mayor McKeithen disagreed because Menlo Park Transportation Committee does not require traffic studies. Jones said he spoke to Menlo Park Senior Traffic Engineer earlier that day who stated that a traffic study will be required for this item.

Lewis amended the motion to revise the scope of work to include El Camino with a focus on Hoover.

Vice mayor McKeithen said that the exhibit does not include that scope. Public Works Director said it is the understanding of Kimley Horn they will be including Hoover in the focus.

Council reviewed the proposal and exhibits. Public Works Director Jones suggested removing Victoria Manor since the residents are looking at El Camino and Hoover.

Andrea Luskin suggested looking at just Hoover and not El Camino since the residents feel that there is nothing that can be done to make it safe.

Public Works Director Jones clarified that Menlo Park Traffic Engineer wants a comparison of the Hoover crosswalk with the El Camino crosswalk to make sure that the Hoover crosswalk is the safer solution.

David Macado, Director of Operations at Menlo School, stated that Menlo School is out for the summer and if a study is done during this time that the traffic and pedestrian numbers might be skewed.

Council Member Marsala stated that he is in favor of a crosswalk at Hoover but feels the study should be done to protect the Town.

Mayor Carlson asked staff if they can negotiate a lower price for the study. Public Works Director Jones said if Victoria Lane is removed from the scope of work the price will drop.

Vice Mayor McKeithen stated that she is in favor of going to Menlo Park for permission before conducting a study.

MOTION by Marsala, second by Lewis to approve acceptance of the proposal and authorize the City Manager to sign a Professional Services Agreement with Kimley-Horn and Associates, Inc to provide traffic engineering services for the Valparaiso Crosswalk at Hoover or Victoria Traffic Study in an amount not exceed \$11,770, plus a 10% contingency of \$1,177, for a total authorization of \$12,947 with the amendment to the scope of work to include El Camino with a focus on Hoover. The motion failed.

Ayes: 2 Nays: 3 (Carlson, McKeithen, Dobbie) Abstain: 0 Absent: 0

MOTION by Marsala, second by Lewis to approve acceptance of the proposal and authorize the City Manager to sign a Professional Services Agreement with Kimley-Horn and Associates, Inc to provide traffic engineering services for the Valparaiso Crosswalk at Hoover or Victoria Traffic Study in an amount not exceed \$11,770, plus a 10% contingency of \$1,177, for a total authorization of \$12,947. The motion failed.

Ayes: 2 Nays: 3 (Carlson, McKeithen, Dobbie) Abstain: 0 Absent: 0

MOTION by McKeithen, second by Dobbie to direct staff to get a new estimate from Kimley Horn based upon the confines of the new traffic study with the comparison of Hoover and its relative safety as compared to El Camino and not utilizing El Camino as a viable alternative and eliminate the counts in the scope. In the interim work with Victoria Manor residents, Menlo School and Menlo College to make contact with Menlo Park to see if they agree with a study. If Menlo Park agrees to move forward then no study will be conducted. The motion passed.

Ayes: 3 Nays: 2 (Lewis, Marsala) Abstain: 0 Absent: 0

Mayor Carlson clarified that if Menlo Park agrees to move forward without a study then staff will move forward.

**20. CONSIDERATION AND POSSIBLE ADOPTION OF A RESOLUTION
ADOPTING THE FY 2009-10 OPERATING AND CAPITAL BUDGET
Report: City Manager Jerry Gruber, Finance Director Louise Ho**

Recommendation: Presentation of proposed budget from City Manager and Finance Director, open public hearing, receive testimony, and close public hearing. After consideration and appropriate direction to staff, Council may adopt Resolution 09-21 adopting Fiscal Year 2009-10 Operating and Capital Budget

Vice Mayor McKeithen and Council Member Lewis gave typographical edits to the Resolution along with clarification errors to exhibit A. Staff took note and will make the changes.

Finance Director Louise Ho stated that this is the proposed final public hearing for the draft FY2009/10 budget. Ho informed Council that revised pages to the budget have been handed out.

Ho reviewed the changes made to the budget since the study session that was conducted on June 1st. Ho said the only changes made to the budget were to reduce the City Council's conference budget and to defer one of the lowest priority drainage projects in the Public Works Department in order to fund the traffic studies.

Ho said the final change to the draft budget is the supplemental request for the purchase of a dump truck for Public Works and two Police patrol vehicles which has been added to the equipment replacement fund.

Council Member Marsala stated that Council talked about the future building inspection fund not being in the general fund. Marsala asked if it should be set aside until it is challenged.

Finance Director Ho said that is at the Council's discretion to set up a new fund or close a fund. Marsala said that the money should be validated.

Council Member Marsala said that section 54954.6 of the Brown Act requires that the Town give at least 45 days notice when imposing to enact a general tax or assessment. Marsala concluded that the budget reflects the road impact fee study which Council has not even reviewed yet.

City Attorney said that there is no reason to believe that the road impact fee is not a legal tax and it should not affect adoption of the budget.

Council Member Lewis concurred with Council Member Marsala and wanted to make sure that the fees that are charged by the Town are charged in a legal way so that the Town avoids any reason for refunds in the future.

Mayor Carlson felt that the placement of the business license fees in the building department is a tax and felt that it should have its own section. Finance Director Ho said it in under the general fund.

Mayor Carlson felt that the goals of the City Manager should include an indication of how to measure his goals.

Denise Kuppelman, Atherton resident stated that she has seen a significant improvement of the budget from past years. Kuppelman suggested that the Police Department goals include enforcement of existing codes. Kuppelman questioned how two employees look over 22 acres of Park.

John Rugeiro, Atherton resident, stated that Bob Cushing, Town Code Enforcement, does a great job for the Town and feels that enough money should always be kept in the budget for him.

Mayor Carlson asked if there is any way to solicit volunteers to come help out in the Park for a volunteer day. Public Works Director Jones said it has happened in the past and hasn't been very successful but he certainly can try again.

Vice Mayor McKeithen asked how often the weed service at the Park comes. Public Works Director Jones said they come on an "as-needed" basis. McKeithen stated that she has seen quite a few overgrown weeds and feels that the contractor should be doing a better job.

City Manager Gruber said he is working with the City Attorney to revise the ordinance as it relates to code enforcement and see if fines can be implemented. Gruber added that this would be a self-funding mechanism where the funds would be turned around and put into a code enforcement fund.

Council Member Marsala thanked staff for their time and work on the budget.

MOTION by McKeithen, second by Marsala to approve adoption of Resolution 09-21 adopting Fiscal Year 2009-10 Operating and Capital Budget with the edits made to the resolution. The motion passed.

Ayes: 4 Nays: 1 (Marsala) Abstain: 0 Absent: 0

21. CONSIDERATION AND POSSIBLE ADOPTION OF A RESOLUTION APPROVING THE FISCAL YEAR 2009-10 APPROPRIATIONS LIMIT AND CALCULATIONS

Report: City Manager Jerry Gruber, Finance Director Louise Ho

Recommendation: Adopt Resolution 09-22 approving the Fiscal Year 2009-2010 Appropriations Limit and Calculations

MOTION by Lewis, second by Marsala to table Item 21 to a future Agenda. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

22. CONSIDERATION AND POSSIBLE ADOPTION OF A RESOLUTION ASSESSING A SPECIAL TAX FOR MUNICIPAL SERVICES FOR THE FISCAL YEAR 2009-2010

Report: City Manager Jerry Gruber, Finance Director Louise Ho

Recommendation: Open public hearing, receive testimony, and close public hearing. After consideration, adopt Resolution 09-23 assessing a Special Tax for Municipal Services for the Fiscal Year 2009-2010 as set forth in Ordinance No. 555

Mayor Carlson stated that this is a resolution the Town must approve yearly to implement using the parcel tax that has been in place as set forth by Ordinance number 555.

MOTION by Lewis, second by McKeithen to approve adoption of Resolution 09-23 assessing a Special Tax for Municipal Services for the Fiscal Year 2009-2010 as set forth in Ordinance No. 555. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

23. TOWN OF ATHERTON FUND BALANCE POLICY FOR THE GENERAL FUND

Report: Finance Director Louise Ho

Recommendation: Approve Resolution 09-24 authorizing the establishment of a Fund Balance Policy for the General Fund

Finance Director Louise Ho said that a draft preliminary general fund reserve policy was presented to the Council in April. Ho added that this policy would be beneficial especially during the economic downturn since it would provide clear guidelines on the amount of reserve to be maintained and when the reserve can be used.

Mayor Carlson said he likes the concept, but the 25% figure is a bit high for the budget stabilization fund and the term “economic uncertainty” and determining when to implement using the reserve is a bit nebulous. Carlson added that with the State threatening to borrow money from cities that Council should think about reopening the entire budget and reviewing expenses rather than taking from reserves.

Council Member Lewis said that she is concerned with the GASB 45 liability and compensated absences that the Town has as ongoing and future liabilities. Lewis said that since there is 25% for the budget stabilization reserve, couldn't it be reduced to 20% or 15% and spread it out between GASB 45 and compensated absences. Finance Director Ho said yes.

Council Member Dobbie said he felt that the 2.7% of unreserved and undesignated is too low and said it should be at a minimum of 5%.

Vice Mayor McKeithen gave edits to the draft policy. Staff took note and will make the changes.

Council Member Marsala said he does not feel that future building expenses should be in the policy and felt that something should be addressed in the policy on how to handle additional legal service funds in the future.

Denise Kuppelman, Atherton resident, said that disasters and unforeseen issues can be very expensive and thinks that the draft condition stating that under no circumstances should the Town's annual operating expenditure for the general fund fall below 15 % is too low.

Mayor Carlson reiterated that he likes the concept but he is not comfortable with the terminology and percentages and felt it needed more review.

City Manager Jerry Gruber stated that the Finance Committee could convene to review this. Council agreed.

MOTION by McKeithen, second by Dobbie to direct the Finance Committee to convene and review the draft fund balance policy and bring it back to the July Council meeting. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

24. DESIGNATE TWO CITY COUNCIL REPRESENTATIVES AND ONE ALTERNATE STAFF MEMBER TO THE PENINSULA CITIES CONSORTIUM FOR HIGH SPEED RAIL AND ADOPT RECOMMENDED GUIDING PRINCIPLES

Report: City Manager Jerry Gruber

Recommendation: Designate two Council Members and one alternate staff member to the Peninsula Cities Consortium (PCC) for High-Speed Rail and Adopt Resolution 09-19 establishing recommended guiding principles

Mayor Carlson stated that five Peninsula Cities have signed an MOU which would help in providing information and input for the purpose of working collaboratively with the California High-Speed Rail Authority. Carlson recommended having himself and Vice Mayor McKeithen as the designees since both are on the Rail Committee and are familiar with the situation.

City Manager Gruber recommended Public Works Director Duncan Jones as the alternate staff member.

MOTION by Lewis, second by Marsala to appoint Mayor Jerry Carlson and Vice Mayor Kathy McKeithen as designees and Public Works Director Duncan Jones as the alternate to the Peninsula Cities Consortium for High Speed Rail.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

25. ADOPTION OF MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF ATHERTON AND THE ATHERTON POLICE OFFICERS' ASSOCIATION FOR THE PERIOD OF JULY 1, 2008, THROUGH SEPTEMBER 30, 2013

Report: City Manager Jerry Gruber, Assistant

City Manager Jerry Gruber said that the MOU includes the proposed agreements which have been reached between the negotiators on behalf of the Town and the Union. Gruber added that if adopted, the MOU would be effective July 1, 2008 until September 30, 2013.

Council Member Marsala said the Town has a great Police Department and they represent the Town very well. Marsala felt that the reopener criteria that states "if the Town is unsuccessful in its attempt to secure a long-term funding mechanism through the election process," should be reviewed because the Town may find themselves securing funding but it will not be enough money.

Council Member Lewis said the Police Department does a very good job and they should know that the Council appreciates them.

Mayor Carlson said a grand jury report was recently issued by San Mateo County which addressed compensations issues such as the 70th percentile and retiree costs and would like to review the recommendations at a future Council meeting.

Mayor Carlson asked City Attorney Furth under what circumstances can Council reopen negotiations. Furth said that there is a reopener provision that if you find yourself in a position where the only way you can balance your budget is layoffs then Union bargaining can take place.

MOTION by McKeithen, second by Lewis to approve the adoption of Memorandum of Understanding between the Town of Atherton and the Atherton Police Officers' Association for the period of July 1, 2008 through September 30, 2013. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

26. AMEND COUNCIL RULES OF PROCEDURE SECTION 5.2 THAT ALLOWS TWO COUNCIL MEMBERS TO PLACE AN ITEM ON A FUTURE CITY COUNCIL AGENDA TO REQUIRE APPROVAL BY COUNCIL PRIOR TO PLACEMENT ON THE AGENDA

Recommendation: Amend Council Rules of Procedure Section 5.2 that allows two Council Members to place an item on future City Council Agenda to require approval by Council under the Future Agenda Items section prior to placement on the Agenda

Council Member Dobbie said that Agenda items can be very dangerous if not approved by the Council and can be very divisive in the Town. Dobbie felt that Agenda items should only be added if a majority of Council approves.

Council Member Marsala said there are items that may make Council Members uncomfortable but feels that it does provide transparency and a colleagues' memo gives the Council and the public something to read and be prepared to speak on. Council Member Marsala concluded that he is in favor of keeping the Council Rules of Procedure Section 5.2 to allow two Council Members to place an item on a Council Agenda.

Council Member Dobbie said that if an item is brought up during Future Agenda Items during a Council meeting and it is a legitimate item then the Council would probably approve it.

Vice Mayor McKeithen said that the Blue Ribbon Task Force had no idea that certain items were being brought to the Council at their last Council meeting and feels that should not happen again. McKeithen said that to improve greater efficiency these things should be brought to the Council and approved on a majority basis.

Council Member Lewis said that at the January Council meeting Council talked about managing the Agendas and how to implement getting items onto the Agenda. Lewis stated that Council approved allowing two Council Members to add an item to the Agenda at their March meeting and now it is recommended to remove that section. Council Member Lewis concluded that she was confused as to why anyone would want to remove that section of the Council rules of procedures because she feels it provides transparency. Council Member Lewis said she was in favor of denying this request.

MOTION by Lewis, second by Marsala to deny the request to Amend Council Rules of Procedure Section 5.2 that allows two Council Members to place an item on future City Council Agenda to require approval by Council under the Future Agenda Items section prior to placement on the Agenda. The motion failed.

Council Member Marsala said that this allows Council Members from a Committee to bring an item to the Agenda and feels like it should be that way to get it out to the Public and address it instead of putting it off for a month.

Ayes: 2 Nays: 3 (Carlson, McKeithen, Dobbie) Abstain: 0 Absent: 0

Mayor Carlson asked for clarification on the request.

City Attorney Furth said that currently Council has a rule that allows two Council Members to go to the City Manager and ask for an item to be placed on the Agenda, the City Manager will place it on an Agenda and Council is free to discuss it and vote on it. Furth said this new proposal, if approved, would allow two Council Members to ask the City Manager to add an item to the Future Agenda Items section of the Agenda to allow the Council to vote whether or not to add it as a regular agenda item to the next Council meeting Agenda.

MOTION by McKeithen, second by Dobbie to Amend Council Rules of Procedure Section 5.2 that allows two Council Members to place an item on future City Council Agenda to require approval by Council under the Future Agenda Items section prior to placement on the Agenda. The motion passed.

Ayes: 3 Nays: 2 (Lewis, Marsala) Abstain: 0 Absent: 0

Council Members Lewis and Marsala expressed their feeling that this new procedure is censorship and does not promote transparency.

27. COUNCIL REPORTS

Council Member Dobbie said that he is reviewing the draft Blue Ribbon Task Force report.

Council Member Lewis said she attended a League of California Cities dinner, NBS Study Session, City Manager’s evaluation meeting, GODBE meetings, and an SFO airport roundtable.

Vice Mayor McKeithen said she attended an Audit meeting, Ad-Hoc legal committee meeting where invoices and funding were reviewed and a San Mateo County Library JPA meeting where they discussed donor city funds.

Council Member Marsala said he attended an Atherton Lions Club meeting and a muscular dystrophy fundraising event and the San Mateo County Library JPA meeting. Marsala concluded that the next Blue Ribbon Task Force meeting is postponed to late July or early August.

Mayor Carlson stated he attended a Transportation meeting in Pleasanton where they discussed High Speed Rail. He added that he sent a letter to Mike Scanlon about the horrible condition of the Fair Oak crossing rail crossing. Carlson added that Redwood City just lost a parcel tax vote. Carlson concluded that he received a letter from the Governor about how the State will do everything they can to not borrow from Cities.

28. FUTURE AGENDA ITEMS - None

29. PUBLIC COMMENTS - None

30. ADJOURN

MOTION by Dobbie, second by Carlson to adjourn the meeting. The motion passed unanimously.

Mayor Carlson adjourned the meeting at 10:43 p.m.

Respectfully submitted,

**Theresa DellaSanta
Deputy City Clerk**



Draft Minutes

**Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT**

JUNE 23, 2009

9:00 A.M.

Town Council Chambers

91 Ashfield Road
Atherton, California

Special Meeting

Mayor Carlson called the meeting to order at 9:00 a.m.

ROLL CALL Lewis, Dobbie, Marsala, McKeithen, Carlson

PUBLIC COMMENTS - None

REGULAR AGENDA

**1. GODBE VOTER SURVEY - PRELIMINARY RESULTS OF ATHERTON
PARCEL TAX RENEWAL**

Recommendation: Discussion and Possible Action of GODBE Voter Survey

Report: City Manager Jerry Gruber

Alice Chan and Robert Godbe, GODBE gave a PowerPoint presentation of the preliminary results of the Atherton parcel tax voter survey. [A copy of the presentation is available in the City Clerks office].

Chan reviewed the research methods and objectives, methodology, initial ballot tests and graphs and charts on resident arguments for and against a parcel tax.

Chan informed Council that GODBE will have a complete analysis by July 6th. Council will add it to their regular Council meeting Agenda for July 15th.

2. DRAFT 5-YEAR FINANCIAL FORECAST

Recommendation: Discussion and Possible Action of Draft 5-Year Financial Forecast

Report: City Manager Jerry Gruber, Finance Director Louise Ho

Finance Director Louise Ho reviewed the draft 5-year financial plan with Council. [A copy of the report is available in the City Clerks Office].

No Action taken.

ADJOURN

MOTION by Marsala, second by Dobbie to adjourn the meeting. The motion passed unanimously.

Mayor Carlson adjourned the meeting at 11:00 a.m.

Respectfully submitted,

**Theresa DellaSanta
Deputy City Clerk**



Draft Minutes

Town of Atherton CITY COUNCIL/ATHERTON CHANNEL DRAINAGE DISTRICT

June 25, 2009

9:00 A.M.

Town Council Chambers

91 Ashfield Road
Atherton, California

Special Meeting

Mayor Carlson called the meeting to order at 9:00 a.m.

ROLL CALL Lewis, Dobbie, Marsala, McKeithen, Carlson

PUBLIC COMMENTS - None

PUBLIC HEARING

DISCUSSION AND REVIEW OF DRAFT MASTER FEE SCHEDULE

Report: City Manager Jerry Gruber, Finance Director Louise Ho

Recommendation: Accept or Provide Direction for Possible Modification of Draft Master Fee Schedule

Jeanette Hahn, NBS Director, gave a PowerPoint presentation on the proposed master fee schedule to the City Council. [A Copy of the presentation is available in the City Clerks office]. Hahn presented a comparison of the current Town fees and the proposed recommended fees.

A brief discussion was held regarding reasons for fee waivers and how to improve cost recovery. City Attorney Wynne Furth said no one has the right to waive fees unless authorized to so by the ordinance or resolution establishing the fee.

Mayor Carlson suggested creating an "issues" list to give to staff which would include anything Council Members had issues with in the proposed master fee schedule. Staff will review these and bring them back to the next Council meeting; copies of the requests will be made part of the packet for that meeting.

Council directed staff to look into cost recovery on banners and to think about a new website budget.

Vice Mayor McKeithen suggested staff review the will under which the Town received the Park and see what restrictions are imposed regarding cost recovery. After the City Attorney advised the Council that short-term use of park facilities for private gatherings is generally considered a public park use in California, Mayor Carlson withdrew his request.

Staff will review the issues developed from the discussion. Council continued the draft master fee schedule to the regular July 15th Council meeting.

ADJOURN

MOTION by Lewis, second by Carlson to adjourn the meeting. The motion passed.

Ayes: 4 Nays: 0 Abstain: 0 Absent: 1 (Marsala)

Mayor Carlson adjourned the meeting at 1:05 p.m.

Respectfully submitted,

**Theresa DellaSanta
Deputy City Clerk**

TOWN OF ATHERTON
CLAIMS LIST JUNE 2009

	06/05/09	06/22/09	06/30/09	Amt
Payroll Checks #	13376-13388	13443-13453	13511-13519	\$ 11,053
Direct Deposit	13389-13442	13454-13510	13520-13577	402,668
Electronic Transfer				136,704
A/P Checks #	28577-28640			<u>285,087</u>
			JUNE 09 TOTAL	\$835,512
			Manual Check # 28354 (May 09)	<u>4,400</u>
			TOTAL	\$839,912

I, Jerome D. Gruber, City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 13376-13577 (payroll), 28577-28640 (accounts payable), manual check 28354, and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$839,912 are true and correct, and that there are sufficient funds for payment.

Jerome D. Gruber
City Manager

The above claims, check numbers 13376-13577 (payroll), 28577-28640 (accounts payable), manual check 28354, and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$839,912 are true and correct, and are authorized for payment.

Jerry Carlson
Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	\$742,300
105	Tennis	1,571
201	Special Parcel Tax	8,550
202	Transportation	-
203	Gas Tax	1,791
210	Road Construction Impact Fees	42,416
211	Park Grants	2,590
213	Library	352
401	General Capital Projects	-
402	Storm Drainage	-
403	Atherton Channel District	-
406	Facilities Construction	2,903
610	Vehicle Replacement	29,275
611	Computer Maint. & Replacement	879
612	Administrative Services	6,672
614	Worker's comp insurance	-
715	Evans Estate	613
716	Flex Spending	-
740	Tree Committee	-
	TOTAL	\$839,912

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028354	05/18/09	CHRIS JOHNSON DBA WOODFIRST	05/01/09	014966	Public Works Admin	Other Contract	4,160.00	1 EA (4) DAYS OPERATED LUMBER MILL
					Public Works Admin	Construction Ma	240.00	12 EA SAW BLADES
						Check Totals	4,400.00	
						Grand Totals	4,400.00	

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028557	06/18/09	A-A-A RENTALS INC	05/28/09	508160	Public Works Admin	Rent - Tools &	24.00	DIAMOND BLADE 14" ASPHALT
						Check Totals	24.00	
028558	06/18/09	ACQUANTEMS FILE 73484	06/01/09	23842591	Finance	Temporary Help	1,756.48	ACCOUNTANT JUN PAN 05/26-05/29/09
			06/08/09	23865990	Finance	Temporary Help	2,195.60	ACCOUNTANT JUN PAN 6/1-6/5/09
						Check Totals	3,952.08	
028559	06/18/09	AT&T PAYMENT CENTER	05/19/09	650-325-2677	Public Works Admin	Communication	26.40	ELEVATOR PHONE HP PARK 325-2677 5/19-6/1
						Check Totals	26.40	
028560	06/18/09	BIGGS CARDOSA ASSOCIATE	05/05/09	54828	NON-DEPARTMENTAL	Other Contract	2,589.50	HP PARK PEDESTRIAN BRIDGE BIDDING & CONS
						Check Totals	2,589.50	
028561	06/18/09	BKF ENGINEERS	05/26/09	9050065	NON-DEPARTMENTAL	Other Contract	2,902.68	CREEK STABILIZATION DESIGN SERVICES FOR
						Check Totals	2,902.68	
028562	06/18/09	CALIF BUILDING STANDARDS CO	06/15/09	JAN-MAR 09	Building	CBSC Fee Payabl	880.20	ASSESSED VALUATION OF PERMITS JAN-MAR 09
						Check Totals	880.20	
028563	06/18/09	CLARK PEST CONTROL	05/15/09	8778206	Public Works Admin	Grounds Mainten	880.00	WEED CONTROL HP PARK MAY 09
						Check Totals	880.00	
028564	06/18/09	CLEAN SOURCE	05/20/09	1874265-00	Public Works Admin	Building Suppli	799.30	TISSUE, TOWELS, LINERS, SEAT COVERS
						Check Totals	799.30	
028565	06/18/09	COMCAST	05/23/09	877021001016	Public Works Admin	Communication	64.75	INTERNET SERVICE HP PARK 6/2-7/1/09
						Check Totals	64.75	
028566	06/18/09	CSG CONSULTANTS, INC.	05/18/09	015943	NON-DEPARTMENTAL	PLANNING DEPOSI	1,080.00	GENERAL MAPREVIEW & SUPPORT
028566	06/18/09	CSG CONSULTANTS, INC.	05/18/09	015942	Public Works Admin	Contract Engine	10,725.00	MUNICIPAL CIVIL ENGINEERING APRIL 09

Check#	Check Dt.	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028567	06/18/09	CUSTOM IRON & CASTING WORKS	05/18/09	108711	Public Works Admin	Check Totals	11,805.00	
						Other Contract	100.23	FABRICATE STEEL BRACKET FOUNTAIN HP PARK
						Check Totals	100.23	
028568	06/18/09	THERESA DELLASANTA	06/04/09	06.04.09	City Manager	Training & Safe	40.00	NOTARY TRAINING & EXAM 6/4/09 T.DELLASAN
					City Manager	Travel & Meetin	51.30	REIMB MILEAGE & BRIDGE TOLL NOTARY TRAIN
						Check Totals	91.30	
028569	06/18/09	DUNBAR ARMORED INC.	06/01/09	2566334	NON-DEPARTMENTAL	Other Contract	181.90	ARMORED CAR SERVICE JUNE 09
						Check Totals	181.90	
028570	06/18/09	GALEDRIGE CONSTRUCTION INC.	06/10/09	6 RETENTION	NON-DEPARTMENTAL	Other Contract	348.16	STEVICK RECONSTRUCTION PROJECT 08-002 FI
					NON-DEPARTMENTAL	Other Contract	651.84	STVEICK RECONSTRUCTION PROJECT 08-002 FI
						Check Totals	1,000.00	
028571	06/18/09	JOHN GARAGOZZO	06/10/09	37 DEBELL DR	NON-DEPARTMENTAL	Building Deposi	5,000.00	REFUND 2ND UTILITY DEPOSIT 37 DEBELL DR
						Check Totals	5,000.00	
028572	06/18/09	VALERIE GARDNER	06/05/09	06.05.09	Building	ENVIRONMENTAL P	6,751.96	REIMB EPC EXPENSE FY 09
						Check Totals	6,751.96	
028573	06/18/09	GOLDFARB & LIPMAN ATTORNEYS	05/19/09	93828	Planning Department	HOUSING ELEMENT	2,064.00	HOUSING ELEMENT ASSISTANCE APRIL 09
						Check Totals	2,064.00	
028574	06/18/09	GRAINGER	05/21/09	831403472	Public Works Admin	Facility Repair	19.78	BATHROOM FAN
						Check Totals	19.78	
028575	06/18/09	HORIZON	02/19/09	12370357-00	Public Works Admin	Construction Ma	70.54	IRRIGATION SYSTEM, VALVES NIPPLES, ADAPT

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
						Check Totals	70.54	
028576	06/18/09	IEDA, INC.	06/01/09	06.01.09	City Attorney	Labor Relations	1,000.00	LABOR RELATIONS CONSULTING 6/1-6/30/09
						Check Totals	1,000.00	
028577	06/18/09	D.A. MCCOSKER CONSTRUCTION	06/10/09	09-05-004	NON-DEPARTMENTAL	Other Contract	23,855.07	STREET RECONSTRUCTION PHASE V, PROJECT 0
					NON-DEPARTMENTAL	Other Contract	17,016.45	STREET RECONSTRUCTION PHASE V, PROJECT 0
						Check Totals	40,871.52	
028578	06/18/09	INFORMATION SERVICES ATTN:	06/09/09	1YAT10905	Police	Other Contract	1,318.33	MICROWAVE AND MESSAGE SWITCH MAY 2009
028579	06/18/09	IWORQ SYSTEMS	05/14/09	2862	Public Works Admin	Computer Softwa	75.00	INTERNET PAVEMENT MGMT & SUPPORT JUNE 0
						Check Totals	1,318.33	
028580	06/18/09	JENSEN LANDSCAPE SERVICE, I	05/26/09	073635	Public Works Admin	Contract Lndscp	2,225.00	LANDSCPE MAINT HP PARK JUNE 09
						Check Totals	2,225.00	
028581	06/18/09	KREFELD'S AWARD CTR.	05/05/09	19923	City Manager	Office Supplies	101.06	(3) 2X8 NAME PLATES FOR GENERAL PLAN COM
			06/11/09	20104	City Manager	Office Supplies	169.34	(6) 2X8 NAME PLATES DEPT MGRS FOR CITY C
						Check Totals	270.40	
028582	06/18/09	LIEBERT CASSIDY WHITMORE IN	06/18/09	06.30.09	City Manager	Training & Safe	14.00	PUBLIC AGENCY ISSUES DURING LEAN ECONOMI
					City Manager	Training & Safe	14.00	12 STEPS TO AVOIDING LIABILITY 06/30/09
						Check Totals	28.00	
028583	06/18/09	ORCHARD SUPPLY HARDWARE	06/08/09	1359/05-09	NON-DEPARTMENTAL	Construction Ma	6.31	TANK LEVER & CHAIN -TOILET REPAIR LIBRAR
					Public Works Admin	Construction Ma	39.42	STUD FINDER, WASHERS, TOGGLE BOLT-ADMIN
					Public Works Admin	Building Suppli	97.76	SNAIL BAIT, GATE LATCHES, TEAK OIL
					Public Works Admin	Landscape Suppl	63.05	SPRINKLER, NOZZLE, SHOVEL, RAKE
					Public Works Admin	Building Suppli	14.77	AERATORS & BATTERIES

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028584	06/18/09	PACIFIC PENINSULA GROUP	06/10/09	127	TUSCALOO NON-DEPARTMENTAL	Building Deposi	3,351.00	REFUND RECYCLING DEPOSIT 127 TUSCALOOSA
						Check Totals	3,351.00	
028585	06/18/09	PAW PRINTS	06/05/09	21091	Police	Other Supplies	81.94	(3) ALARM SIGNS
						Check Totals	81.94	
028586	06/18/09	PACIFIC MUNICIPAL CONSULTAN	05/07/09	28406	Planning Department	ZONING CODE UPD	1,950.00	ZONING CODE UPDATE APRIL 2009
						Check Totals	1,950.00	
028587	06/18/09	PODS PORTABLE ON DEMAND STO	05/22/09	050-143588	Public Works Admin	Rent - Faciliti	191.19	ONSITE STORAGE HP PARK MAY 09
			05/22/09	050-143587	Public Works Admin	Rent - Faciliti	191.19	ONSITE STORAGE HP PARK MAY 09
						Check Totals	382.38	
028588	06/18/09	R & S ERECTION OF S.M. INC.	04/30/09	19135G	Public Works Admin	Facility Repair	270.00	LABOR & SUPPLIES TO REPAIR GATE
			04/30/09	19134G	Public Works Admin	Facility Repair	186.00	REPAIR & SERVICE GATE & MOTOR
						Check Totals	456.00	
028589	06/18/09	REPUBLIC ITS	05/10/09	0904534	Public Works Admin	Traffic Mainten	418.68	TRAFFIC SIGNAL ROUTINE MAINT APRIL 09
						Check Totals	418.68	
028590	06/18/09	S M CO NARCOTCIS TASK FORCE	06/08/09	FY 2008/2009	Police	Other Contract	25,238.00	FY 2008/2009 CONTRIBUTION
						Check Totals	25,238.00	
028591	06/18/09	SAN MATEO REGIONAL NETWORK,	06/10/09	18146	Police	Other Contract	385.00	MONTHLY ACCESS FEE T-1 SERVICE JUNE 09

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028592	06/18/09	SHARP ELECTRONICS CORPORATI	05/14/09	A190188	Public Works Admin	Machinery & Equ	157.21	SN450N COPIER CONTRACT 05/12-06/11/09 P.
					Public Works Admin	Machinery & Equ	4.66	SN450N COPIER-OVERAGE 4/12-5/11/09 P.W.
						Check Totals	161.87	
028593	06/18/09	ELENA SHVARTS	06/10/09	66 ACACIA	NON-DEPARTMENTAL	Building Deposi	5,000.00	REFUND 2ND UTILITY DEPOSIT 66 ACACIA
						Check Totals	5,000.00	
028594	06/18/09	DARYL D. JONES, INC. DBA TE	06/10/09	40114	Police	Other Contract	934.00	MANAGEMENT & MAINTENANCE OF COMMUNICATIO
						Check Totals	934.00	
028595	06/18/09	WILLIAMS SCOTSMAN	05/29/09	90934113	Public Works Admin	Rent - Faciliti	715.80	MONTHLY LEASE PAYMENTS JUNE 09
						Check Totals	715.80	
028596	06/18/09	ZUKIN FOROOD GROUP	06/10/09	66 ACACIA DR	NON-DEPARTMENTAL	Building Deposi	1,000.00	REFUND RECYCLING DEPOSIT 66 ACACIA
			06/10/09	66 ACACIA DR	Public Works Admin	Other Supplies	2,500.00	REFUND UTILITY BOND 66 ACACIA
						Check Totals	3,500.00	
028598	06/26/09	ABAG POWER PURCHASING POOL	06/01/09	8002163	Public Works Admin	Utilities	205.93	LEVELIZED GAS 150 WATKINS 4/25-5/26/09
					Public Works Admin	Utilities	77.23	LEVELIZED GAS 160 WATKINS 4/25-5/26/09
					Police	Utilities	115.84	LEVELIZED GAS POLICE DEPT 4/25-5/26/09
					NON-DEPARTMENTAL	Utilities	102.97	LEVELIZED GAS TOWN HALL 4/25-5/26/09
					NON-DEPARTMENTAL	Utilities	51.48	LEVELIZED GAS LIBRARY 4/25-5/26/09
					Public Works Admin	Utilities	90.10	LEVELIZED GAS CORP OFFICE 4/25-5/26/09
						Check Totals	643.55	
028599	06/26/09	JOSEPH AIELLO	06/18/09	06.18.09	Building	Training & Safe	30.00	REIMB IAPMO TRAINING MEETINGJ. AIELLO 6/
						Check Totals	30.00	
028600	06/26/09	AT&T CALNET 2	06/01/09	656942	Public Works Admin	Communication	15.56	327-3232 5/1-5/31/09

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
			06/01/09	656943	Public Works Admin	Communication	55.23	327-4859 5/1-5/31/09
			06/10/09	669178	Police	Communication	15.55	289-9297 5/10-6/9/09
			06/10/09	669817	Police	Communication	29.75	323-1014 5/10-6/9/09
			06/10/09	669818	Police	Communication	14.25	323-1801 5/10-6/9/09
			06/10/09	669819	Police	Communication	45.17	323-1802 5/10-6/9/09
			06/10/09	669820	Police	Communication	30.01	323-3612 5/10-6/9/09
			06/10/09	669821	Police	Communication	291.46	323-6131 5/10-6/9/09
			06/10/09	669822	Police	Communication	0.10	323-6452 5/10-6/9/09
			06/10/09	669823	Police	Communication	28.97	323-7653 5/10-6/9/09
			06/10/09	669824	Police	Communication	155.71	326-2801 5/10-6/9/09
			06/10/09	669825	Police	Communication	29.75	328-3220 5/10-6/9/09
			06/10/09	669826	Police	Communication	15.99	473-9743 5/10-6/9/09
			06/11/09	671163	Police	Communication	22.75	462-1470 5/11-6/10/09
			06/13/09	673559	Police	Communication	15.81	326-1167 5/13-6/12/09
						Check Totals	766.06	
028601	06/26/09	JONATHAN B. BUCKHEIT C/O CA	06/18/09	C1V482668	Non-Department	Settlement Exp	7,922.50	SETTLEMENT CHECK
						Check Totals	7,922.50	
028602	06/26/09	CA STATE DISBURSEMENT UNIT	06/19/09	92772/6-19-0	NON-DEPARTMENTAL	Payroll Deducti	100.62	CHILD SUPPORT W/H 5/31-6/12/09
			06/19/09	0750106244-0	NON-DEPARTMENTAL	Payroll Deducti	339.80	CHILD SUPPORT W/H 5/31-6/12/09
						Check Totals	440.42	
028603	06/26/09	CALIFORNIA WATER SERVICE	06/01/09	4726166666/0	Public Works Admin	Utilities	635.34	WATER 150 WATKINS 4/24-5/26/09
			06/03/09	0686127445/0	Public Works Admin	Utilities	26.39	WATER-FIRE PROTECT 5/1-5/31/09
			06/03/09	9293092658/0	Police	Utilities	28.51	WATER 83 ASHFIELD-PD 4/3-5/4/09
					Public Works Admin	Utilities	115.14	WATER ALAMEDA/ATHERTON 4/3-5/4/09
					Public Works Admin	Utilities	711.42	WATER-STATION LANE 5/5-6/2/09
					Public Works Admin	Utilities	42.51	WATER 99 ASHFIELD 5/5-6/2/09
					Public Works Admin	Utilities	128.04	WATER EL CAMINO REAL 4/3-5/4/09
					Public Works Admin	Utilities	413.22	WATER EL CAMINO REAL 4/24-5/26/09
					NON-DEPARTMENTAL	Utilities	34.95	WATER 2 STATION LANE 4/3-5/4/09
					Public Works Admin	Utilities	28.51	WATER 91 ASHFIELD 4/3-5/4/09
					NON-DEPARTMENTAL	Utilities	41.40	WATER 94 ASHFIELD 4/3-5/4/09
					Public Works Admin	Utilities	31.73	WATER STATION LANE 4/3-5/4/09
					Public Works Admin	Utilities	40.21	WATER-MAPLE 4/3-5/4/09

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028604	06/26/09	DOLLY CHAMPSI	06/24/09	55 DEODORA R	NON-DEPARTMENTAL	Check Totals	2,277.37	
						Building Deposi	5,000.00	REFUND LANDSCAPE SCREENING DEPOSIT
						Check Totals	5,000.00	
028605	06/26/09	COMMERCIAL ENVIRONMENT LAND	06/01/09	2213-0609	Public Works Admin	Contract Lndscp	1,582.00	MONTHLY LANDSCAPE SERVICE 6/09
						Check Totals	1,582.00	
028606	06/26/09	DIVERSIFIED MAINTENANCE SER	06/01/09	D61424	NON-DEPARTMENTAL	Custodial Servi	308.17	JANITORIAL SERVICE TOWN HALL JUNE 09
					Police	Custodial Servi	417.85	JANITORIAL SERVICE POLICE DEPT JUNE 09
					Building	Custodial Servi	115.08	JANITORIAL SERVICE PERMIT CENTER JUNE 09
					Public Works Admin	Custodial Servi	145.98	JANITORIAL SERVICE PUBLIC WORKS JUNE 09
					Public Works Admin	Custodial Servi	193.09	JANITORIAL SERVICE CORP YARD JUNE 09
					NON-DEPARTMENTAL	Custodial Servi	445.59	JANITORIAL SERVICE LIBRARY JUNE 09
						Check Totals	1,625.76	
028607	06/26/09	FIRST CHOICE	06/18/09	656286	Police	Other Supplies	43.50	COFFEE - POLICE
			06/18/09	211942	Building	Office Supplies	28.16	COFFEE - PERMIT CENTER
			06/24/09	198917	Police	Other Supplies	49.95	COFFEE - POLICE
						Check Totals	121.61	
028608	06/26/09	NICK HILLARD	06/08/09	06.08.09	Police	Training - POST	491.00	REIMB LODGING N.HILLARD, K-9 CONFERENCE
						Check Totals	491.00	
028609	06/26/09	ELENA HOBBS	06/24/09	77 BROADACRE	NON-DEPARTMENTAL	Building Deposi	1,000.00	REFUND RECYCLING DEPOSIT 77 BROADACRES
						Check Totals	1,000.00	
028610	06/26/09	HORIZON	05/29/09	12381489-00	Public Works Admin	Landscape Suppl	228.83	SPRINKLERS, VALVES, ADAPTERS
						Check Totals	228.83	
028611	06/26/09	IDEAL R.V. AND TRAILER	06/04/09	0024815	Public Works Admin	Building Suppli	99.13	26 GALLONS OF PROPANE FOR OUTDOOR HEATER

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028612	06/26/09	D.A. MCCOSKER CONSTRUCTION	05/08/09	09-05-0100	NON-DEPARTMENTAL	Check Totals	99.13	
						Other Contract	544.23	STREET RECONSTRUCTION PHASE V, PROJECT 0
						Check Totals	544.23	
028613	06/26/09	DUNCAN JONES	06/01/09	03.25.09	Public Works Admin	Travel & Meetin	34.22	MEALS - LEAGUE OF CA CITIES PW CONFERENC
						Check Totals	34.22	
028614	06/26/09	LINDA KEEGAN	06/24/09	321 WALSH	NON-DEPARTMENTAL	Building Deposi	1,000.00	REFUND RECYCLING DEPOSIT 321 WALSH RD
						Check Totals	1,000.00	
028615	06/26/09	LISA KEYSTON	06/24/09	147 PATRICIA	NON-DEPARTMENTAL	Zoning & Planni	1,500.00	TREE PERMIT WITHDRAWN
						PLANNING DEPOSI	2,000.00	REIMB TREE DEPOSIT
						Check Totals	3,500.00	
028616	06/26/09	KIKUCHI & ASSOCIATES	06/03/09	06.03.09	NON-DEPARTMENTAL	Other Contract	840.00	CONSTRUCTION ADMINISTRATION FOR HOLBROOK
						Other Contract	7,710.00	LANDSCAPE DESIGN SERVICE FOR THE HOLBROOK
						Check Totals	8,550.00	
028617	06/26/09	SUZANNE LEGALLET	06/24/09	88 SELBY LN	Building	Plan Check Fee	100.00	CANCEL TREE REMOVAL PERMIT 88 SELBY LANE
						Check Totals	100.00	
028618	06/26/09	JASON & SARA MAAS	06/09/09	35 LINDA VIS	NON-DEPARTMENTAL	Zoning & Planni	1,500.00	REFUND CONDITIONAL USE PERMIT FEE 35 LIN
						PLANNING DEPOSI	2,000.00	REFUND CONDITIONAL USE PERMIT DEPOSIT 35
						Building Permit	209.25	REFUND CANCEL PERMIT FEE 35 LINDA VISTA
						Plan Check Fee	136.01	REFUND CANCEL PLAN CHECK FEE 35 LINDA VI
						Road Impact Fee	85.20	REFUND CANCEL ROAD IMPACT FEE 35 LINDA V
						Check Totals	3,930.46	
028619	06/26/09	NEAL MARTIN & ASSOCIATES	05/31/09	980	Planning Department	Contract Planne	16,927.82	CONTRACT PLANNING SERVICES 05/01-05/31/0
						HOUSING ELEMENT	1,569.88	HOUSING ELEMENT 5/1-5/31/09

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028620	06/26/09	MBIA MISC GENERAL POST OFFI	06/15/09	11775A	Finance	Check Totals	18,497.70	
						Other Contract	250.42	INVESTMENT ADVISORY SERVICE 5/1-5/31/09
						Check Totals	250.42	
028621	06/26/09	MENLO BUILDERS	06/17/09	59 MICHAELS	Building	Building Permit	195.10	ERMIT FEE ADJUSTMENT 59 MICHAELS WAY
					Building	Plan Check Fee	126.82	PLAN CHECK FEE ADJUSTMENT 59 MICHAELS WA
					NON-DEPARTMENTAL	Road Impact Fee	120.70	ROAD IMPACT FEE ADJUSTMENT 59 MICHAELS W
						Check Totals	442.62	
028622	06/26/09	MUNI SERVICES LLC	06/15/09	WARREN ROOF	NON-DEPARTMENTAL	Business Licens	100.00	BUSINESS LICENSE-WARREN ROOF CORP
						Check Totals	100.00	
028623	06/26/09	KRISTEN NICHOLS	06/15/09	06.11.09	Police	Gas & Oil	37.40	REIMB MILEAGE, K. NICHOLS, DISASTER TRAI
						Check Totals	37.40	
028624	06/26/09	NICOLAY CONSULTING AND ACTU	06/23/09	44.7-2009-06	NON-DEPARTMENTAL	Other Contract	4,000.00	1 EA INITIAL STUDY ON THE POST RETIREMEN
						Check Totals	4,000.00	
028625	06/26/09	OFFICE DEPOT	06/04/09	476900687-00	Finance	Office Supplies	111.53	DIVIDERS FOR BUDGET
					NON-DEPARTMENTAL	Office Supplies	49.39	FAX TONER-ADMIN
					City Manager	Office Supplies	23.93	AUDIO TAPES
						Check Totals	184.85	
028626	06/26/09	PUBLIC EMPLOYEES RETIREMENT	06/19/09	06.19.09	NON-DEPARTMENTAL	Payroll Deduciti	4,534.78	PERS W/H 5/31-6/12/09
					NON-DEPARTMENTAL	Payroll Benefit	46,131.04	PERS 5/31-6/12/09
						Check Totals	50,665.82	
028627	06/26/09	KRYSTAL PRONSKA	06/24/09	06.24.09	Police	Training - POST	1,812.86	REIMB TRAINING EXPENSE - POLICE ACADAMEY

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028628	06/26/09	PURCHASE POWER	05/31/09	15433368881/	NON-DEPARTMENTAL	Check Totals	1,812.86	
						Postage	585.56	POSTAGE-MAY 09
						Check Totals	585.56	
028629	06/26/09	S & T INVESTIGATIONS STACEY	06/09/09	63	Police	Other Contract	1,115.00	BACKGROUND AND CREDIT CHECK DISPATCH APP
						Check Totals	1,115.00	
028630	06/26/09	S M CO SHERIFF'S OFFICE TRA	06/18/09	07/14-15/09	Police	Training - POST	450.00	16 HOUR DRIVER TRAINING J.YOAKUM 7/14-7/
						Check Totals	450.00	
028631	06/26/09	SHARP ELECTRONICS CORPORATI	06/15/09	AR197435	NON-DEPARTMENTAL	Office Machines	205.89	CONTRACT OVERAGE 5/16-6/15/09
						Check Totals	205.89	
028632	06/26/09	SPRINGBROOK SOFTWARE	05/31/09	0012324	NON-DEPARTMENTAL	Computer Equipm	879.16	SPRINGBOOK SOFTWARE TRAVEL EXPENSE 03/23
						Check Totals	879.16	
028633	06/26/09	STATE CONTROLLERS OFFICE DI	06/18/09	0005347	NON-DEPARTMENTAL	Audit & Financi	1,791.22	ANNUAL STREETS REPORT 07/08
						Check Totals	1,791.22	
028634	06/26/09	STEAM SYSTEM ROBERT KNOPPS	06/02/09	06.02-09	Public Works Admin	Other Contract	275.00	STEAM CLEAN ALL CARPETS JENNINGS PAVILIO
			06/02/09	06-02-09	Public Works Admin	Other Contract	290.00	STEAM CLEAN ALL CARPETS MAIN HOUSE
						Check Totals	565.00	
028635	06/26/09	SUNNYVALE FORD LINCOLN MERC	06/23/09	06.23-09	Non-Department	DISASTER PREPAR	20,000.00	1 EA 2009 SSV EXPEDITION 4 X 4 BLACK
					Police	Misc Capital Ou	9,274.95	1 EA 2009 SSV EXPEDITION 4 X 4 BLACK
						Check Totals	29,274.95	
028636	06/26/09	TEAMSTERS UNION LOCAL 856	06/19/09	06.19-09	NON-DEPARTMENTAL	Payroll Deducti	401.55	DUES W/H 5/31-6/12/09

Check Disbursement by Vendor for the Check Dates 06/01/2009 through 06/30/2009

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
						Check Totals	401.55	
028637	06/26/09	TOWN OF ATHERTON	06/25/09	10.20.08	NON-DEPARTMENTAL	Accounts Payabl	260.00	STAFF FOR ART SHOW
028637	06/26/09	TOWN OF ATHERTON	06/25/09	09.08.08	NON-DEPARTMENTAL	Accounts Payabl	352.91	POSTAGE FOR FLYERS-ART EXHIBIT 9/19/08
						Check Totals	612.91	
028638	06/26/09	VERIZON WIRELESS	05/21/09	0764870568	City Manager	Communication	45.01	MODEM J.GRUBER 4/22-5/21/09
					Building	Communication	137.06	CELL PHONES BLDG DEPT 4/22-5/21/09
					Police	Communication	568.74	CELL PHONE P.D. 4/22-5/21/09
					Public Works Admin	Communication	172.62	CELL PHONES PUBLIC WORKS 4/22-5/21/09
					Public Works Admin	Communication	178.37	CELL PHONES STREETS DEPT 4/22-5/21/09
					Public Works Admin	Communication	43.08	CELL PHONE PARKS DEPT 4/22-5/21/09
					Public Works Admin	Communication	91.15	CELL PHONES HP PARK 4/22-5/21/09
						Check Totals	1,236.03	
028640	06/26/09	YOUNG & BORLICK ARCHITECTS	06/10/09	202 CAMINO A	Building	Building Permit	1,475.96	REFUND CANCEL PERMIT FEE 202 CAMINO AL L
					NON-DEPARTMENTAL	Road Impact Fee	1,789.20	REFUND ROAD IMPACT FEE 202 CAMINO AL LAG
					NON-DEPARTMENTAL	Business Licens	907.20	REFUND BUS LIC FEE 202 CAMINO AL LAGO
						Check Totals	4,172.36	
						Grand Totals	285,086.85	



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JEROME GRUBER, CITY MANAGER**

FROM: LOUISE HO, FINANCE DIRECTOR

DATE: FOR THE MEETING OF JULY 15, 2009

**SUBJECT: PRELIMINARY FINANCIAL REPORT FOR TWELVE MONTHS
ENDED JUNE 30, 2009**

RECOMMENDATION

Receive the preliminary General Fund Financial Report for the twelve months ended June 30, 2009.

DISCUSSION

Staff revised the format on how the financial report is to be presented. The new format incorporates a column “**Accrual**” to account for revenues and expenditures that need to be included in order to more accurately reflect the actual data. For the twelve months ended June 30, 2009, if revenues and expenditures are assumed to be distributed evenly, 100% of the annual FY 2008-09 Budget (12/12) should be earned or incurred.

The accrual amounts only reflect data up to July 9, 2009. The report also reflected the mid-year budget adjustments (Adjusted Budget) approved by the City Council on March 26, 2009, and the additional \$120,000 appropriation to the City Attorney Department budget approved by the City Council on June 17, 2009.

General Fund Revenues

For the twelve months ended June 30, 2009, the General Fund reported revenues of \$9,498,785, which is 105% of the annual adjusted revenue budget for FY 2008-09. Most of the major revenues met or exceeded budget projection with the exception of building permits, property transfer tax, POST reimbursement, and donation/contribution.

Monthly Financial Report

The Town budgeted \$816,800 in anticipation of refunding two years of business license tax authorized by the City Council in December 2008. As of June 30, 2009, \$226,633 has been refunded. MuniServices is continuing to process the refund claims. Staff is projecting that the total refund claims will come in lower than the total estimated refund budgeted.

General Fund Expenditures

As to the expenditures for the twelve months ended June 30, 2009, the General Fund reported \$10,187,037, which is 99.1% of the annual adjusted expenditure budget for FY 2008-09.

To better explain the variance, staff is providing variance explanations for material items. It is important to note that Finance Department is going through the year-end process of accruing revenues and expenditures that have not been received or paid. It is the Town's policy to continue accruing for 60 days after year ended. The final operating results for FY 2008-09 will be concluded with the audit in September 2009.

FISCAL IMPACT

None

Prepared by:

Approved by:

/s/ Louise Ho

/s/ Jerome D. Gruber

Louise Ho
Finance Director

Jerome D. Gruber
City Manager

Attachment: Financial Report
Variance Explanation

Town of Atherton											
General Fund											
Financial Report for the Twelve Months Ended June 30, 2009 (Preliminary)											
(Excl. Encumbrances)											
Dept	Description	Adjusted Budget FY08/09	12/12 of Budget	Actual Jul 08 thru June 09	Accrual	Adj. Actual Jul 08 thru June 09	% of 12/12 Budget	Year-To-Date Variance	% of Annual Budget	Actual Jul 07 thru June 08	
		(a)	(b)	(c)	(d)	(e)	(e/b)	(a-e)	(e/a)	(f)	
	Revenues		100%								
	Secured	4,299,782	4,299,782	4,275,985	177,359	4,453,344	103.6%	(153,562)	103.6%	4,187,323	
	Unsecured	268,806	268,806	276,459		276,459	102.8%	(7,653)	102.8%	249,861	
	SB813 Redemption	65,000	65,000	128,896	1,877	130,773	201.2%	(65,773)	201.2%	172,923	A
	Home Owners Prop Tax Re	31,500	31,500	26,989	4,763	31,752	100.8%	(252)	100.8%	31,582	
	Local Sales & Use Tax	85,000	85,000	84,448	764	85,212	100.2%	(212)	100.2%	130,061	
	Public Safety Sales Tax	54,000	54,000	66,493	9,745	76,238	141.2%	(22,238)	141.2%	74,163	
	IN LIEU SALES TAX/TRIPLE FLIP	31,235	31,235	31,527		31,527	100.9%	(292)	100.9%	54,235	
	Franchise Taxes-PG&E	225,000	225,000	220,512		220,512	98.0%	4,488	98.0%	214,649	
	Franchise Tax-Cal Water	84,000	84,000	72,912		72,912	86.8%	11,088	86.8%	73,986	
	Franchise Tax-BFI	173,000	173,000	140,528		140,528	81.2%	32,472	81.2%	167,454	
	Franchise Taxes-Cable	110,000	110,000	101,138	25,362	126,500	115.0%	(16,500)	115.0%	104,311	
	Document Trsf Tax	200,000	200,000	115,236	24,191	139,427	69.7%	60,573	69.7%	293,610	
	Motor Vehicle In-Lieu	623,670	623,670	623,670		623,670	100.0%	-	100.0%	603,156	
	Motor Veh. Lic Fees (MVLf)	25,000	25,000	17,506	7,895	25,401	101.6%	(401)	101.6%		
	Business Licenses	161,800	161,800	148,426		148,426	91.7%	13,374	91.7%	595,292	
	Bus Lic Refund -FY 06/07	(217,100)	(217,100)	(20,166)	(17,965)	(38,131)	17.6%	(178,969)	17.6%		B
	Bus Lic Refund -FY 07/08	(462,900)	(462,900)	(89,394)	(41,936)	(131,330)	28.4%	(331,570)	28.4%		B
	Bus Lic Refund -FY 08/09	(136,800)	(136,800)	(30,073)	(27,099)	(57,172)	41.8%	(79,628)	41.8%		B
	Home Occupation	3,000	3,000	1,900		1,900	63.3%	1,100	63.3%	10,270	
	Building Permit	800,000	800,000	640,420		640,420	80.1%	159,580	80.1%	1,052,397	C
	Encroachment	170,000	170,000	154,372		154,372	90.8%	15,629	90.8%	130,651	
	Other Licenses & Permit	500	500	475		475	95.0%	25	95.0%	375	
	Landscape Fee	4,000	4,000	(5,000)		(5,000)	-125.0%	9,000	-125.0%	7,950	
	Vehicle Code Fines	30,000	30,000	8,306	53	8,359	27.9%	21,641	27.9%	4,284	
	Other Fines & Forfeit	11,000	11,000	24,360	2,911	27,271	247.9%	(16,271)	247.9%	27,446	
	Parking Violations			-		-	0.0%	-	0.0%	12,914	
	ERAF Subvention	547,368	547,368	543,116		543,116	99.2%	4,252	99.2%	489,941	
	POST Reimb	20,000	20,000	9,865	2,105	11,970	59.9%	8,030	59.9%	8,097	

Town of Atherton										
General Fund										
Financial Report for the Twelve Months Ended June 30, 2009 (Preliminary)										
(Excl. Encumbrances)										
Dept	Description	Adjusted Budget FY08/09	12/12 of Budget	Actual Jul 08 thru June 09	Accrual	Adj. Actual Jul 08 thru June 09	% of 12/12 Budget	Year-To-Date Variance	% of Annual Budget	Actual Jul 07 thru June 08
		(a)	100% (b)	(c)	(d)	(e)	(e/b)	(a-e)	(e/a)	(f)
	Other Reimbursements	60,000	60,000	7,632		7,632	12.7%	52,368	12.7%	143,813
	SB 90 reimbursement	-	-			-	0.0%	-	0.0%	5,571
	Grants	40,000	40,000	54,556		54,556	136.4%	(14,556)	136.4%	162,046
	React Task Force Reimb	55,820	55,820	55,819		55,819	100.0%	1	100.0%	106,571
	Elections Processing Fee	2,000	2,000	2,000		2,000	100.0%	-	100.0%	
	Document/Research Fee	400	400	-		-	-100.0%	400	-100.0%	1,138
	Photocopy Fee	6,000	6,000	7,847		7,847	130.8%	(1,847)	130.8%	3,540
	Alarm Sign Fees	600	600	810		810	135.0%	(210)	135.0%	930
	Vehicle Release	2,500	2,500	2,400		2,400	96.0%	100	96.0%	1,660
	Fingerprinting Fee			30		30	100.0%	(30)	100.0%	5
	Affidavit of Cost			4,737		4,737	100.0%	(4,737)	100.0%	
	Police Report	3,000	3,000	2,320		2,320	77.3%	680	77.3%	3,345
	Special Service Fee	2,000	2,000	372		372	18.6%	1,628	18.6%	4,364
	Post Office	55,000	55,000	47,449	4,314	51,762	94.1%	3,238	94.1%	51,762
	Application Fee	-	-	675	150	825	100.0%	(825)	100.0%	44,566
	Zoning & Planning Fees	82,000	82,000	69,250		69,250	84.5%	12,750	84.5%	(5,250)
	Plan Check	365,000	365,000	399,427		399,427	109.4%	(34,427)	109.4%	404,377
	Social Fees	35,000	35,000	105,893		105,893	302.6%	(70,893)	302.6%	336,256
	Meeting Fees	65,000	65,000	52,629		52,629	81.0%	12,371	81.0%	50,533
	Class Fees	16,000	16,000	11,000		11,000	68.8%	5,000	68.8%	2,797
	Weddings	90,000	90,000	68,973		68,973	76.6%	21,028	76.6%	
	Misc. Use Fee	500	500	4,599		4,599	919.8%	(4,099)	919.8%	4,750
	Interest Income	200,000	200,000	128,928		128,928	64.5%	71,072	64.5%	80,350
	Cellular One	36,000	36,000	33,114		33,114	92.0%	2,886	92.0%	37,239
	Property Rental-Playscl	75,000	75,000	64,906		64,906	86.5%	10,094	86.5%	74,448
	Sale of Property	-	-	2,246		2,246	100.0%	(2,246)	100.0%	720
	Donations/Contributions	36,151	36,151	12,176		12,176	33.7%	23,975	33.7%	3,985
	Miscellaneous Income	10,000	10,000	15,603		15,603	156.0%	(5,603)	156.0%	44,928
	Trsf in from Spec Parcel Tax	350,000	350,000	350,000		350,000	100.0%	-	100.0%	

Town of Atherton										
General Fund										
Financial Report for the Twelve Months Ended June 30, 2009 (Preliminary)										
(Excl. Encumbrances)										
Dept	Description	Adjusted Budget FY08/09	12/12 of Budget	Actual Jul 08 thru June 09	Accrual	Adj. Actual Jul 08 thru June 09	% of 12/12 Budget	Year-To-Date Variance	% of Annual Budget	Actual Jul 07 thru June 08
		(a)	100% (b)	(c)	(d)	(e)	(e/b)	(a-e)	(e/a)	(f)
	Transfers in from Gas Tax	100,000	100,000	100,000		100,000	100.0%	-	100.0%	
	Transfers in from GFCIP	150,000	150,000	150,000		150,000	100.0%	-	100.0%	
	Total Revenues	9,044,832	9,044,832	9,324,297	174,488	9,498,785	105.0%	(453,953)	105.0%	10,261,375
	EXPENDITURES									
City Council	Advertising/Publishing	-	-	435		435	100.0%	(435)	100.0%	
	Other Contract Services	9,000	9,000	9,400	75	9,475	105.3%	(475)	105.3%	14,661
	Office Supplies	600	600	3,792		3,792	632.0%	(3,192)	632.0%	726
	Membership/Dues	18,000	18,000	16,304		16,304	90.6%	1,696	90.6%	18,340
	Travel & Meetings	6,000	6,000	6,543		6,543	109.1%	(543)	109.1%	10,480
	Special Events & Awards	1,000	1,000	438		438	43.8%	562	43.8%	50
	Administrative Services	381	381	381		381	100.0%	-	100.0%	381
	Computer Services Charge	796	796	796		796	99.9%	0	99.9%	796
	City Council Totals:	35,777	35,777	38,089	75	38,164	106.7%	(2,387)	106.7%	45,434
(City Manager	Salaries & Benefits	555,121	555,121	553,309	3,286	556,595	100.3%	(1,474)	100.3%	401,214
City Clerk	Contract Services	84,000	84,000	102,283	1,493	103,777	123.5%	(19,777)	123.5%	157,410
Personnel)	Supplies & Materials	7,700	7,700	4,963	784	5,747	74.6%	1,953	74.6%	9,311
	General Expenses	57,500	57,500	61,286	2,052	63,337	110.2%	(5,837)	110.2%	46,283
	Reimbursements	30,315	30,315	30,315		30,315	100.0%	-	100.0%	30,330
	City Manager Totals:	734,636	734,636	752,156	7,614	759,771	103.4%	(25,135)	103.4%	644,548
City Attorney	Contract Services	418,000	418,000	300,737	119,148	419,885	100.5%	(1,885)	100.5%	587,788
Legal Services	General Expenses	2,000	2,000	162		162	8.1%	1,838	8.1%	10,000
	Supplies & Materials	-	-	22		22	100.0%	(22)	100.0%	-
	Reimbursements	6,228	6,228	6,228		6,228	100.0%	-	100.0%	6,228
	City Attorney Totals:	426,228	426,228	307,148	119,148	426,296	100.0%	(68)	100.0%	604,016
(Finance	Salaries & Benefits	348,040	305,025	338,612	1,470	340,082	111.5%	7,958	97.7%	282,786

Town of Atherton										
General Fund										
Financial Report for the Twelve Months Ended June 30, 2009 (Preliminary)										
(Excl. Encumbrances)										
Dept	Description	Adjusted Budget FY08/09	12/12 of Budget	Actual Jul 08 thru June 09	Accrual	Adj. Actual Jul 08 thru June 09	% of 12/12 Budget	Year-To-Date Variance	% of Annual Budget	Actual Jul 07 thru June 08
			100%							
		(a)	(b)	(c)	(d)	(e)	(e/b)	(a-e)	(e/a)	(f)
Post Office)	Contract Services	50,000	50,000	32,235	6,634	38,869	77.7%	11,131	77.7%	90,705
	Supplies & Materials	11,000	11,000	5,432		5,432	49.4%	5,568	49.4%	3,427
	General Expenses	3,600	3,600	1,512		1,512	42.0%	2,088	42.0%	782
	Rents & Leases		-	590		590	100.0%	(590)	100.0%	-
	Facility & Equipment	7,500	7,500	660		660	8.8%	6,840	8.8%	-
	Reimbursements	19,616	19,616	19,616		19,616	100.0%	(0)	100.0%	19,616
	Finance Totals:	439,756	396,741	398,656	8,104	406,761	102.5%	32,995	92.5%	397,315
(Planning)	Contract Services	283,937	283,937	262,957	20,914	283,871	100.0%	66	100.0%	402,609
	Supplies & Materials	-	-	53		53	100.0%	(53)	100.0%	-
	Planning Totals:	283,937	283,937	263,010	20,914	283,924	100.0%	13	100.0%	402,609
(Building)	Salaries & Benefits	864,441	864,441	805,603	4,907	810,509	93.8%	53,932	93.8%	693,910
	Contract Services	208,900	208,900	168,501	20,000	188,501	90.2%	20,399	90.2%	585,200
	Supplies & Materials	21,000	21,000	16,288	45	16,333	77.8%	4,667	77.8%	18,929
	General Expenses	10,000	10,000	9,885		9,885	98.8%	115	98.8%	3,883
	Facility & Equipment	1,500	1,500	436		436	29.1%	1,064	29.1%	501
	Reimbursements	48,358	48,358	48,358		48,358	100.0%	0	100.0%	103,844
	Building Totals:	1,154,199	1,154,199	1,049,070	24,951	1,074,022	93.1%	80,177	93.1%	1,406,266
Non-Dept	Retiree Health Care	97,200	97,200	113,002		113,002	116.3%	(15,802)	116.3%	
	Contract Services	23,745	23,745	1,428		1,428	6.0%	22,318	6.0%	
	Settlement Expense	-	-	7,923		7,923	100.0%	(7,923)	0.0%	
	Non-Dept. Totals:	120,945	120,945	122,352	-	122,352	101.2%	(1,407)	101.2%	-
Police	Salaries & Benefits	4,092,933	4,092,933	4,064,561	21,777	4,086,338	99.8%	6,595	99.8%	4,175,932
	Contract Services	260,670	260,670	251,032		251,032	96.3%	9,638	96.3%	223,258
	Supplies & Materials	171,002	171,002	126,987	5,811	132,798	77.7%	38,204	77.7%	154,018
	General Expenses	103,483	103,483	121,230	4,201	125,431	121.2%	(21,948)	121.2%	73,828

Town of Atherton										
General Fund										
Financial Report for the Twelve Months Ended June 30, 2009 (Preliminary)										
(Excl. Encumbrances)										
Dept	Description	Adjusted Budget FY08/09	12/12 of Budget	Actual Jul 08 thru June 09	Accrual	Adj. Actual Jul 08 thru June 09	% of 12/12 Budget	Year-To-Date Variance	% of Annual Budget	Actual Jul 07 thru June 08
			100%							
		(a)	(b)	(c)	(d)	(e)	(e/b)	(a-e)	(e/a)	(f)
	Facility & Equipment	125,156	125,156	74,660	19,737	94,397	75.4%	30,759	75.4%	78,534
	Reimbursement	141,886	141,886	141,886		141,886	100.0%	0	100.0%	214,935
	Police Totals:	4,895,130	4,895,130	4,780,356	51,526	4,831,882	98.7%	63,248	98.7%	4,920,506
(Public Works & Parks)	Salaries & Benefits	1,463,828	1,463,828	1,473,406	54,974	1,528,379	104.4%	(64,551)	104.4%	1,376,346
	Contract Services	446,650	446,650	494,237	(71,817)	422,420	94.6%	24,230	94.6%	539,834
	Supplies & Materials	95,300	95,300	62,859		62,859	66.0%	32,441	66.0%	74,323
	General Expenses	97,000	97,000	121,182	8,165	129,346	133.3%	(32,346)	133.3%	12,320
	Rent & Leases	42,068	42,068	36,653		36,653	87.1%	5,415	87.1%	13,052
	Facility & Equipment	32,500	32,500	3,859	1,644	5,503	16.9%	26,997	16.9%	49,372
	Reimbursements	58,705	58,705	58,705		58,705	100.0%	-	100.0%	38,085
	Public Works Totals:	2,236,051	2,236,051	2,250,901	(7,035)	2,243,867	100.3%	(7,816)	100.3%	2,103,332
	Total Expenditures	10,326,659	10,283,644	9,961,739	225,298	10,187,037	99.1%	139,622	98.6%	10,524,027
	Excess (Deficiency) of Revenues over	(1,281,827)	(1,238,812)	(637,442)		(688,252)	55.6%	(593,575)	53.7%	(262,651)
	Beg. Fund Balance	7,882,853				7,882,853				
	Proj. Ending Fund Balance	6,601,026				7,194,601				

Town of Atherton
Financial Report for the Twelve Months Ended June 30, 2009
Revenue Variance Explanation

A. **SB 813 Redemption**

The actual for the year was higher than budgeted due to the time lag between assessed value changes and recorded by the County Assessor's Office.

B. **Business License Refund**

MuniServices is continuing to process the refund claims received. The amount budgeted for the refund assumed 100% refund. Since the refund claim period is open till December 2009, the refund budget will need to be carried forward to FY 2010. A mid-year budget adjustment will be presented to City Council in February 2010 to carry the budget.

C. **Building Permit & Plan Check**

The combined building dept revenues came in \$125,153 below adjusted budget.

D. **Other Reimbursements**

Finance Dept is the process of reviewing the year-end billings created by Dept of Public Works to see if all reimbursements are billed and complete.

E. **Interest Income**

The interest income for April to June 2009 has not been booked. Once the June 2009 bank reconciliation is completed, the interest will be allocated to all funds.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JEROME GRUBER, CITY MANAGER**

FROM: LOUISE HO, FINANCE DIRECTOR

DATE: FOR THE MEETING OF JULY 15, 2009

**SUBJECT: APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH THE
CITY OF REDWOOD CITY TO PROVIDE INFORMATION
TECHNOLOGY SUPPORT**

RECOMMENDATION

Approve the agreement for information technology support between the City of Redwood City and the Town of Atherton; authorize the City Manager to execute the agreement.

DISCUSSION

The Town of Atherton has contracted the City of Redwood City since July 1, 2007, to provide information technology support to the Town. The agreement for FY 2008-09 expired on June 30, 2009. Staff is recommending that the City Council continue to select the City of Redwood City to provide the support service for the third year. This will allow time for staff to evaluate the information technology needs of the Town, bring forth improvement proposal to the City Council, and develop a Request for Proposal for FY 2010-11.

The Redwood City contract for FY 2008-09 was for 250 hours at an hourly rate of \$129.26. For FY 2009-10, the hourly rate requested by the City of Redwood City is \$135.72, an increase of 5%. With the formation of the Staff IT Committee, staff reduced the support hours from 260 hours in FY 2008-09 to 200 hours in FY 2009-10. This amounts to 4 hours a week for 50 weeks.

FISCAL IMPACT

The cost for 200 hours of IT support is \$27,144. This amount is budgeted in FY 2009-10 Non-Department budget for FY 2009-10.

Prepared by:

Approved by:

Louise Ho
Finance Director

Jerome D. Gruber
City Manager

Attachment: Agreement
Purchase Requisition

**AGREEMENT FOR
INFORMATION TECHNOLOGY SUPPORT BETWEEN THE CITY OF
REDWOOD CITY AND THE TOWN OF ATHERTON**

THIS AGREEMENT is made and entered into this ____ day of _____, 2009, by and between the **CITY OF REDWOOD CITY**, hereinafter referred to as "RWC", and **THE TOWN OF ATHERTON**, hereinafter referred to as "**TOA**," and collectively herein called the "**Parties**."

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, TOA desires to engage RWC to render certain Information Technology services to TOA related to carrying on the day to day technology related operations of TOA; and

WHEREAS, RWC is qualified to provide such services to TOA; and

WHEREAS, TOA has elected to engage the services of RWC upon the terms and conditions as hereinafter set forth.

TERMS AND CONDITIONS

1. **Services.**

The services to be performed by RWC under this Agreement shall include those services set forth in **Exhibit A**, which is by this reference incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit A is hereby made an obligation of RWC under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of said Parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

2. **Term of Agreement.**

The term of this agreement shall be for one (1) year, commencing July 1, 2009 and

shall expire on June 30, 2010, or until terminated by sixty (60) days prior written notice by either party.

3. Compensation.

The normal business hours hourly rate for the fiscal year 2009-2010 (July 1, 2009 through June 30, 2010) for services by RWC under this Agreement shall be \$135.72.

4. Effective Date of Agreement.

This Agreement becomes effective on July 1, 2009

5. Reliance of Professional Skill of RWC.

RWC represents that it has the necessary professional skills to perform the services required and TOA shall rely on such skills of RWC to do and perform the work.

6. Relationship of Parties.

It is understood that the relationship of RWC to TOA is that of an independent contractor and all persons working for or under the direction of RWC are its agents or employees and not agents or employees of TOA.

7. Nonassignment.

This Agreement is not assignable either in whole or in part.

8. Amendments.

This Agreement may be amended or modified only by written agreement signed by both Parties.

9. Validity.

The invalidity, in whole or in part, of any provisions of this Agreement shall not void or affect the validity of any other provisions of this Agreement.

10. Governing Law/Litigation.

This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either Party shall be brought in the County of San Mateo, California. In the

event of litigation between the Parties hereto to enforce any provision of the Agreement, the unsuccessful Party will pay the reasonable expenses of litigation of the successful Party.

11. Mediation.

Should any dispute arise out of this Agreement, the Parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither Party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the Parties. If a mediated settlement is reached, neither Party shall be deemed the prevailing party for purposes of the settlement, and each Party shall bear its own legal costs.

12. Entire Agreement.

This Agreement, including Exhibit A, comprises the entire Agreement.

13. Indemnity.

RWC shall defend, indemnify and hold TOA and its officers and employees harmless from any and all claims and liabilities related to or as a result of RWC's performance of this Agreement, to the extent they are caused by RWC's negligent acts, or willful wrongful acts.

14. Insurance.

RWC shall not commence work under this Agreement until all insurance required under this paragraph has been obtained. Upon request, RWC shall furnish TOA with certificates of insurance evidencing the required coverage.

A. Workers' Compensation and Employers' Liability Insurance.

RWC shall have in effect during the entire life of this Agreement Workers' Compensation and Employers' Liability Insurance providing full statutory coverage. In signing this Agreement, RWC makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 37900 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance

with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

B. Liability Insurance.

RWC shall take out and maintain during the life of this Agreement such bodily injury liability and property damage liability insurance as shall protect RWC while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from RWC's work under this Agreement, whether such work be by RWC or by any subcontractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be One Million and no/100 Dollars (\$1,000,000.00) combined single limit bodily injury and property damage for each occurrence. TOA, its officers, employees and agents shall be maintained as additional insured's on said policy, and a certificate of said coverage shall be delivered to TOA before any work commences. All insurance shall be with insurance carriers licensed in the State of California and in good standing with the California Department of Insurance.

C. Notwithstanding the above, RWC shall have the right to self-insure against any and all perils and/or liabilities against which it would otherwise be required to insure and shall also have the right to effect any such insurance by means of so called "blanket" or "umbrella" policies of insurance. If RWC decides to self-insure, RWC must provide TOA with written notice of self-insurance identifying the type of policy coverage and the amount for which it shall self-insure.

15. Notice.

All notices required by this Agreement shall be given to RWC and TOA in writing, by first class mail, postage paid, addressed as follows:

RWC: The City of Redwood City
Attention: IT Manager
1017 Middlefield Road
Redwood City, CA 94063

TOA: TOWN OF ATHERTON
Attention: City Manager
91 Ashfield Road
Atherton, CA 94027

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date indicated on page one (1).

DATED: _____, 200__ **CITY OF REDWOOD CITY:**

BY: _____
Peter Ingram, CITY MANAGER

DATED: _____, 200__ **TOWN OF ATHERTON:**

BY: _____
Jerry Gruber, CITY MANAGER

EXHIBIT A

A. SCOPE OF SERVICES

1. Definitions:

A. Normal Business Hours: Defined as Monday through Friday, 8:00 a.m. through 5:00 p.m. except the following currently recognized RWC holidays (calendar dates vary depending on the year):

- New Year's Day
- Martin Luther King, Jr. Day
- Presidents Day
- Memorial Day
- 4th of July
- Labor Day
- Veterans Day
- Thanksgiving Day
- Thanksgiving Friday
- Christmas Eve
- Christmas Day
- New Year's Eve

Rates for hours worked by RWC during normal business hours will be at the current rate in which they are worked.

B. Non-business hours: All hours worked outside of normal business hours. TOA requested work to be performed during non-business hours will be invoiced at a rate equal to one-and-one-half times the then current rate. Examples: A request from TOA for RWC to install new equipment during a weekend to minimize disruption during TOA normal business hours; An after-hours call to RWC to fix a downed server or internet connection.

- C. Maintain and support:** RWC will keep the type of equipment or specific named equipment operational as defined by its purpose. If RWC staff is unable to resolve an issue without external vendor support, RWC will contact and work with the appropriate vendor until the malfunctioning equipment is operational. RWC staff will keep the same equipment optimized and its firmware/software current as deemed appropriate to maintain optimized operations, while minimizing down time.
2. **Internet Access Support:** RWC will maintain and support this connection.
 3. **Firewall Support:** RWC will maintain and support this appliance and in some instances make recommendations to improve security to reduce network vulnerabilities.
 4. **Network Support:** RWC will maintain and support all the switches and other networking devices in TOA .
 5. **Server Support:** RWC will maintain and support all servers used in TOA . RWC staff will provide full support for the following:
 - Operating systems
 - File and print services
 - Email
 - Antivirus and spam filtering
 - Internet blocking
 - Applications running on the servers
 6. **Desktop, Laptop, and Mobile Computing Device Support (DLM):** RWC will maintain and support all DLM on the TOA network including future connected or non-connected DLM. Support will include, but not be limited to: developing and providing specifications; purchasing, setting up, and installing; optimizing and patching; and protecting against unwanted intrusion – spyware, viruses, etc.
 7. **Other:** Technologies not currently named will be maintained and supported upon written agreement by TOA and RWC. Written agreement can be in the form of an email request.
 8. **For all supported technologies,** RWC will work with manufacturers and vendors to purchase new, as well as return and replace failed parts, such as hard drives, monitors, printers, etc. From time to time additional external contractors may be required, such as

for larger cabling or electrical work. RWC will find, coordinate, and schedule the efforts of external contractors. For all emergency and non-emergency issues during normal business hours, RWC will respond within four (4) hours, usually faster. RWC will respond with its best effort for all emergencies during non-business hours.

B. COMPENSATION

1. TOA agrees to pay to RWC the full cost of providing technology services as shown in this Exhibit A, as the same may be amended from time to time by written agreement between the Parties.
2. TOA and RWC acknowledge and agree that compensation paid by TOA to RWC under this Agreement is based upon RWC's cost of providing the services required hereunder, including salaries and benefits of employees.
3. TOA agrees to compensate RWC for Information Technology services. Direct external costs such as external contractors and equipment purchases on behalf of TOA are borne by TOA. Information Technology services costs include those expenses necessary to administer this Agreement. RWC will provide these services for an hourly rate of \$135.72 during fiscal year 2009-2010 (July 1, 2009 to June 30, 2010). The hourly rate will be adjusted on an annual fiscal year basis.
4. Remote support will be billed in fifteen (15) minute intervals.
5. **Terms of Payment.** RWC shall invoice in arrears on the first of each month in the amount \$2,262.00 (200 hours per year, times \$135.72 per hour, divided by 12 months).
6. **Charges for other services and special projects:** Additional hours for special projects requested of RWC will be at the current rate in which the work was done and will be invoiced in the month following the completion of the requested service or incurred expense. Special projects are typically projects requested by TOA that require RWC resources well-above the initially agreed upon five hours per week, and where TOA wants to save the five hours for normal support, or where TOA wants RWC to track and invoice requested work separate from normal invoicing. Special projects are subject to RWC staff

availability.

External vendor charges and equipment purchases will be paid directly by TOA or reimbursed by TOA if paid by RWC, and shall be without RWC overhead fees.

7. **End of year reconciliation:** During July 2010, RWC will reconcile the previous fiscal year's purchased hours (200) against the worked hours. RWC will invoice TOA for all worked and non-invoiced hours, or refund TOA for all invoiced but non-worked hours.
8. **Reporting:** Each month RWC will submit to TOA a spreadsheet showing and recording the hours worked to date, the name of the tech who worked the hours, and a brief description of the work completed.

9. Requesting Support:

- **Non-emergency support** – support request during normal business hours, as defined in Exhibit A, section A.1.A, and where RWC staff is not on-site, can be requested using one of the following three methods:
 - i. Logging into RWC's online help desk system at <http://thecity.redwoodcity.org:8080/hd/index.htx>.
 - ii. Calling or emailing the primary Analyst assigned to TOA .
 - iii. Calling RWC help desk at (650) 780-7093
- **Emergency support** – non-planned support requests for services during non-business hours, as defined in Exhibit A, section A.1.B, to resolve issues in which a business function cannot be performed.
 - i. Logging into RWC's online help desk system at <http://thecity.redwoodcity.org:8080/hd/index.htx>.
 - ii. The highest ranking, on-site staff member from TOA calls the RWC Information Technology Manager at (650) 464-9575.

Important Note: Emergency support is considered a best effort as RWC is not a 24 X 7 shop. Emergency support is charged at one-and-one-half times the normal hourly rate.

TOWN OF ATHERTON PURCHASE REQUISITION

VENDOR:

City of Redwood City
Name
1017 Middlefield Road
Address
Redwood City, CA 94063
City, State, Zip

DELIVER TO:

Town of Atherton
Name
Finance
Department
91 Ashfield Road, Atherton
Address, City, State, Zip
CA 94027

IF THIS VENDOR IS NOT ON THE TOWN'S VENDOR LIST, THEN YOU MUST PROVIDE THE VENDOR'S FED ID # (Corporation/Partnership) OR SOCIAL SECURITY # AND OWNER'S NAME

FEDERAL ID #

S. S. # and Owner's Name

Account #	Qty	Unit Price	Description (Part / Model #)	Total Cost
<u>101-30-3159-000</u>	<u>200</u>	<u>\$135.72</u>	<u>IT support</u>	<u>27,144</u>

Req. Delivery Date: 7/1/09 - 6/30/10

Purchase Order Number _____

Payment Terms monthly

Sub-Total	
Tax	
Shipping Cost	
Total Cost	<u>27,144</u>

REQUIRED CHECKLIST:

within Budget? 6
Y/N initials
 Bids Attached? 7
Y/N initials

(If no, then attach explanation)

(If no, then attach explanation)
sole source

Name of Requestor: Louise Ho
(Print)

Dept Mgr. Approval: [Signature]
(Signature)

RETURN FORM TO FINANCE WITH BIDDER'S INFORMATION LIST ATTACHED



DATE: FOR THE CITY COUNCIL MEETING OF JULY 15, 2009

TO: THE CITY COUNCIL

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

SUBJECT: ADOPTION OF A STREET ADDRESS ASSIGNMENT POLICY

RECOMMENDATION

Staff recommends that the City Council adopt the attached street address assignment policy to allow one distinct address per legal dwelling unit.

BACKGROUND

The Atherton Municipal Code does not have regulations in place for address assignments. The Building Department currently processes address assignment requests. These requests will either be for a new address number in replacement of an existing address number or in the case of a subdivision, assignment of an address number for a vacant lot. Recently, we have received a couple of requests for an address assigned, in addition to the existing address. In one situation, the request is for assignment of "A", "B" and "C" to the existing address to accommodate multiple utility meters from PG&E. The other request is to assign an address for an accessory structure to be used as a home occupation business in addition to the address currently assigned to the main residence.

ANALYSIS

Atherton Municipal Code currently allows for the construction of a main residence, an internal living unit and a second dwelling unit within the main building area. Staff is supportive of allowing unique addresses for each legal dwelling unit on the site. Staff will assign a new address for the additional legal dwelling unit with a letter sequence. For example, if the main residence is located at 123 Atherton Avenue, the second dwelling unit would be assigned 123-A Atherton Avenue.

Atherton Municipal Code does not allow the use of detached accessory structures for occupancy as a home occupation business. Therefore, staff would not support allowing a distinct address number for a detached accessory structure. Staff would not support assigning an additional address for accessory structures for the purpose of obtaining separate utility meters.

The proposed address policy was reviewed with the Building Official and Menlo Park Fire Protection District staff. Once an address is assigned, a letter is generated to all affected agencies by Town staff informing them of the new address. The County Assessor's office will continue to recognize one address per legal parcel.

ALTERNATIVES

The Council could provide direction to staff to expand the address assignment policy to allow address assignments for accessory buildings. The Council could also restrict the street address assignment policy to one district address per property.

FISCAL IMPACT

A fee is collected for the processing of address assignment requests. Staff will continue to collect this fee. No fiscal impact associated with the adoption of the street address assignment policy as proposed.

ENVIRONMENTAL DETERMINATION

The street address assignment policy has been determined exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA section 15061(3); the address assignment policy is not considered a project and will not have the potential for causing a significant effect on the environment.

FORMAL MOTION

I move that the City Council adopt the street address assignment policy to allow one address per legal dwelling unit.

/s/ Lisa Costa Sanders

/s/ Jerome D. Gruber

Lisa Costa Sanders, Deputy Town Planner

Jerome D. Gruber

Attachment:

1. Proposed address assignment policy

**TOWN OF ATHERTON
ADDRESS ASSIGNMENT POLICY**

The City Manager and/or his/her designee shall assign one numerical address number per legal lot in the Town of Atherton. The assigned address shall follow logical numerical progression, leaving adequate space for any vacant parcels or parcels of land of sufficient size to accommodate a future subdivision. The City Manager and/or his/her designee may also assign an additional lettered address for each legal second dwelling unit. For example, if the main residence is 123 Atherton Avenue, the second dwelling unit would be assigned 123-A Atherton Avenue.

Additional addresses may be assigned to the public schools, private schools and the country club after consultation with Menlo Fire Protection District at the discretion of the City Manager and/or his/her designee.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JERRY GRUBER, CITY MANAGER**

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JULY 15, 2009

**SUBJECT: AWARD OF CONTRACT FOR THE WATER TOWER LAWN
PROJECT NUMBER 08-026**

RECOMMENDATION:

Pass a motion to award the contract for the Water Tower Lawn Project, project number 08-026 to the low bidder to be determined by the July 14 bids, for an amount to be determined by Council at its meeting, based on the bid results and to authorize the City Manager to execute the contract on behalf of the Town.

INTRODUCTION:

The Landscape Master Plan for Holbrook-Palmer Park includes a lawn between the Pavilion and the Water Tower. The Atherton Dames funded the landscape design of the project using funding collected for improvement to the Water Tower environs. Kikuchi and Associates, the park's landscape architect, was retained to design the project. The final conceptual design was presented to the Park and Recreation Commission at their February 4, 2009 meeting, where it was recommended for approval. The City Council approved the final conceptual plan at the February 2009 meeting, and approved the plans and authorized advertising the project at the June 2009 meeting.

The project consists of removal of conflicting vegetation, moving some trees and removing others, installing irrigation and drainage, and planting a new lawn. The project will create a continuous lawn from the Pavilion to the Water Tower. The existing asphalt pathway adjacent to the Water Tower will remain, to be realigned in a future project.

ANALYSIS:

Because this project is being expedited, with advertising authorized at the June meeting and needing to give the contractors a maximum amount of time to prepare bids, bids will be received for the Water Tower Lawn Project on July 14, 2009.

The project has been split into two phases for bidding purposes in order to achieve the lowest possible bid. Each bidder can bid each phase and/or both phases together. The lower of the lowest combination of the sum of the bids for each phase or the lowest bid for both phases will be awarded the contract.

FISCAL IMPACT:

Atherton Dames funds in the amount of \$75,000 and Parcel Tax funds in the amount of \$25,000 are budgeted for this project in FY 2009-10. Bids will be received for the project on July 14, 2009. A separate staff report will be prepared for distribution at the City Council meeting to convey the bid results. The architect's estimate prepared by Kikuchi Associates, the designer of the project, is \$96,273.

Additional fiscal impact of this project will be increased maintenance (mowing, trimming, irrigation, fertilization and weed control) of the completed lawn area. The mowing, trimming and irrigation (including repairs) will need to be accommodated by park staff because the landscape contractor for the park has been cut due to budget constraints. In the future, hopefully, a landscape contractor will be brought back and this additional lawn area added to their contract. The landscape contract will be rebid, so the potential cost increase is not known at this time.

Fertilization and weed control will be added to the Pest Control contract, currently with Clark Pest Control, at a cost of approximately \$83 per month (\$1000 per year). Clark is paid per visit per hour, so the exact cost to include this lawn in subsequent visits was estimated at 10% of their current expenditure rate, based on the relative size of this lawn.

Prepared By:

/s/ Duncan L. Jones

Duncan L. Jones, P.E.
Public Works Director

Approved:

Jerome D. Gruber
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JERRY GRUBER, CITY MANAGER**

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JULY 15, 2009

**SUBJECT: AWARD OF CONTRACT TO G. BORTOLOTTO & COMPANY,
INC. FOR THE STREET RECONSTRUCTION PHASE 6
PROJECT NUMBER 08-025 IN AN AMOUNT NOT TO EXCEED
\$390,264.65 PLUS A TEN PERCENT CONSTRUCTION
CONTINGENCY, FOR A TOTAL AUTHORIZATION OF
\$429,291.11.**

RECOMMENDATION:

Pass a motion to award the contract for Street Reconstruction Phase 6 Project, project number 08-025 to G. Bortolotto & Company, the low bidder on the July 9, 2009 bids, for \$390,264.65, with a 10% construction contingency of \$39,026.46, for a total authorization of \$429,291.11; and to authorize the City Manager to sign the contract on behalf of the Town.

INTRODUCTION:

The FY 2008-09 adopted Capital Improvement Program includes funds for street reconstruction, with sufficient balance to provide the local match for the federal funds. Atherton Avenue was chosen because it is the only street that is eligible for federal funding with valley gutter, which allows it to be reconstructed with absolutely no environmental impacts. Only streets on the California Road System (CRS), primarily arterials and collectors, are eligible for federal funding. Streets with environmental impacts are likely to be held up in the Caltrans process and be unable to meet the timelines of the federal funding.

In 2003, Atherton Avenue was reconstructed from Stern Lane to Linda Vista Avenue. The next segment due on Atherton Avenue would extend this reconstruction from Stern Lane to Elena Avenue. Atherton Avenue between Selby Lane and Elena Avenue is one of

the sections of the street most in need of reconstruction, with the lowest PCI on Atherton Avenue (67) in the most recent survey.

While a 67 PCI is still a fair condition pavement structure, it does not adequately reflect the condition of the roadway base in this segment. Year after year our patching contract includes deep lift repairs in this segment, often right next to previous repairs. The street is now a patchwork of Town street patches, utility patches and residence connection patches, providing a fairly rough ride. Further base failures continue to occur.

There is also an add alternate to add Atherton Avenue from Selby Lane to Stern Lane.

It was intended that the additional length of 1040' (from Selby Lane to Stern Lane) would be included if the bids were low enough such that the add alternate could be included within the budget. The total authorization, bid plus contingency, including the add alternate is less than the budget, therefore staff recommends that the add alternate be included in the award.

ANALYSIS:

9 bids were received for the Street Reconstruction Phase 6 Project as follows:

<u>CONTRACTOR</u>	<u>LOCATION</u>	<u>BASE BID</u>	<u>ADD ALT.</u>	<u>TOTAL</u>
G. Bortolotto & company	San Carlos, CA	\$256,936.65	\$133,328.00	\$390,264.65
Interstate Gr. & Paving	S. San Francisco, CA	\$266,745.00	\$148,304.00	\$415,049.00
O.C. Jones & sons	Berkeley, CA	\$267,757.50	\$186,784.00	\$454,541.50
O'Grady Paving	Mountain View, CA	\$271,285.00	\$151,216.00	\$422,501.00
Jos J. Albanese	Santa Clara, CA	\$271,767.00	\$276,640.00	\$548,407.00
Top Grade construction	Foster City, CA	\$280,885.00	\$137,072.00	\$417,957.00
Granite construction	Santa Clara, CA	\$284,965.00	\$156,041.60	\$441,006.60
CF Archibald	Redwood City, CA	\$339,790.00	\$181,792.00	\$521,582.00
Independent Construction	Concord, CA	\$419,260.00	\$481,624.00	\$900,884.00

FISCAL IMPACT:

ARRA funds in the amount of \$468,000 have been obligated to this project. Of those, \$221,000 are funds exchanged with the Town of Woodside, which will be reimbursed to Woodside with Atherton local funds. \$247,000 is Atherton's share of the ARRA funding.

Road Impact funds in the amount of \$250,736, Measure A funds of 80,000, Proposition 1B funds of \$63,923 and ARRA funds of \$247,000 are budgeted for this project in FY 2009-10, for a total budget of \$641,659. These funds are all derived from savings on previous projects and reallocated to this project, plus the ARRA grant.

Bids were received for the project on July 9, 2009. G. Bortolotto & Co. was the low bidder at \$256,936.65 for the base bid and \$133,328.00 for the bid alternate for the total bid of \$390,264.65. This bid was 38.60% below the engineer's estimate prepared by staff, the designer of the project, of \$641,574. A 10% construction contingency of

\$39,026.64 would bring the total authorization to \$429,291.11, which is \$212,282.89 (33.10%) below the FY 2009-10 budget.

Prepared By:

/s/ Duncan L. Jones

Approved:

Duncan L. Jones, P.E.
Public Works Director

Jerome D. Gruber
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JERRY GRUBER, CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JULY 15, 2009

**SUBJECT: APPROVE A CONTRACT CHANGE ORDER FOR
INDEPENDENT CONSTRUCTION CO. FOR THE STREET
RECONSTRUCTION PHASE 5 PROJECT NUMBER 08-023 IN
THE AMOUNT OF \$48,798.58.**

RECOMMENDATION:

Approve a Contract Change Order for Independent Construction Co. for Street Reconstruction Phase 5 Project, project number 08-023 in the amount of \$48,798.58.

INTRODUCTION:

Street Reconstruction Phase 5 began on Monday May 5th, 2009. While working on Lupin Lane, the contractor encountered unanticipated field conditions. During the grinding of existing asphalt concrete, the asphalt was found to be thicker in certain areas on the roadway than was anticipated. Staff anticipated a thickness of 0.55', but existing conditions were 8" or more in some areas. In order to provide a uniform subgrade, existing asphalt was removed and aggregate base was installed to fill the void.

After removing the asphalt, the contractor scarified 6" of the soil to provide the required uniform subgrade. Cotton Shire and Associates, the Town's geotechnical engineering firm, were present to observe and test the compaction of the soil. Approximately 5,200 SF of compacted soils were unsuitable for paving. The soil was overly wet and constantly rolled under the heavy equipment, a sign of subgrade instability. According to the geotechnical engineer's recommendation, staff authorized the contractor to stabilize the area with 6" of ¾" drain rocks encapsulated by filter fabric and capped with class II aggregate base. This was successful in most areas, but was unsuccessful in certain areas.

The geotechnical engineer then stated that unsuitable soil should be removed until the soil was dry enough, backfilling the void with base rock or imported soil. This would have been extremely costly and would delay the project because the depth necessary to achieve dry soil was not known. It could have been several feet or more. A more common solution is to bridge the unsuitable material with an asphalt plug. Additional work was done and the job was completed. The solution was successful. The contractor has now completed the asphalt pavement.

ANALYSIS:

Field Change Orders

AC stabilization =	\$11,465.11
Drain Rock/AB stabilization =	\$18,304.00
AB to fill roadway due to removal of additional AC thickness =	\$13,461.79
Grinding additional AC roadway =	<u>\$ 5,567.68</u>
TOTAL COST OF FIELD CHANGE ORDERS =	\$48,798.58

These costs are based on regular unit prices and industry standard time and materials costs. The costs of repair of these two unforeseen conditions has exceeded the contingency of the contract. Staff recommends that the contract amount and authorization be increased by the amount of the change order, leaving the contingency intact to handle minor items on the next three streets yet to be constructed, Oak Grove Avenue, Marianna Lane and Fennwood Drive.

FISCAL IMPACT:

Current total authorization for Street Reconstruction Phase 5 is \$471,164.82. An increase due to change orders in the amount of \$48,798.58 bringing the new total for Street Reconstruction Phase 5 to \$519,963.40, which is within the Street Reconstruction budget for FY 2009-10 of \$900,000, .

ALTERNATIVE:

An alternate to increasing the contract amount is to cancel Fennwood Drive reconstruction from this contract at a cost savings of \$67,704.34. Fennwood Drive would then be postponed until the next Street Reconstruction project in the Summer of 2010, using the same Street Reconstruction budget recommended to be used for this Contract Change Order.

Prepared By:

Approved:

/s/ Duncan L. Jones

Duncan L. Jones, P.E.
Public Works Director

Jerome D. Gruber
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: MIKE WASMANN, BUILDING OFFICIAL

DATE: FOR THE MEETING OF JULY 15, 2009

SUBJECT: APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR CODE ENFORCEMENT

RECOMMENDATION

Approve an Amendment to the Professional Services Agreement with CSG Consultants, Inc. to provide Code Enforcement Services to the Town of Atherton in the amount of \$54,250 for the fiscal year 2009-010.

BACKGROUND

The Town of Atherton currently employs a part-time Code Enforcement Officer from CSG Consultants, Inc., to enforce the municipal code on a complaint basis. The Council, in its regular meeting of June 18, 2008, approved the Code Enforcement Program to be continued for Fiscal Year 2008-09.

The Code Enforcement Officer will continue to work in response to service requests from residents on a regularly scheduled day to provide the best access for the public with the ability to increase or decrease the schedule or to vary the schedule for a maximum of eight hours per week. This level of service is consistent with the level of service provided last fiscal year. Mr. Robert Cushing will continue. The agreement has been reviewed by the City Attorney.

FISCAL IMPACT

The hourly rate remains at \$103/hour. A twenty percent contingency has been included for additional service over the regular scheduled days. Sufficient funds to provide these services are included in the adopted 2009-010 budget.

Prepared By:

Approved:

Mike Wasmann
Building Official

Jerome D. Gruber
City Manager

Attachment:

- 1- CSG Propopsal
- 2- Professional Service Agreement



May 28, 2009

06-01-09 13:45 RCVD

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

Re: FY 2009/10 Contract Code Enforcement Services

Dear Mr. Gruber:

CSG Consultants, Inc. is pleased to provide this proposal to continue to provide code enforcement services for the Town of Atherton. Mr. Robert Cushing will continue to serve in this position. We understand that the Town currently requires these services 8 hours per week, with additional hours as needed. The fee for these services will continue to be billed at \$103 per hour. We propose that Bob's time be scheduled in an 8 hour block every Wednesday (one full day per week). In addition, Bob will be available to respond to phone calls and emails on behalf of the City. Given the fact that Bob will be taking vacation at some point during the 52 week period, charges for these additional services will be absorbed in our estimated schedule. As requested, we are also including expenses (mileage, etc). The estimated annual fee for these services is as follows:

Fee Schedule

\$103/hr x 8 hours per week @ 52 weeks = \$42,848
\$45 daily expenses (mileage, etc.) @ 52 weeks = \$2,340
Total Estimated Expenses: \$45,188

The contract will be in effect from July 1, 2009 until June 30, 2010. CSG will obtain prior approval from the City Manager before performing any work in excess of the above noted schedule. Additional hours will not exceed 10% over the agreed upon time period without Council approval. The following outlines our proposed scope of work:

Scope of Service

Code enforcement services will include assessment, field investigation, follow-up, correspondence, logging and tracking of complaints and cases, public information and related duties as assigned by the City Manager or designee. CSG will schedule and conduct subsequent inspections until violations are in compliance with Town requirements.

We are enclosing 2 copies of CSG's signed contract for the provision of these services for your review and approval. If you are in agreement with its provisions, kindly sign and return one copy for our records. Thank you again for the opportunity to further serve the Town of Atherton. Should you have any questions, please contact me at (650) 522-2500.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Mao", is written over a white background.

Richard Mao, P.E.
President

AGREEMENT FOR PROFESSIONAL SERVICES
by and between the
TOWN OF ATHERTON (Town)
and
CSG CONSULTANTS, INC. (Consultant)

PREAMBLE

This agreement for the performance of professional services ("Agreement") is made and entered into on this _____ day of _____, 2009 ("Effective Date"), by and between CSG CONSULTANTS, INC., a California corporation, with its principal place of business located at 1700 S. Amphlett Blvd., 3rd Floor, San Mateo, CA 94402 ("Consultant") and the TOWN OF ATHERTON, California, a California municipal corporation, with its principal place of business located at 91 Ashfield Road, Atherton, CA 94027 ("Town"). Town and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. Town desires to secure professional services as described in Exhibit A, entitled "Scope of Services"; for Code Enforcement.
- B. Consultant represents that it possesses the professional qualifications and expertise to provide such services and
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SCOPE OF SERVICES

Except as specified in this Agreement, Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by Town at its own risk and expense. Services to be provided to Town are more fully described in Exhibit A, entitled "Scope of Services." include Code Enforcement assessment and Code Enforcement. All of the exhibits referenced in this Agreement are attached and incorporated by this reference.

2. TERM OF AGREEMENT

- A. Consultant shall provide the services under the requirements of this Agreement commencing upon the date of execution of this Agreement by the parties. Consultant shall complete services within the time limits set forth in Scope of Services or as mutually determined in writing by Parties.

- B. Unless extended by mutual written agreement of Parties, or terminated earlier in accordance with this Agreement, Consultant's obligation to perform services to be provided under the terms of this Agreement shall continue in full force and effect until June 30, 2010.

3. **RESPONSIBILITY OF CONSULTANT**

Consultant shall be responsible for the quality, technical accuracy, and coordination of services furnished by it under this Agreement as outlined in Exhibit A. Consultant will endeavor to provide services in a manner consistent with the level of care and skill ordinarily exercised by other professionals providing the same service in the same locale. Consultant shall be solely responsible to Town for the performance of Consultant, and any of his or her employees, agents, subcontractors, or suppliers, under these Agreement Documents.

4. **RESPONSIBILITY OF TOWN**

- A. Town has established a budget for professional services including all costs as outlined in Exhibits A and B. The City Manager, or designee, shall be Town's authorized representative and will ensure all required budget, purchase orders, service orders and any other internal documentation necessary to comply with the terms of this Agreement are properly and timely prepared in order to enable Consultant to commence and continue services according to terms of the Agreement.
- B. On behalf of Town, the City Manager, or designee, shall be Town's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The City Manager, or designee, shall render decisions in a timely manner pertaining to documents submitted by Consultant in order to avoid unreasonable delay in the orderly and sequential progress of Consultant's services. Consultant shall promptly comply with instructions from City Manager or designee. The City Manager will ensure all required budget, purchase orders, service orders and any other internal documentation necessary to comply with the terms of this agreement are properly and timely prepared in order to enable Consultant to continue services according to the terms of this Agreement.

5. **PAYMENT OF COMPENSATION**

- A. In consideration for Consultant's performance of services, Town shall pay Consultant for all services rendered by Consultant pursuant to Consultant's Standard Rate Schedule, the current version of which is outlined in Exhibit B, "Services Fee Schedule." Payments made by Town under this Agreement shall be the amounts charged for Services provided and billed by Consultant, subject to verification by Town, pursuant to the standard rates set forth in the "Services Fee Schedule" attached as Exhibit B. Consultant may begin services prior to the effective date of this agreement at its own risk, with the understanding that, upon Town

approval, Town may choose to compensate consultant for services performed prior to Council authorization, with the limits of the City Manager's authority.

- B. Consultant shall bill Town on a monthly basis for services provided by Consultant during the preceding month, subject to verification by Town. Payment to Consultant for services will be made within thirty (30) days of date of Consultant invoice. Amounts unpaid 60 days from the invoice date shall bear interest at the rate of 1% per month.
- C. Compensation for the services hereunder shall not exceed \$45,188, unless changed in writing by Town. CSG will notify the City Manager before proceeding with any work in excess of \$45,188. City Manager is authorized to approve an increase of up to \$4,518.80 without Town Council approval.

6. RIGHT TO TERMINATION

Both parties reserve the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to the other party. As of the date of termination, Consultant shall immediately cease all services hereunder, except such as may be specifically approved by both Consultant and Town's authorized representative. Consultant shall be entitled to compensation for all services rendered prior to termination and for any services authorized by the authorized representative thereafter.

7. NO ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST

This Agreement is a contract for professional services. Town and Consultant bind themselves, their partners, successors, assigns, executors and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of both parties.

8. NO AGENCY

Consultant shall not have authority, expressed or implied, to act on behalf of Town as an agent, or to bind Town to any obligations whatsoever, unless specifically authorized in writing by the City Manager or authorized representative.

9. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an Agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. CONSULTANT IS AN INDEPENDENT CONSULTANT

It is agreed that in performing the work required under this Agreement, Consultant and any person employed by or contracted with Consultant to furnish labor and/or materials under this Agreement is not an agent nor employee of Town. Consultant has full rights to manage its employees subject to the requirements of the law.

11. CONFIDENTIALITY OF MATERIAL

All memoranda, specifications, plans, data, drawings, descriptions, documents, discussions or other information received by or for Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant and shall not, without the prior written consent of Town, be used for any purposes other than the performance of the services nor be disclosed to an entity not connected with performance of the services. Nothing furnished to Consultant, which is otherwise known to Consultant or becomes generally known to the public or is of public record, shall be deemed confidential.

12. RIGHT OF TOWN TO INSPECT RECORDS OF CONSULTANT

Town, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant's compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to Town. Town shall disallow any expenses not so recorded.

Consultant shall submit to Town any and all reports concerning its performance under this Agreement that may be requested by Town in writing. Consultant agrees to assist Town in meeting Town's reporting requirements to the State and other agencies with respect to Consultant's services hereunder.

13. CORRECTION OF SERVICES

Consultant will be given the opportunity and agrees to correct any incomplete, inaccurate or defective services at no further cost to Town, when such defects are due to the negligence, errors or omissions of Consultant.

14. FORCE MAJEURE

The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of any public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes and unusually severe weather if Consultant shall, within ten (10) days of the commencement of such condition, notify the City Manager who shall

thereupon ascertain the facts and extent of any necessary delay, and extend the time for performing services for period of enforced delay when and if the City Manager's determination shall be final and conclusive upon the parties to this Agreement.

15. FAIR EMPLOYMENT

Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background, or marital status, in violation of state or federal law.

16. HOLD HARMLESS/INDEMNIFICATION

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold Town harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Consultant's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her sub-consultants or anyone for whom Consultant is legally liable.

Town agrees, to the fullest extent permitted by law, to indemnify and hold Consultant harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Town's negligent acts, errors or omissions and those of his or her contractors, sub-contractors or consultants or anyone for whom Town is legally liable, and arising from the project that is the subject of this Agreement. Town further agrees to defend Consultant by providing legal counsel for the services that Consultant performs to the same degree and level as if the consultant were a Town employee, excepting Consultant gross negligence or willful misconduct.

Consultant is not obligated to indemnify Town in any manner whatsoever for Town's own negligence.

17. INSURANCE REQUIREMENTS

A. Without limiting Contractor's indemnification of Town, and prior to commencing any Services required under this Agreement, Consultant shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

1. Commercial General Liability Policy (bodily injury and property damage): Policy limits are subject to review, but shall in no event be less than, the following:

- \$1,000,000 Each Occurrence
- \$1,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal Injury

2. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
3. Comprehensive Business Automobile Liability Insurance Policy with policy limits at minimum limit of not less than one million dollars (\$1,000,000) each accident using. Liability coverage shall apply to all owned, non-owned and hired autos.
4. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of Consultant. Coverage shall be in an amount of not less than two million dollars (\$2,000,000) per claim/aggregate.

B. EVIDENCE OF COVERAGE

Prior to commencement of any services under this Agreement, Consultant, shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with endorsements and deductibles indicated in this Agreement. Consultant shall file with Town all certificates for required insurance policies for Town's approval as to adequacy of insurance protection.

18. AMENDMENTS

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and incorporated into this Agreement. Such changes, which are mutually agreed upon by Town and Consultant, shall be incorporated in amendments to this Agreement.

19. WAIVER

No term or provision hereof shall be deemed waived and no default or breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented to such breach. The consent by any party to, or waiver of, a breach or default by the other, shall not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach or default.

The failure of either party to insist upon or enforce strict conformance by the other party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such party's right unless made in writing and shall not constitute any subsequent waiver or relinquishment.

20. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT

This Agreement embodies the Agreement between Town and Consultant and its terms and conditions. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of Town prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon Town.

Agreement Documents comprise the entire Agreement between Town and Consultant concerning the work to be performed for this project. Agreement Documents are complementary; what is called for in one of the Agreement Documents is binding as if called for by all of them.

21. SEVERABILITY CLAUSE

In the event any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

If any part of this agreement is for any reason held to be excessively broad as to time, duration, geographical scope, activity or subject, it will be construed, by limiting or reducing it, so as to be enforceable to the extent reasonably necessary for the protection of the parties.

22 NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to Town addressed as follows:

City Manager
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

And to Consultant addressed as follows:

Name: CSG CONSULTANTS, INC.
Address: 1700 S. Amphlett Blvd., 3rd floor
San Mateo, CA 94402

23 STATUTES AND LAW GOVERNING CONTRACT

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

24. WAIVER OF CONSEQUENTIAL DAMAGES

Town and Consultant mutually agree to waive all claims of consequential damages arising from disputes, claims, or other matters relating to this Agreement.

25. DISPUTE RESOLUTION

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Consultant and Town regarding the construction or application of this Agreement, and claims arising out of this agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request that the Superior Court, State of California, County of San Mateo appoint a mediator. The mediation meeting shall not exceed one day or eight (8) hours. The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. Mediation under this section is a condition precedent to filing an action in any court. In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of this Agreement, or to recover damages for the breach thereof, the Party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing Party all reasonable attorneys' fees, costs and expenses incurred by the prevailing Party.

26. VENUE

In the event that suit shall be brought by either Party, the Parties agree that the venue shall be exclusively vested in the state courts of the County of San Mateo or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Francisco.

27. 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.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

TOWN OF ATHERTON, CALIFORNIA,
a California Municipal Corporation

Approved as to form:

Wynne Furth,
City Attorney

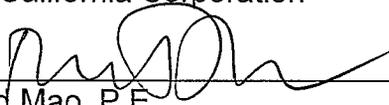
Jerry Carlson
Mayor

Attest:

Theresa DellaSanta
Deputy City Clerk

"Town of Atherton"

CSG CONSULTANTS, INC.
a California Corporation



Richard Mao, P.E.

President
1700 S. Amphlett Blvd., 3rd floor,
San Mateo, CA 94402
Telephone: (650)522-2500
Fax: (650)522-2599

"Consultant"

EXHIBIT A

Scope of Work

Code enforcement services will include assessment, field investigation, follow-up, correspondence, logging and tracking of complaints and cases, public information and related duties as assigned by the City Manager or designee.

CSG will schedule and conduct subsequent inspections until violations are in compliance with Town requirements.

EXHIBIT B
Services Fee Schedule

<u>Position</u>	<u>Hourly Fee</u>
Code Enforcement Consultant	\$103.00

Mileage reimbursement will be invoiced at IRS rate plus 15%

Calls for service will be billed for a minimum of four hours

CSG estimates the following annual fee for these services to be as follows: --

\$103/hr x 8 hours per week @ 52 weeks = \$42,848

\$45 daily expenses (mileage, etc.) x 52 weeks = \$2,340

Total Estimated Fee: \$45,188

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2009 by and between the **TOWN OF ATHERTON**, hereinafter referred to a “TOWN” and CSG Consultants, Inc. hereinafter referred to as “CONSULTANT”.

RECITALS

THIS AGREEMENT is entered into with reference to the following facts and circumstances:

- A. That TOWN desires to engage CONSULTANT to render certain professional services to the TOWN;
- B. That CONSULTANT is qualified to provide such services to the TOWN; and
- C. That TOWN has elected to engage the services of CONSULTANT upon the terms and conditions as hereinafter set forth.

TERMS AND CONDITIONS

1. Services

The services to be performed by CONSULTANT under this Agreement shall include those services set forth in Exhibit A, which is by this reference incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit A is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

2. Term of Agreement

Said services shall commence on execution and shall continue until completion of the task set forth in Exhibit A as described in the preceding section, or until terminated by ten (10) days written notice by either party.

3. Compensation

Payment under this agreement shall be as per Exhibit A. This is a time and materials agreement with a not-to-exceed budget of \$45,188.

4. Authorization and Termination

This Agreement becomes effective when endorsed by both parties in the space provided below.

5. **Reliance of Professional Skill of Consultant**

CONSULTANT represents that it has the necessary professional skills to perform the services required and TOWN shall rely on such skills of the CONSULTANT to do and perform the work.

6. **Relationship of Parties**

It is understood that the relationship of CONSULTANT to TOWN is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of TOWN.

7. **Non-assignment**

This Agreement is not assignable either in whole or in part.

8. **Amendments**

This Agreement may be amended or modified only by written agreement signed by both parties.

9. **Validity**

The invalidity, in whole or in part, of any provisions of this Agreement shall not void or affect the validity of any other provisions of this Agreement.

10. **Governing Law/Litigation**

This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable expenses of litigation of the successful party.

11. **Mediation**

Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement, and each party shall bear its own legal costs.

12. **Entire Agreement**

This Agreement, including Exhibit A, comprises the entire Agreement.

13. **Indemnity**

CONSULTANT shall defend, indemnify and hold TOWN and its officers and employees harmless from any and all claims and liabilities related to or as a result of CONSULTANT's performance of this Agreement.

14. **Insurance**

CONSULTANT shall not commence work under this Agreement until all insurance required under this Paragraph has been obtained. CONSULTANT shall furnish TOWN with certificates of insurance evidencing the required coverage. The TOWN will be named as additional insured in the policy. These certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to the TOWN office of any pending change in the limits of liability or of any cancellation or modification of the policy.

a) **Workers' Compensation and Employers' Liability Insurance**

CONSULTANT shall have in effect during the entire life of this Agreement Workers' Compensation and Employers' Liability Insurance providing full statutory coverage. In signing this Agreement, CONSULTANT makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 37900 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

b) **Liability Insurance**

CONSULTANT shall take out and maintain during the life of this Agreement such bodily injury liability and property damage liability insurance as shall protect CONSULTANT while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims from property damage which may arise from CONSULTANT's work under this Agreement, whether such work be by CONSULTANT or by any subcontractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be Two Million and no/100 Dollars (\$2,000,000.00) combined single limit bodily injury and property damage for each occurrence. The TOWN, its officers, employees and agents shall be maintained as additional insureds on said policy, and a certificate of said coverage shall be delivered to the TOWN before any work commences. All insurance shall be with insurance carriers licensed in the State of California and in good standing with the California Department of Insurance.

15. **Notice**

All notices required by this Agreement shall be given to TOWN and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:

TOWN:

City Manager
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

CONSULTANT:

President
CSG Consultants, Inc.
1700 South Amphlett Blvd., 3rd Floor
San Mateo, CA 94402

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first written by their respective officers duly authorized in that behalf.

TOWN OF ATHERTON

BY: _____
Jerome D. Gruber, City Manager

Date: _____

APPROVED AS TO FORM:

BY: _____
Wynne S. Furth, City Attorney

Date: _____

CONSULTANT:
CSG CONSULTANTS, INC.

BY: _____

Date: _____



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JEROME D. GRUBER, CITY MANAGER

DATE: CITY COUNCIL MEETING OF JULY 15, 2009

SUBJECT: APPROVAL OF SECOND AMENDMENT TO CONTRACT FOR SERVICES FOR ALAN MARGOT, TENNIS PROFESSIONAL

RECOMMENDATION

Approve second amendment to contract for services of Tennis Professional Alan Margot.

BACKGROUND

The Town has previously retained the services of Alan Margot as Tennis Professional at Holbrook-Palmer Park. The original contract effective March 1, 2005 expired February 28, 2007. A first amendment was approved and effective March 1, 2007 and is due to expire on the last day of June, 2009. Attached is an amendment to contract based upon the previous contract, effective July 1, 2009 for a two-year term through February 2011.

FISCAL IMPACT

No fiscal impact.

Attachment: Draft Second Amendment

**SECOND AMENDMENT TO THE AGREEMENT FOR SERVICES
OF
USPTA TEACHING TENNIS PROFESSIONAL ALAN MARGOT**

This Second Amendment to the Agreement for Services by and between the Town of Atherton ("Town") and Alan Margot, USPTA "Tennis Professional" ("Tennis Pro") for management of the Town's tennis instruction program ("Second Amendment") is entered into as of the ___ day of _____, 2009, ("Effective Date"), by and between Town and Tennis Pro.

RECITALS

- A. Town and Tennis Pro are parties to that certain Agreement for Services of USPTA Teaching Tennis Professional Alan Margot effective March 1, 2005 ("Agreement").
- B. Town and Tennis Pro entered into a First Amendment to the Agreement effective March 1, 2007 to provide for continuing services as described therein.
- C. Town and Tennis Pro now desire to enter into this Second Amendment to provide for continuing services as described below.

AGREEMENT

NOW, THEREFORE, in consideration of the following mutual promises, the parties hereby amend the Agreement as follows:

- 1. Subsection C, Part 2, Paragraph 3. Subsection C, Part 2. of Paragraph 3 is hereby amended to read as follows: "Automobile liability limits of \$1,000,000 bodily injury and property damage combined."
- 2. Subsection A, Paragraph 4. Subsection A of Paragraph 4 is hereby amended to read as follows: "This contract shall commence effective July 1, 2009, and unless terminated sooner pursuant to Section 4.B or Section 4.C, as amended, or extended for another two-year term pursuant to Section 4.D., as amended, the contract will terminate on the last day of June, 2011."
- 3. Subsection O, Paragraph 5. Subsection O of Paragraph 5 is hereby added to read as follows: "Tennis Pro will be required to post a rate and fee schedule in a conspicuous spot at its Administrative office at the Main House at Holbrook-Palmer Park which shall include a contact name and phone number for person(s) to call when no one is available in the office."
- 4. Agreement in Effect. Except as amended by this Second Amendment, the Agreement, as amended, shall remain in full force and effect.
- 5. Counterpart Signatures. This Second Amendment may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

IN WITNESS THEREOF, the parties have executed this Second Amendment as of the Effective Date.

Dated: July_____, 2009

Jerry Carlson, Town of Atherton Mayor

Dated: July_____, 2009

Alan Margot, Tennis Professional

APPROVED AS TO FORM:

Wynne Furth, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JEROME D. GRUBER, CITY MANAGER

DATE: CITY COUNCIL MEETING OF JULY 15, 2009

SUBJECT: REJECT CLAIM OF JONATHAN B. BUCKHEIT

RECOMMENDATION

Adopt Resolution 09-20 rejecting claim of Jonathan B. Buckheit.

BACKGROUND

The Town received a California Tort Claim from Jonathan B. Buckheit on April 9, 2009.
[A copy of the claim is available in the City Clerks Office.]

ABAG has recommended that the Town reject the claim of Jonathan B. Buckheit.

FISCAL IMPACT

No fiscal impact.

Attachment: Resolution 09-20 rejecting the claim of Jonathan B. Buckheit

RESOLUTION 09-20

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
REJECTING THE CLAIM OF
Jonathan B. Buckheit**

[Re: Police Action]

BE IT RESOLVED by the City Council of the Town of Atherton that the Claim for alleged damages with an unknown date and received April 9, 2009 is hereby rejected.

DULY AND REGULARLY ADOPTED this 15th day of July, 2009

TOWN OF ATHERTON

Jerry Carlson, Mayor

ATTEST

Theresa N. DellaSanta, Deputy City Clerk



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: Jerry Gruber, City Manager

FROM: Eileen M. Wilkerson, Assistant City Manager

DATE: FOR THE MEETING OF July 15, 2009

SUBJECT: EMPLOYEE PRACTICES LIABILITY COVERAGE

RECOMMENDATION:

That the Council authorize the City Manager to enter into an agreement with ABAG and Steadfast Insurance Company (Zurich) to provide Employee Practices Liability Coverage effective July 1, 2009 through June 30, 2010 in an amount not to exceed \$36,000.

INTRODUCTION:

June 17, 1992 the Town of Atherton approved a risk coverage agreement between the Association of Bay Area Governments (ABAG) and the Town of Atherton. Resolution 92-19 declared the Town empowered to insure itself against liability and other losses, workers' compensation claims and to provide insurance and self-insurance in any desired combination.

Through Resolution 92-19 the Town entered into a Joint Powers Agreement with other members of ABAG to pool their self-insured losses; jointly purchase excess insurance, and to develop effective risk management and loss control programs to reduce the amount and frequency of its losses.

In November 2008 a need for Employee Practices Liability Coverage became known and Staff discovered that the Town of Atherton did not have Employee Practices Liability Coverage through ABAG although it was offered.

Staff investigated options available, reviewed the Town's Purchasing Policy, and completed an application for Employee Practices Liability Coverage through ABAG.

Over the course of the next months Driver Speciality Group, Alliant Insurance Service, Inc. solicited proposals on behalf of ABAG and the Town of Atherton. Of ten companies solicited, only two companies submitted proposals.

Lloyd's of London provided their proposal based on the initial Town application to ABAG.

Steadfast Insurance Company (Zurich) asked for further clarification on several personnel issues before they provided their proposal.

The following proposals were received:

Company	Deductible	Premium
Lloyd's of London (London)	\$250,000	\$139,353.75
Steadfast Insurance Company (Zurich)	\$100,000	\$34,271.73

ANALYSIS:

Both proposals are for a 12 month period, limit liability to \$5,000,000 for each claim and in the aggregate, and include surplus lines taxes and surplus lines fees.

The London proposal exempts any prior personnel acts.

The Zurich proposal exempts specific individual employees and specific prior personnel acts. Mary Lendaris, Alliant Insurance Service, Inc. has worked closely with Zurich and Staff to fully explain each prior personnel act that would have resulted in a claim against the coverage. Ms. Lendaris indicated to Staff that the Town's response and current procedures significantly influenced reducing the premium to the level proposed.

For purposes of this Staff Report and privacy issues, the employee names have been removed in the Zurich proposal.

FISCAL IMPACT:

Due to the delay in signing an agreement, the original application will need to be re-signed/re-dated and submitted prior to binding. According to Ms. Lendaris, dependent upon the total time delay the premium may be insignificantly adjusted upwards. The FY 2009-10 budget approved on June 17, 2009 includes \$36,000 for Employee Practices Liability Coverage through ABAG.

Prepared By:

Approved by:

Eileen Wilkerson
Assistant City Manager

Jerry Gruber
City Manager

Attachments:

Lloyds of London Proposal
Steadfast Insurance Company (Zurich) Proposal



DRIVER SPECIALTY GROUP

Named Insured: Town of Atherton
91 Ashfield Road
Atherton, CA 94027

Carrier: Steadfast Insurance Company (Zurich)
AM Best Rating: A XV
Standard & Poor's Rating: AA+
California Status: Non-Admitted

Coverage: **Employment Practices Liability**

Proposed Period: Annual (12 month period)

Retro-active Date: Inception Date of Coverage

Limits of Liability: \$ 5,000,000 Each Claim and in the Aggregate

Self-Insured Retention: \$ 100,000 Per Claim

Annual Premium:	\$ 33,201.00	Policy Premium
	\$ 996.03	Surplus Lines Taxes
	\$ 74.70	Surplus Lines Fee
	\$ 34,271.73	Total Annual Premium

Prior & Pending Lit Date: Inception

Continuity Date: Inception

Extended Reporting Period: One Calendar Year at 75%

Endorsements: Terrorism Risk Insurance Act
Third Party Endorsement
Prior Acts Exclusion
Specific Individual Exclusion (Troy Henderson)
Specific Circumstances Exclusion (Johns, English, Ortiz-Buckley)

Subject to:

- Original application will need to be re-signed/re-dated and submitted prior to binding
- Prior Acts Exclusion must be signed and dated by Insured when the policy is issued (see attached for sample)
- Signed D-1 is required (see attached)



DRIVER SPECIALTY GROUP

This proposal is for information purposes only and does not amend, extend or alter the policy in any way. Please refer to the policy form for completed coverage and exclusion information.

Alliant embraces a policy of transparency with respect to its compensation from insurance transactions. Details on our compensation policy, including the types of income that Alliant may earn on a placement, are available on our website at www.alliantinsurance.com. For a copy of our policy or for any inquiries regarding compensation issues pertaining to your account you may also contact us at: Alliant Insurance Services, Inc., Attention: General Counsel, 701 B Street, 6th Floor, San Diego, CA 92101.

*Analyzing insurers' over-all performance and financial strength is a task that requires specialized skills and in-depth technical understanding of all aspects of insurance company finances and operations.

Insurance brokerages such as Alliant Insurance typically rely upon rating agencies for this type of market analysis. Both A.M. Best and Standard and Poor have been industry leaders in this area for many decades, utilizing a combination of quantitative and qualitative analysis of the information available in formulating their ratings.

A.M. Best has an extensive database of nearly 6,000 Life/Health, Property Casualty and International companies. You can visit them at www.ambest.com.

For additional information regarding insurer financial strength ratings visit Standard and Poor's website at www.standardandpoors.com

To learn more about companies doing business in California, visit the California Department of Insurance website at www.insurance.ca.gov

Prior Acts Exclusion Endorsement



The following information is required only when this endorsement is issued subsequent to preparation of policy.

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.

Named Insured and Mailing Address:

Producer:

In consideration of the premium charged, it is hereby understood and agreed that this policy specifically excludes loss resulting from claims made against any Insured arising from any acts, errors, omissions, or personal injuries occurring or alleged to have occurred prior to

I/We hereby understand and agree to the above.

Signature of partner, officer or sole proprietor	Date
--	------

All other terms and conditions remain unchanged.

Signed by: _____
Authorized Representative

_____ Date



AmWINS Insurance Brokerage of California, LLC
 19867 Prairie Street
 Suite 250
 Chatsworth, CA 91311

CA License #0C01319

Surplus Lines Disclosure

Named Insured: Town of Atherton
Agency: Alliant Insurance Services, Inc.
LOB: Employment Practices Liability

State	Disclosure
CA	<p>NOTICE:</p> <ol style="list-style-type: none"> 1. THE INSURANCE POLICY THAT YOU ARE APPLYING TO PURCHASE IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS. 2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT THAT APPLY TO CALIFORNIA LICENSED INSURERS. 3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED. 4. CALIFORNIA MAINTAINS A LIST OF ELIGIBLE SURPLUS LINE INSURERS APPROVED BY THE INSURANCE COMMISSIONER. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST AT THE INTERNET WEB SITE OF THE CALIFORNIA DEPARTMENT OF INSURANCE: www.insurance.ca.gov. 5. FOR ADDITIONAL INFORMATION ABOUT THE INSURER YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE, AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: 1-800-927-4357. 6. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BE BOUND IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO

BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE
COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE
THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE
UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT
TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS
DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM WILL BE
PRORATED AND ANY BROKER'S FEE CHARGED FOR THIS INSURANCE
WILL BE RETURNED TO YOU.

Date: _____

Insured: _____

SF 198230.2 73670 00741 D-1 (Effective January 1, 2009)



THIS DISCLOSURE DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER ANY POLICY.

DISCLOSURE OF IMPORTANT INFORMATION RELATING TO TERRORISM RISK INSURANCE ACT

SCHEDULE*

Premium attributable to risk of loss from certified acts of terrorism for lines of insurance subject to TRIA:

INCLUDED

*Any information required to complete this Schedule, if not shown above, will be shown in the quote or proposal.

A. Disclosure of Premium

In accordance with the federal Terrorism Risk Insurance Act ("TRIA"), as amended, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to the risk of loss from terrorist acts certified under that Act for lines subject to TRIA. That portion of premium attributable is shown in the Schedule above. The premium shown in the Schedule above is subject to adjustment upon premium audit, if applicable.

B. Disclosure of Federal Participation in Payment of Terrorism Losses

The United States Government may pay a share of insured losses resulting from an act of terrorism. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the insurer retention. The insurer retention equals 20% of the insurer's prior calendar year direct earned premium associated with lines of insurance subject to TRIA. TRIA is scheduled to expire on December 31, 2014.

C. Disclosure of \$100 Billion Cap on All Insurer and Federal Obligations

If aggregate insured losses attributable to terrorist acts certified under TRIA exceed \$100 billion in a Program Year (January 1 through December 31) and an insurer has met its deductible under the program, that insurer shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of Treasury.

D. Availability

As required by TRIA, we have made available to you for lines subject to TRIA coverage for losses resulting from acts of terrorism certified under TRIA with terms, amounts and limitations that do not differ materially from those for losses arising from events other than acts of terrorism.

E. Definition of Act of Terrorism under TRIA

TRIA defines "act of terrorism" as any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States:

1. to be an act of terrorism;
2. to be a violent act or an act that is dangerous to human life, property or infrastructure;
3. to have resulted in damage within the United States, or outside of the United States in the case of an air carrier (as defined in section 40102 of Title 49, United States Code) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), or the premises of a United States mission; and
4. to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.



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No act may be certified as an "act of terrorism" if the act is committed as part of the course of a war declared by Congress (except for workers' compensation) or if losses resulting from the act, in the aggregate for insurance subject to TRIA, do not exceed \$5,000,000.



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ZURICH VALUE

This proposal represents our commitment to build value for you and deliver Zurich Quality for your customers. Zurich delivers:

- Exceptional financial strength and stability from one of the world's largest property and casualty insurers
- Knowledge of workers' compensation, from one of the largest commercial insurers in the U.S. and one of the leading insurers in your market
- World class service backed by our global resources and network of professionals

Zurich's professionals are prepared to help your customers protect employees and preserve their productivity.

Prevent or minimize workplace injuries/illnesses

- Virtual Consulting online system helps educate employers and their employees on workplace safety with access to training, tools and information resources, industry-specific loss exposures and effective controls to help manage their risk of employee injury/illness.

Prepare to effectively manage injuries that do occur

- Zurich C.a.r.e.® Directory Online provides ready access to our medical provider network, including specialists in diagnostic testing, durable medical equipment and pharmacy services.
- Our eZ Transition online tool assists customers in development, implementation and execution of effective Return to Work programs with the flexibility to support and enhance RTW programs at all stages of development and all levels of sophistication.

Take immediate action to reduce the costs and liabilities of occupational injury/illness and obtain the best outcome for the employee

- Zurich's award winning Care Center receives claims online, by e-mail, toll free phone, fax, and mail – at any time, every day of the year – directing them to the right resource to assure an appropriate and rapid response. Experienced case management and state-of-the-art technology deliver exceptional results.
- eZ Transition provides online access to your customer's RTW policies and documentation, and facilitates communications with the injured employee, health care providers, and Zurich Claim and Managed Care professionals.

Claims, Managed Care and Risk Engineering services are provided by Zurich Services Corporation.



If you would like to obtain a copy of our specimen policy and/or application, please visit our website at www.zurichna.com/ea.

Please do not hesitate to contact our office if you have any questions.

Customer Services Contact information

Claims reporting	Online https://webclaims.zurichna.com/ Phone 1-800-987-3373 Fax 1-877-962-2567 E-mail USZ_CareCenter@zurichna.com Mail/Location Zurich Claim Offices [http://www.zurichna.com/zus/aboutus.nsf/claimofficelookup?openform]
Policy Administration	Phone 1-847-605-3637 Fax 1-847-605-6556 E-mail Jeannette.Thele@zurichna.com

Third Party Discrimination Endorsement



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Additional Prem.	Return Prem.
<polnbr>	<effdt>	<expidt>	<btneff>	<add prem>	<rpem>ZEnd

Parent Company:

Endorsement Number:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Commercial Employment Practices Liability Policy

It is agreed that:

1. Subsection I.A. is amended by adding the following additional Insuring Clause:

The Underwriter shall pay on behalf of the Insureds all loss for which the Insureds become legally obligated to pay on account of any Claim by or on behalf of any natural person (other than a past, present or prospective Employee or shareholder of the Company in their capacity as such) for a Wrongful Discrimination Act taking place before or during the Policy Period if such Claim is first made against the Insureds, individually or otherwise, during the Policy Period or, if exercised, during the Extended Reporting Period.

2. Solely with respect to coverage afforded by reason of this endorsement:

a. Item 4. Deductible Amount, of the Declarations is amended to read as follows:

Retention Amount : Third Party EPL Retention

b. Item 8. Pending or Prior Date, of the Declarations is amended to read as follows:

Pending or Prior Date: mm/dd/ccyy

c. The term "Wrongful Employment Act" wherever used in this policy shall mean Wrongful Discrimination Act.

3. Section III, Definitions, is amended by adding the following:

Wrongful Discrimination Act means any act, error, omission, neglect, or breach of duty actually or alleged committed or attempted by the Company or by one or more Insured Persons in their capacities as such or by any other person for whom the Insureds are legally responsible, in connection with any actual or alleged violation of any federal, state, or local statute, regulation, ordinance, common law or public policy concerning discrimination or sexual harassment.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Signed by: _____
 Authorized Representative

_____ Date

Prior Acts Exclusion Endorsement



The following information is required only when this endorsement is issued subsequent to preparation of policy.

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.

Named Insured and Mailing Address:

Producer:

In consideration of the premium charged, it is hereby understood and agreed that this policy specifically excludes loss resulting from claims made against any Insured arising from any acts, errors, omissions, or personal injuries occurring or alleged to have occurred prior to

I/We hereby understand and agree to the above.

Signature of partner, officer or sole proprietor	Date
--	------

All other terms and conditions remain unchanged.

Signed by: _____
 Authorized Representative

_____ Date



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Specific Circumstances Exclusion

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Additional Prem.	Return Prem.
<poinbr>	<effdt>	<expidt>	<btneff>	<aprem>ZEnd	<rpm>ZEnd

Parent Company:

Endorsement Number:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Commercial Employment Practices Liability Policy

It is agreed that:

The following is added to Section IV. – EXCLUSIONS:

The Underwriter shall not be liable or Loss on account of any Claim(s) made against any Insureds based upon, arising out of, or attributable to the following fact, circumstances, events, or transactions listed below or the same or substantially same fact, circumstance or situation underlying or alleged therein:

1. <DESCRIPTION OF CIRCUMSTANCES>

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Signed by: _____
Authorized Representative

_____ Date

Declarations – Commercial Employment Practices Liability Policy



Zurich American Insurance Company

Policy Number:

Item 1. Named Insured and Address:

Item 2. Limits of Liability: (A) Each Claim \$
(B) Each Policy Period \$

Note that the Limits of Liability and any Retention Amount are reduced or exhausted by Defense Costs.

Item 3. Policy Period: From 12:01 A.M. on
To 12:01 A.M. on
Local time at the address shown in Item 1.

Item 4. Retention Amount: \$ Each Claim

Item 5. Coinsurance Percent: Each Claim

Item 6. Punitive Damages Included as Loss: Yes No

Item 7. Extended Reporting Period: (A) Additional Premium:
(B) Additional Period:

Item 8. Pending or Prior Date:

Item 9. Continuity Date:

Item 10. Endorsements Effective at Inception:

THIS IS A CLAIMS MADE AND REPORTED POLICY. CLAIMS MUST BE FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF EXERCISED, AND REPORTED TO THE UNDERWRITER DURING THE POLICY PERIOD OR THE EXTENDED REPORTED PERIOD, IF EXERCISED. THE PAYMENT OF DEFENSE COSTS REDUCES THE LIMIT OF LIABILITY. PLEASE READ THE POLICY CAREFULLY.

In witness whereof, the Underwriter issuing this policy has caused this policy to be signed by its authorized officers, but it shall not be valid unless also signed by the duly authorized representative of the Underwriter.

ZURICH AMERICAN INSURANCE COMPANY

Authorized Representative

Date
President
Zurich American Insurance Company

Corporate Secretary
Zurich American Insurance Company

Commercial Employment Practices Liability Policy Claims Made and Reported Coverage



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THIS IS A CLAIMS MADE AND REPORTED POLICY. CLAIMS MUST BE FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF EXERCISED, AND REPORTED TO THE UNDERWRITER DURING THE POLICY PERIOD OR THE EXTENDED REPORTED PERIOD, IF EXERCISED. THE PAYMENT OF DEFENSE COSTS REDUCES THE LIMITS OF LIABILITY. PLEASE READ THE POLICY CAREFULLY.

In consideration of payment of the premium and in reliance upon the statements made in the application and its attachments and any materials submitted therewith, all of which are made a part hereof, and subject to the Declarations and the limitations, conditions, provisions and other terms of this policy (including any endorsements hereto), the Insurer providing this insurance (herein called the Underwriter) agrees with the Insured as follows:

I. INSURING AGREEMENT

A. COVERAGE

The Underwriter shall pay on behalf of the Insured all Loss for which the Insured becomes legally obligated to pay on account of any Claim by or on behalf of an Employee of the Named Insured for a Wrongful Employment Act taking place before or during the Policy Period, if such Claim is first made against the Insureds, individually or otherwise, during the Policy Period, or the Extended Reporting Period, if exercised, and reported to the Underwriter during the Policy Period, or Extended Reporting Period, if exercised.

B. DEFENSE

The Underwriter shall have the right and duty to defend Claims against the Insured, even if the allegations in the Claim are groundless, false or fraudulent. The Underwriter's right and duty to defend includes, without limitation, the right and duty to select defense counsel, for the investigation, defense and settlement of the Claim and the Underwriter shall pay all reasonable Defense Costs arising from such Claim. The Underwriter's duty to defend any Claim or to pay Loss for such Claim ends when the applicable Limits of Liability have been exhausted.

The Insured agrees to provide the Underwriter with all information, assistance and cooperation which the Underwriter reasonably requests and agree that in the event of a Claim the Insured will do nothing that shall prejudice the Underwriter's position or its potential or actual rights of recovery. The Underwriter may make any investigation it deems necessary.

If we defend the Insured under a reservation of rights, both the Insured and the defense counsel shall be required to maintain records pertinent to the Insured's Defense Costs. These records will be used to determine the allocation of any Defense Costs not covered by this insurance and payment of such costs may be the sole responsibility of the Insured.

The Insured agrees not to settle any Claim, incur any Defense Costs or otherwise assume any contractual obligation or admit any liability with respect to any Claim without the Underwriter's written consent. The Underwriter shall not be liable for any settlement, Defense Costs, assumed obligation or admission to which it has not consented. The Underwriter and the Insured shall not unreasonably withhold any consent referenced in this Subsection I.B.

If the Insured refuses to consent to any settlement opportunity recommended by the Underwriter, or elects to contest the Claim, then the Underwriter's Limits of Liability under this policy shall be reduced to the amount for which the Claim could have been settled plus all Defense Costs incurred up to the time the Underwriter made its recommendation. This amount shall not exceed the remainder of the Limits of Liability.

Defense Costs are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations, and the payment by the Underwriter of Defense Costs reduces such Limits of Liability.

II. EXTENSIONS

A. Spousal Liability

If a Claim against an Insured includes a claim against the Insured's lawful spouse solely by reason of (1) such spouse's status as spouse of the Insured, or (2) such spouse's ownership interest in property which the claimant seeks as recovery for alleged Wrongful Employment Acts of the Insured, all loss which such spouse becomes legally obligated to pay by reason of such claim shall be treated for purposes of this policy as Loss which the Insured becomes legally obligated to pay on account of the Claim made against the Insured. Such spousal loss shall be covered under this policy only if and to the extent such loss would be covered if incurred by the Insured.

The coverage extension afforded by this Subsection II.A. does not apply to any Claim alleging any wrongful act or omission by the Insured's spouse.

B. Estates and Legal Representatives

This policy shall afford coverage for Claims for the **Wrongful Employment Acts** of Insureds made against the estates, heirs, legal representatives or assigns of any such Insureds who are deceased or against the legal representatives or assigns of any such Insureds who are incompetent, insolvent or bankrupt to the extent that in the absence of such death, incompetence, insolvency or bankruptcy, such Claims would have been covered by this policy.

C. Extended Reporting Period

If either the Underwriter or the Named Insured fails or refuses to renew this policy, or if the Named Insured cancels this policy, then the Named Insured shall have the right, upon payment of an additional premium calculated at the percent set forth in Item 7(A) of the Declarations of the annualized policy premium, to an extension for the period set forth in 7(B) of the Declarations (Extended Reporting Period) following the effective date of the such nonrenewal, but only with respect to any **Wrongful Employment Act** taking place prior to the effective date of such nonrenewal. The right to this Extended Reporting Period shall lapse unless written notice of an election to purchase this coverage, and the additional premium due, is given by the Named Insured and received by the Underwriter within thirty (30) days following the cancellation or nonrenewal of the policy. If such written notice is not mailed to the Underwriter within thirty (30) days or the premium is not paid when due, then the Insured shall not, at a later date, be entitled to purchase an Extended Reporting Period.

The election of the Extended Reporting Period shall not in any way reinstate or increase the Limits of Liability in Item 2 of the Declarations. The Limits of Liability applicable to the Extended Reporting Period shall be the Limits of Liability remaining under this policy for the Policy Period.

If the Named Insured invokes this Extended Reporting Period in accordance with the above, neither the Underwriter nor the Named Insured shall be entitled to cancel the Extended Reporting Period. The entire additional premium for the Extended Reporting Period shall be deemed fully earned and non-refundable as of the inception date of the Extended Reporting Period.

III. DEFINITIONS

When used in this policy:

A. Claim means:

1. a written demand for monetary damages,
2. a civil proceeding commenced by the service of a complaint or similar pleading,
3. a formal administrative or regulatory proceeding (including without limitation an **EEOC Proceeding**) commenced by the Insured's receipt of a notice of charges, formal investigative order or similar document, or
4. an arbitration or other alternative dispute resolution proceeding,

against any Insured for a **Wrongful Employment Act**, including any appeal therefrom.

- B. Defense Costs** means that part of Loss consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or Employees of the Named Insured) incurred in defending or investigating Claims and the premium for appeal, attachment or similar bonds but without any obligation of the Underwriter to apply for or furnish such bonds.

The Underwriter shall only be liable for those **Defense Costs** incurred after it receives notification of the Claim

- C. EEOC Proceeding** means an investigative proceeding before the Equal Employment Opportunity Commission or an adjudicatory or investigative proceeding before any similar federal, state or local government body whose purpose is to address **Wrongful Employment Acts**.
- D. Employee** means one or more persons while in the regular service of the Named Insured in the ordinary course of the Named Insured's business and whom the Named Insured compensates (if at all) by salary, wages and/or commissions and has the right to govern and direct in the performance of such service, including without limitation volunteers, past, present, prospective, part-time, temporary, seasonal, contract and leased employees otherwise described within this definition. Employee also means any independent contractor who is treated under applicable laws as an employee of the Named Insured.

E. Insured means:

1. **Named Insured;**
 2. **Employees;** or
 3. Any natural persons who were, now are, or shall become duly elected or appointed directors, officers, advisory board members, principals, or operating executives of the **Named Insured** and with respect to the **Named Insured's** business activities.
- F. **Interrelated Wrongful Employment Acts** means all **Wrongful Employment Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- G. **Loss** means the total amount which any **Insured** becomes legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the **Extended Reporting Period**, if exercised, made against such **Insured** for **Wrongful Employment Acts** for which coverage applies, including, but not limited to, damages (including front pay and back pay), judgments, pre-judgment and post-judgment interest, settlements and **Defense Costs**. **Loss** does not include (1) any amount not indemnified by the **Named Insured** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order, (2) fines or penalties imposed by law, (3) taxes, (4) the cost to comply with any injunctive or other non-monetary relief or any agreement to provide any such relief, (5) **Punitive Damages**, or (6) matters uninsurable under the law pursuant to which this policy is construed. However, **Loss** shall include liquidated damages awarded under the Age Discrimination in Employment Act or the Equal Pay Act, as amended and if such coverage is granted pursuant to Item 6 of the **Declarations**, **Punitive Damages** to the extent such damages are insurable under the internal laws of any state or jurisdiction:
1. where the **Punitive Damages** were awarded or imposed;
 2. where any **Wrongful Employment Act** underlying the **Claim** took place;
 3. where any **Insured** is incorporated, has its principal place of business or resides.
- If the **Insured** determines in good faith that **Punitive Damages** in a **Claim** are insurable, the **Underwriter** shall not challenge such determination unless required to do as a matter of public policy.
- H. **Named Insured** means the entity shown in item 1 of the **Declarations**.
- I. **Policy Period** means the period of time specified in Item 3 of the **Declarations**, subject to prior termination in accordance with Cancellation section of this policy. If this period is less than or greater than one (1) year, then the **Limits of Liability** specified in Item 2 of the **Declarations** shall be the **Underwriter's** maximum **Limit of Liability** under this policy for the entire period.
- J. **Punitive Damages** means punitive or exemplary damages or the multiple portion of any multiplied damage award (other than liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, as amended).
- K. **Wrongful Employment Act** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by the **Named Insured** or by one or more **Insured(s)** in their capacities as such or by any other person for whom the **Insureds** are legally responsible, in connection with any actual, alleged or constructive wrongful dismissal, discharge or termination of employment; employment-related misrepresentation; violation of any federal, state, or local statute, regulation, ordinance, common law or public policy concerning employment or discrimination in employment; sexual or other illegal workplace harassment (including without limitation offensive, intimidating, coercive or unwelcome conduct, advances, contact or communications); wrongful failure to employ or promote; wrongful discipline; wrongful deprivation of a career opportunity; wrongful demotion or adverse change in the terms, conditions or status of employment; illegal retaliatory treatment of employees; negligent hiring; negligent evaluation of employees; wrongful reference; employment-related invasion of privacy; employment-related defamation; employment related negligent infliction of emotional distress; or other employment related torts.

IV. EXCLUSIONS

A. The Underwriter shall not be liable for Loss on account of any Claim made against any Insured:

1. based upon, arising out of, or attributable to any Wrongful Employment Act, fact, circumstance or situation which has been the subject of any written notice given under any policy of which this policy is a renewal or replacement;
2. based upon, arising out of, or attributable to any demand, suit or proceeding pending against any Insured on or prior to the Pending or Prior Date set forth in Item 8 of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
3. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law, (ii) the Employee Retirement Income Security Act of 1974 (except Section 510 thereof), (iii) the Fair Labor Standards Act (except the Equal Pay Act), (iv) the National Labor Relations Act, (v) the Worker Adjustment and Retraining Notification Act, (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985, (vii) the Occupational Safety and Health Act, (viii) any other federal, state or local statute or law similar to any statute or law described in (i) through (vii) of this exclusion, or (ix) rules or regulations promulgated under any of such statutes or laws; provided this exclusion shall not apply to any Claim for any actual or alleged retaliatory treatment of the claimant by the Insured on account of the claimant's exercise of rights pursuant to any such statute, law, rule or regulations;
4. for bodily injury (other than employment related mental anguish or employment related emotional distress), sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof;
5. for breach of any express contract of employment or any express obligation to make payments in the event of termination of employment;
6. for compensation earned by the claimant in the course of employment but not paid by the Named Insured, including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days; provided, however, this exclusion shall not apply to any back pay or front pay;
7. for the cost and/or replacement of any medical or insurance benefits (or the equivalent value thereof) to which the claimant allegedly was entitled or would have been entitled had the Named Insured provided the claimant with a continuation or conversion of such benefits or insurance;
8. based upon, arising out of, or attributable to any criminal, fraudulent, or dishonest Wrongful Employment Act by an Insured; or
9. based upon, arising out of, or attributable to a lockout, strike, picket line, hiring of replacement workers, outsourcing or other similar actions when related to labor union disputes or labor union negotiations.

B. The Underwriter shall not be liable for that part of Loss, other than Defense Costs, which constitutes:

1. non-monetary damages; or
2. the costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common law; or the costs associated with providing any reasonable accommodations to any person with a disability or other protected characteristics.

No fact pertaining to or knowledge possessed by any Insured shall be imputed to any other Insured for purposes of applying the exclusions set forth in this Section IV.

V. LIMITS OF LIABILITY, RETENTION AND COINSURANCE

For the purposes of this policy, all Claims arising out of the same Wrongful Employment Act and all Interrelated Wrongful Employment Acts of Insureds shall be deemed one Claim, and such Claim shall be deemed to be first made when the earliest of such Claims is first made, whether before or during the Policy Period.

The Underwriter's maximum liability for each Claim shall be the Limit of Liability for each Claim set forth in Item 2(A) of the Declarations. The Underwriter's maximum aggregate liability for all Loss on account of all Claims first made during the same Policy Period shall be the Limit of Liability for each Policy Period set forth in Item 2(B) of the Declarations.

The Underwriter's liability for Loss on account of each Claim shall apply only to that part of such Loss which is excess of the applicable Retention Amount set forth in Item 4 of the Declarations. The portion of the Loss within the Retention Amount shall be borne by the Insured; the Underwriter shall have no obligation for such Retention.

The Underwriter's liability for Loss (excess of the applicable Retention Amount) on account of each Claim shall apply only to that part of such Loss which is excess of the applicable Coinsurance Percent in Item 5 of the Declarations. The Underwriter shall have no obligation for such Coinsurance Percent.

Defense Costs are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations, and the payment by the Underwriter of Defense Costs reduces such Limits of Liability.

VI. REPORTING AND NOTICE

The Insureds shall, as a condition precedent to their rights under this policy, give to the Underwriter written notice of any Claim made against any Insured as soon as practicable but in no event later than sixty (60) days after expiration of the Policy Period, or, if exercised, the Extended Reporting Period.

If during the Policy Period the Insureds become aware of circumstances which could give rise to a Claim against the Insureds and give written notice of such circumstances to the Underwriter during the Policy Period, then any Claims subsequently arising from such circumstances shall be considered to have been made during the Policy Period in which the circumstances were first reported to the Underwriter.

The Named Insured or the Insured shall, as a condition precedent to exercising their rights under this policy:

1. include within any notice of Claim or circumstance a description of the Claim or circumstances, the nature of the alleged Wrongful Employment Act, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the Insureds first became aware of the Claim or circumstances, and
2. give to the Underwriter such information and cooperation as it may reasonably require.

All notices under any provision of this policy shall be in writing and given by prepaid express courier, certified mail or fax properly addressed to the appropriate party. Notice to the Insureds may be given to the Named Insured at the address as shown in Item 1 of the Declarations

All notices of Claims or circumstances are to be submitted to the following address:

Zurich North America
Employment Practices Liability-Claims
P.O. Box 307010
Jamaica, NY 11430-7010

All other notices to the Underwriter under this policy shall be given to the following address:

Employment Practices Liability -Underwriting
One Liberty Plaza
New York, New York 10006

Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

VII. GENERAL CONDITIONS

A. Representations and Severability

In granting coverage under this policy, the Underwriter has relied upon the declarations, representations and warranties in the written application for this policy and, if applicable, upon any declarations, representations and warranties in the original written application submitted to another insurer in respect of the prior employment practices liability coverage incepting as of the Continuity Date set forth in Item 9 of the Declarations. All such declarations, representations and warranties are the basis of coverage under this policy and shall be considered as incorporated in and constituting part of this policy.

Such written application(s) for coverage shall be construed as a separate application for coverage by each of the Insureds. No statement in the application or knowledge possessed by any of the Insured shall be imputed to any other Insured for the purpose of determining if coverage is available. The statements in the application and only knowledge possessed by the chairperson, president, chief executive officer, chief financial officer, chief operating officer, director of human resources and in-house general counsel shall be imputed to the Named Insured for the sole purpose of determining if coverage is available with respect to Claims against the Named Insured.

B. Changes in Exposure

1. Acquisition or Creation of Another Organization

If during the Policy Period the Named Insured:

- a. acquires the majority interest or operation of another organization by merger into or consolidation with the Named Insured; or
- b. creates another organization that the Named Insured controls the majority interest or operation.

such organization and its Insureds shall be covered under this policy but only with respect to Wrongful Employment Acts taking place after such acquisition or creation.

As a condition precedent to coverage with respect to such organization and its Insureds, the Named Insured shall give written notice of such acquisition or creation to the Underwriter within thirty (30) days, together with such information as the Underwriter may require and shall pay any additional premium required by the Underwriter. Coverage shall continue up to ninety (90) days after the effective date of such acquisition or creation, or to the end of the Policy Period, whichever is earlier.

2. Acquisition of Named Insured

If during the Policy Period:

- a. the Named Insured merges into or consolidates with another organization, or
- b. another organization or person, or a group of organizations and/or persons acting in concert acquires an ownership interest of the Named Insured by more than 50%;

then coverage under this policy shall continue until termination of this policy but only with respect to Claims for Wrongful Employment Acts taking place prior such merger, consolidation or acquisition

The Named Insured shall give written notice of such merger, consolidation or acquisition to the Underwriter as soon as practicable together with such information the Underwriter may require.

C. Arbitration

The Underwriter and the Insureds shall submit any dispute or controversy arising out of or relating to this policy or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree, the arbitration shall be administered by the American Arbitration Association ("AAA") in accordance with its then prevailing commercial arbitration rules. The AAA arbitration panel shall consist of one arbitrator selected by the Insureds, one arbitrator selected by the Underwriter, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

D. Territory and Valuation

All premiums, Limits of Liability, Retention Amounts, Loss and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of Loss under this policy is stated in a currency other than United States of America dollars, payment under this policy shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of Loss is due, respectively.

Coverage under this policy shall extend to Claims made and Wrongful Employment Acts occurring anywhere in the world.

E. Other Insurance

Unless expressly written to be excess over other applicable insurance, this policy is intended to provide primary insurance; provided that if any Loss arising from any Claim made against any Insured is also insured under another valid and collectible policy(ies), then this policy shall share such Loss with such other policy(ies) pro rata based on the respective Limits of Liability set forth in the Declarations for this policy and such other policy(ies).

F. Subrogation

In the event of any payment under this policy, the Underwriter shall be subrogated to the extent of such payment to all the Insureds' rights of recovery, and the Insureds shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Underwriter effectively to bring suit in the name of the Insureds.

G. Alteration and Assignment

No change in, modification of, or assignment of interest under this policy shall be effective except when made by a written endorsement to this policy which is signed by an authorized representative of the Underwriter.

H. Action Against the Underwriter

No action shall lie against the Underwriter unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy. No person or organization shall have any right under this policy to join the Underwriter as a party to any action against the Insureds to determine the Insureds' liability nor shall the Underwriter be impleaded by the Insureds or their legal representatives. Bankruptcy or insolvency of a Named Insured or the Insured or of the estate of any Insured shall not relieve the Underwriter of its obligations nor deprive the Underwriter of its rights or defenses under this policy.

I. Authorization Clause

By acceptance of this policy, the Named Insured agrees to act on behalf of the Insureds with respect to the giving and receiving of notice of Claim or termination, the payment of premiums and the receiving of any return premiums that may become due under this policy, the agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this policy (including giving of notice to apply for the Extended Reporting Period), and the Insureds agree that the Named Insured shall act on their behalf.

J. Cancellations

This policy may be canceled by the Named Insured by surrender of the policy to the Underwriter or by mailing written notice to the Underwriter stating when such cancellation shall take effect. If canceled by the Named Insured, the Underwriter shall retain the customary short-rate proportion of the premium. In no event may the requested date of cancellation be greater than ten (10) days prior to the date the request is received by the Underwriter.

This policy may be canceled by the Underwriter by written notice mailed to the Named Insured at the address shown in the Declarations. Such cancellation shall be no fewer than sixty (60) days from the date the notice is mailed unless the policy is canceled because the Named Insured has failed to pay a premium or Retention Amount when due. In that event, such cancellation shall take effect no fewer than ten (10) days from the date the notice is mailed.

If the policy is canceled by the Underwriter, the earned premium shall be computed pro-rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter. Failure to pay any premium adjustment at, on, or around the time of the effective date of cancellation shall not alter the effectiveness of cancellation.

This policy shall terminate upon expiration of the Policy Period shown in the Declarations.

Eileen Wilkerson

From: Mary Lendaris [MLendaris@alliantinsurance.com]
Sent: Tuesday, April 21, 2009 9:02 AM
To: Eileen Wilkerson
Cc: Seth Cole
Subject: Town of Atherton - Employment Practices Liability
Attachments: Proposal - EPL 0910 - Zurich.pdf; Sample Endts - Zurich 09-10.pdf; Proposal - EPL 0910 - London REVISED.pdf

Eileen,

We are pleased to attach the proposal received from Zurich (Steadfast Insurance Company) along with their sample form and endorsements.

<<Proposal - EPL 0910 - Zurich.pdf>> <<Sample Endts - Zurich 09-10.pdf>>

Following your response to their questions, they were able to provide very reasonable terms and pricing.

We have also received a revised quote from London after forwarding the detailed information you provided. They reduced their total premium from \$154,837.50 to \$139,353.75. For good measure we are attaching the updated proposal document for this option.

<<Proposal - EPL 0910 - London REVISED.pdf>>

After you have had a chance to review, please call with any questions or concerns that you may have.

Thank you and take care.

~Mary

Mary Lendaris
Driver Specialty Group
Alliant Insurance Service, Inc.
100 Pine Street, 11th Floor
San Francisco, CA 94111
Direct: (415)403-1405
Fax: (415)402-0773
License #: 0C36861
mlendaris@alliantinsurance.com

This e-mail and all attachments to it are for the sole use of the intended recipients and may contain proprietary information and trade secrets of Alliant Insurance Services, Inc. and its subsidiaries. This e-mail may also contain information which is confidential or which is protected from disclosure by privilege. Any unauthorized use, disclosure or distribution of this e-mail and its attachments is prohibited. If you are not the intended recipient, let us know by reply e-mail and then erase and destroy all electronic or other copies of this message.



DRIVER SPECIALTY GROUP

Named Insured: Town of Atherton
91 Ashfield Road
Atherton, CA 94027

Carrier: Lloyd's of London
AM Best Rating: A XV
California Status: Non-Admitted

Coverage: **Employment Practices Liability**

Proposed Period: Annual (one year)

Retro-active Date: Inception Date of Coverage

Limits of Liability: \$ 5,000,000. Each Claim and in the Aggregate

Self-Insured Retention: \$ 250,000. Per Claim

Annual Premium: \$ 135,000.00 Policy Premium
\$ 4,050.00 Surplus Lines Taxes
\$ 303.75 Surplus Lines Fee
\$ **139,353.75 Total Premium**

Policy Form: BRP EPL Form

Endorsements: Small AP/RP Clause - NMA1168
Nuclear Incident Exclusion Clause - NMA 1256
Radioactive Contamination Exclusion Clause - NMA 1477
War and Terrorism Exclusion - NMA 2918
US Terrorism Risk Insurance Act of 2002 as Amended - LMA5091
Insured Education Document
California Mandatory Disclosure Clause - LSW1147C
Retroactive Date Endorsement
Pending and Prior Litigation Dates - Inception
Third Party Liability Coverage - Not covered

Subject to: *The quote is subject to receipt, review and acceptance of the following prior to binding:*

- Satisfactory BRP EPL New Business Application
- Breakdown of the employees showing what they do (Police, Admin, Public Works, etc)
- If coverage is purchased, EPL audit would be performed by Gary Basham (Basham & Parker) prior to inception



DRIVER SPECIALTY GROUP

This proposal is for information purposes only and does not amend, extend or alter the policy in any way. Please refer to the policy form for completed coverage and exclusion information.

Alliant embraces a policy of transparency with respect to its compensation from insurance transactions. Details on our compensation policy, including the types of income that Alliant may earn on a placement, are available on our website at www.alliantinsurance.com. For a copy of our policy or for any inquiries regarding compensation issues pertaining to your account you may also contact us at: Alliant Insurance Services, Inc., Attention: General Counsel, 701 B Street, 6th Floor, San Diego, CA 92101.

*Analyzing insurers' over-all performance and financial strength is a task that requires specialized skills and in-depth technical understanding of all aspects of insurance company finances and operations.

Insurance brokerages such as Alliant Insurance typically rely upon rating agencies for this type of market analysis. Both A.M. Best and Standard and Poor have been industry leaders in this area for many decades, utilizing a combination of quantitative and qualitative analysis of the information available in formulating their ratings.

A.M. Best has an extensive database of nearly 6,000 Life/Health, Property Casualty and International companies. You can visit them at www.ambest.com.

For additional information regarding insurer financial strength ratings visit Standard and Poor's website at www.standardandpoors.com

To learn more about companies doing business in California, visit the California Department of Insurance website at www.insurance.ca.gov



Town of Atherton

*Marketplace Options for
2009/2010 EPL New Business Placement
Updated 05/29/09*

- ❖ Zurich Quote: \$5mil limit - \$100k SIR - \$33,201 premium + taxes/fees

- ❖ London Re-quoted: \$5mil limit - \$250k SIR - \$135k premium + taxes/fees

Original Quote: \$5m limit - \$250k SIR - \$150k premium + taxes/fees

- AWAC Can't compete with other quotes provided
- U.S.Fire Declined - class
- Scottsdale Declined - class

- ACE/ Westchester Decline – can't compete with other quotes
- XL Decline – can't compete
- Lexington Decline- frequency of claims vrs number of employees
- AXIS Decline- class
- CNA Financial Insurance Decline due to underwriting guidelines.
- Executive Risk/ Chubb Custom Decline- class
- Houston Casualty Decline - class
- RLI Decline- does not meet underwriting guidelines.
- Evanston Decline- class
- Stateside Decline- severity of open claims.
- Lloyds Syndicate (Beazley & BRIT) Decline- nature of operations.
- Travelers Decline- class
- Admiral Decline - class
- Philadelphia Decline - class



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JERRY GRUBER, CITY MANAGER

DATE: FOR THE MEETING OF JULY 15, 2009

SUBJECT: APPOINTMENT OF PAUL SKEEN JONES TO THE ATHERTON RAIL COMMITTEE

RECOMMENDATION:

Appoint Paul Skeen Jones to the Atherton Rail Committee.

BACKGROUND:

The Atherton Rail Committee was originally created as an ad hoc subcommittee (Caltrain Corridor Subcommittee) by the Atherton City Council at its November 19, 2003, Regular Meeting. At its March 7, 2006, meeting, the Committee requested a name change to the Atherton Rail Committee, which was approved by Council on March 15, 2006.

Committee members are comprised of two Council Members and up to 10 Council-appointed residents of the Town. The Atherton Rail Committee currently has 2 vacancies.

Paul Skeen Jones has worked on operating, maintenance, capital acquisition, route selection, and costing problems for most major U.S. railroads and for railroads in Spain, Thailand, Malaysia and Korea and contributed to the design of railroads in Spain and Korea.

FISCAL IMPACT:

There is no fiscal impact.

TOWN OF ATHERTON

APPLICATION FOR APPOINTMENT TO COMMISSION OR COMMITTEE

Name: PAUL SKEEN JONES

Address: 99 MOULTON DRIVE, ATHERTON, CA 94027

Home Telephone: 650-328-2839 Date: 29 JUNE 2009

Work Telephone: NONE

Are you registered to vote in the Town of Atherton? Yes No

I am applying for a position on the (check one):

Planning Commission Park and Recreation Commission

General Plan Committee Arts Committee

Other: RAILROAD

TO THE APPLICANT:

This application form is intended to provide you with information about the body on which you would like to serve. The completed application will also help the interviewing Council Members learn more about you. In responding to the questions here, please feel free to use separate sheets of paper to expand on your answers if you wish to do so.

1. Why do you want to serve on the body for which you are submitting your application?
What particular skills, interest or experience would you bring to it if selected?

I AM DEEPLY CONCERNED WITH PROBLEMS IMPOSED BY HIGH SPEED RAIL SERVICE THROUGH ATHERTON, AND WITH THE QUALITY OF CALTRAIN SERVICE. I BELIEVE THAT MY EDUCATION AND EXPERIENCE PROVIDE A BASIS FOR MEANINGFUL CONTRIBUTIONS TO ATHERTON'S RAILROAD PROBLEMS.

EDUCATION: BACHELOR OF MECH. ENGR., CORNELL UNIV; MBA, GOLDEN GATE UNIV.,
PH.D. INDUSTRIAL ENGR., STANFORD UNIV.

I HAVE WORKED ON OPERATING, MAINTENANCE, CAPITAL ACQUISITION, ROUTE SELECTION, AND COSTING PROBLEMS FOR MOST MAJOR U.S. RAILROADS AND FOR RAILROADS IN SPAIN, THAILAND, MALAYSIA, AND KOREA. I HAVE CONTRIBUTED TO THE DESIGN OF HIGH SPEED RAILROADS IN SPAIN (MADRID-SEVILLE AND MADRID-BARCELONA) AND KOREA (SEKUL PUSAN).

2. Have you attended any meeting of the body on which you wish to serve?

Yes No

3. Have you reviewed the minutes of the past meetings of the body on which you wish to serve? (Minutes and past agendas of Town bodies are available for review at Town Hall during normal business hours.)

Yes No

4. Have you spoken with any current or former members of the body on which you wish to serve about service on that body?

Yes No

5. Do you believe that other time demands might interfere with your ability to devote the time necessary to serve if you are selected?

Yes No

6. Vacancies occur periodically on Town bodies. If you are not selected for the position for which you are applying, would you like to be considered for future vacancies occurring within one year of the date of this applications?

No Yes, for (check as many as you wish):

- Planning Commission
- Park and Recreation Commission
- General Plan Committee
- Arts Committee
- Other: RAILROAD

FOR YOUR INFORMATION:

The two-member screening committee of the Council will interview all applicants, if feasible. The Committee makes its recommendation of the person or persons to fill the existing vacancies to the full Council. The recommendation is not binding, although it is usually followed. Council Members may nominate others for appointment.

Council Members and Planning Commissioners must annually file a "Statement of Economic Interests", which is a public document and is forwarded to the Fair Political Practices Commission. All members of Town Commissions/Committees must be registered voters and reside in Atherton.

Service on Town bodies is without compensation. Application for reimbursement by the Town for expenses incurred in Town service may be made on forms available from the City Clerk. There is no assurance that expenses will be reimbursed.

Length of service on Town bodies is controlled by ordinance or resolution. Persons appointed may be reappointed within the restrictions of the ordinance. The fact that an individual is appointed does not necessarily mean the individual will be re-appointed. Copies of appropriate ordinances, (and statutes, if applicable) are available from the City Clerk.

Thank you for your interest in serving the Town of Atherton.

email address: pauljonas51@comcast.net



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JERRY GRUBER, CITY MANAGER

DATE: FOR THE MEETING OF JULY 15, 2009

SUBJECT: REAPPOINTMENT OF DIANE CRITTENDON AND APPOINTMENT OF RICHARD MOORE TO THE ATHERTON PARKS AND RECREATION COMMISSION

RECOMMENDATION:

Re-appoint Dianne Crittendon and appoint Richard Moore to the Atherton Parks & Recreation Commission.

BACKGROUND:

The Parks and Recreation Commission consist of seven (7) appointed members. One member must be a representative of the Holbrook-Palmer Park Foundation. One member must be a representative of the Atherton Dames.

Diane Crittendon would like to continue her seat as the Atherton Dames representative with a term that expires April 30, 2013.

Clarice Merrill would not like to continue serving on the Parks & Recreation Commission. The Holbrook-Palmer Park Foundation has nominated Richard Moore to represent the Foundation on the Parks & Recreation Commission for the term that expires on April 30, 2013.

FISCAL IMPACT:

There is no fiscal impact.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
JERRY GRUBER, CITY MANAGER

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JULY 15, 2009

SUBJECT: STATUS UPDATE ON ROAD IMPACT FEE STUDY

RECOMMENDATION:

Accept this status report update from staff and provide direction, if any.

INTRODUCTION:

The Road Impact Fee was originally approved by Council on September 20, 2000 based on a study performed by DKS Associates, Inc. in August of 2000. In 2005, Kimley-Horn updated the fee study, including an Off-Haul Fee. That study apportioned the road deterioration 45% to general construction traffic and 55% to excavation off-haul (after reducing the net deterioration by 12.6% for refuse vehicles, based on a study done by Hilton Farnkopf and Hobson (HFH)). The revised road impact fee and off-haul fee were approved by Council in March of 2005. The Off-Haul Fee was rescinded in September of 2006 without reapportioning the roadway deterioration to general construction, although the argument for rescinding the fee was that the general construction value already included the excavation cost and the fee was duplicative. Had the Road Impact fee been adjusted to cover the total roadway deterioration due to construction, it would have increased by 122% from 0.71% to 1.58% of the building permit fee. This adjustment was not made. In June of 2007, the valuation basis of building permits was adjusted from \$250 per square foot to \$350 per square foot, an increase of 40%. The road impact fee, set as a percentage of the building permit fees, increased accordingly. This was not sufficient to cover the deterioration to the Town's roadways, because the deterioration caused by heavy vehicles had been partially allocated to excavation off-haul, and that fee

was cancelled. From this it was suspected that not enough funds were collected to cover deterioration. However, no formal study was done at the time.

In order to re-evaluate the road impact fees, Kimley Horn was hired to update their road impact fee study based on 2008 data. This was determined to be the first phase of their work, to look at fees going forward. The 2005 study was based on the 2003 pavement condition survey. Since that time, a 2005 and a 2008 study have been performed. Kimley-Horn was instructed to use the 2008 study and the last three years of building permit information and redo the study using the same methodology as the 2005 study. Kimley-Horn prepared a draft report, but used a slightly different methodology and produced a report with dramatically different results that would result in a reduced fee going forward.

ANALYSIS:

Kimley-Horn was not asked to look back to determine if the fees collected from 2005 to 2008 were adequate and excessive. That was intended to be Phase 2 of their work and was not included in their scope or fees. Staff is in the process of collecting the financial information necessary to perform this study. In the process of evaluating the information needed, staff determined that the draft study prepared by Kimley-Horn was inadequate because it did not use the same methodology as the 2005 study. Instead of estimating the deterioration of the Town's roadways, the report used the theoretical deterioration from the MTC Pavement Management Program shown in the 2008 Pavement Condition Index (PCI) report. This was a logical step for them to take, since the 2008 report showed the cost to maintain the PCI (the 2003 and 2005 studies did not contain this cost).

However, this methodology gave misleading results. The theoretical deterioration, based on empirical data from all Bay Area jurisdictions, shows that Atherton would need to spend only \$450,000 per year to maintain its streets at a level pavement condition. Staff discovered that, between the 2003 and 2005 pavement condition surveys, the Town spent approximately \$500,000 per year (holding funds in reserve in case the parcel tax did not pass). During that period the pavement condition index (PCI) dropped by four points from 68 to 64. The MTC model predicted that, if no money were spent on Atherton's streets, the PCI would only drop to 65. The Town spent slightly more than the predicted money to hold the PCI level and still the PCI dropped.

This indicates that Atherton's deterioration exceeds the theoretical values of the MTC model and that \$450,000 is insufficient to cover the accelerated deterioration that occurs in Atherton because of the intense level of large residential construction that impacts virtually every residential street. Other jurisdictions providing the data for the MTC program do not have this intensity of trucking on their residential streets. Houses in Atherton are similar to commercial construction in other cities, but their commercial construction occurs primarily on their arterials and does not impact the residential streets to the degree large residential construction it does in Atherton.

Once all the financial data is developed of the amounts spent, and the portion collected and spent from the road impact fee fund, Kimley-Horn will be asked to re-evaluate the

road impact fees based on the actual amounts spent by Atherton on the streets, prepare a new fee study for fees looking forward, and determine if the funds collected since 2005 exceeded the deterioration that occurred due to construction.

FISCAL IMPACT:

Initial calculations by staff show that the deterioration that occurred from 8/22/03 to 4/21/08, the dates of the pavement condition surveys, was approximately \$4.9 million. A portion of that deterioration is allocable to refuse trucks, calculated in the HFH report to be 12.6%, or about \$600,000. The remaining deterioration due to construction vehicles is therefore approximately \$4.3 million. The amount of road impact fee money collected on the streets during that period was approximately \$4.3 million. These numbers still need to be verified, both from finance and from Kimley-Horn to verify the calculation of deterioration. The amount actually spent during this same period still needs to be calculated, but is estimated to be approximately \$3 million. Additional street reconstruction projects using road impact funds were just ready for summer construction when the survey was conducted in April 2008. The balance of the road impact fund on June 30, 2009 is estimated at \$768,000.

Approximately \$8.5 million was spent on the roads from all sources, resulting in a PCI increase to 76, a great improvement in the general condition of the streets since 2003. It is a maxim of pavement technology that streets in good condition cost less to keep in good condition. A corollary is that roads in good condition are not affected by heavy trucks to the extent that roads in fair or poor condition are affected. It is therefore predicted that the road impact fee going forward will be reduced due to the improved condition of Atherton's streets. That improved condition is a direct result of an infusion of capital funds from three sources, Parcel Tax (\$3.8 million), STP Grants (\$1 million), Measure A (\$0.5 million) and Gas Tax (\$155 thousand). The expenditure of Parcel Tax funds can be seen as the primary driver in improving the condition of Atherton's streets, resulting in a reduction in the road impact fee for all Athertonians.

Prepared By:

Approved:

/s/ Duncan L. Jones

Duncan L. Jones, P.E.
Public Works Director

Jerome D. Gruber
City Manager

PROCLAMATION

IN RECOGNITION OF FAMILY DAY – A DAY TO EAT DINNER WITH YOUR CHILDREN

WHEREAS, the use of illegal and prescription drugs and the abuse of alcohol and nicotine constitute the greatest threats to the well-being of America's children;

WHEREAS, 14 years of surveys conducted by the National Center on Addiction and Substance Abuse (CASA) at Columbia University have consistently found that the more often children and teenagers eat dinner with their families the less likely they are to smoke, drink and use illegal drugs;

WHEREAS, frequent family dining is associated with lower rates of teen smoking, drinking, illegal drug use and prescription drug abuse;

WHEREAS, the correlation between frequent family dinners and reduced risk for teen substance abuse is well documented;

WHEREAS, parents who are engaged in their children's lives – through such activities as frequent family dinner – are less likely to have children who abuse substances;

WHEREAS, family dinners have long constituted a substantial pillar of family life in America;

NOW, THEREFORE I, as Mayor of the Town of Atherton, and on behalf of the Atherton City Council, do hereby proclaim the fourth Monday of every September as:

Family Day – A Day to Eat Dinner with Your Children

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Town of Atherton to be affixed this 15th day of July, 2009.

Jerry Carlson, MAYOR
Town of Atherton



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JEROME D. GRUBER, CITY MANAGER

DATE: FOR THE MEETING OF JULY 15, 2009

SUBJECT: AN ORDINANCE OF THE TOWN OF ATHERTON CALLING AN ELECTION TO SUBMIT TO THE VOTERS TWO ORDINANCES PROVIDING FOR (1) RENEWAL OF THE PARCEL TAX FOR AN ADDITIONAL FOUR YEARS AND (2) INCREASING THE APPROPRIATION LIMIT TO PERMIT SPENDING THE PROCEEDS OF THE PARCEL TAX FOR THE SAME PERIOD.

RECOMMENDATION:

That the Council hold a public hearing and adopt the following ordinance:

AN ORDINANCE OF THE TOWN OF ATHERTON CALLING AN ELECTION TO SUBMIT TO THE VOTERS (1) AN ORDINANCE AUTHORIZING THE RENEWAL OF THE PARCEL TAX FOR AN ADDITIONAL FOUR YEARS AND (2) AN ORDINANCE OF INCREASING THE APPROPRIATIONS LIMIT FOR THE SAME PERIOD

BACKGROUND:

In 2005 the voters of the Town of Atherton adopted Ordinance 555 by a two-thirds vote, adopting a parcel tax for five fiscal years. The last fiscal year that the parcel tax will be in effect is the 2009-2010 fiscal year. The parcel tax is a significant portion of the Town's total revenue, making possible the funding of the police department at its current levels as well as certain capital improvements. After reviewing the Town's budget and the survey information provided by Godbe Research on the preferences of Atherton residents, the Council directed Staff to place on its July agenda the ordinances and resolutions necessary to place before the voters an

extension of that parcel tax and an associated increase in the Town's appropriations limit (also known as the Gann limit.) The measures would go before the voters at a special municipal election consolidated with other San Mateo County elections on November 3, 2009.

The proposed ordinance would not increase the real property taxes of any Atherton property owner; it would maintain the parcel tax at its existing level. For the town to spend the proceeds of a parcel tax, the voters also need to approve an increase in the Town's appropriation limit. Under Article XIII B of the California Constitution, the voters can raise the appropriation limit for no more than four years at a time. The attached ordinances therefore provide for a four (4) year extension of the parcel tax and a four (4) year increase in the appropriations limit.

Ordinance 555, adopted by the voters on February 16, 2005, increased the appropriation limit by one and one-half times the parcel tax levy. Because the Town revenues rely heavily on property related taxes, staff is seeking City Council direction on whether the limit should be equal to the tax levy (as currently drafted), or at one and one-half times the levy, which was the earlier practice.

Effective Date of Ordinance

The ordinance before the council placing these measures on the ballot is effective immediately upon passage by the Council. The ordinance extending the parcel tax would go into effect upon approval by two-thirds of those voting in Atherton's November election. The tax would be collected for fiscal years 2010-2011 through 2013-2014. The increase of the appropriations limit requires a simple majority of the voters; it would be effective for the same fiscal years as the parcel tax.

Next Steps

If the Council adopts the attached ordinance, the next step will be to pass associated resolutions establishing certain election procedures. These resolutions are the subject of a separate report on tonight's agenda.

ALTERNATIVES:

1. Pass the ordinances as proposed.
2. Modify the first proposed ordinance by changing the tax rates or the number of years the taxes will be collected.
3. Modify the second proposed ordinance (second measure) to increase the appropriation limit from "by the amount of money levied under a voter-approved parcel tax" to "by one and one-half times the amount of money levied under a voter approved parcel tax."
4. Decide not to ask the voters to approve a parcel tax or increase in the appropriations limit at the November election.

Prepared by:

/s/ Jerome D. Gruber

Jerome D. Gruber
City Manager

Attachments: Ordinance Placing Measures Before the Voters

ORDINANCE NO. 581

AN ORDINANCE OF THE TOWN OF ATHERTON CALLING A SPECIAL MUNICIPAL ELECTION TO SUBMIT TO THE VOTERS (1) AN ORDINANCE AUTHORIZING THE RENEWAL OF THE PARCEL TAX FOR AN ADDITIONAL FOUR YEARS AND (2) AN ORDINANCE INCREASING THE APPROPRIATION LIMIT TO PERMIT SPENDING THE PROCEEDS OF THE PARCEL TAX FOR THE SAME PERIOD

The City Council of the Town of Atherton does hereby ordain as follows:

SECTION 1. ELECTION CALLED. The City Council of the Town of Atherton submits the following ordinances to the voters of the Town of Atherton at a Special Election to be held on Tuesday, November 3, 2009.

SECTION 2. FULL TEXT OF THE FIRST MEASURE. The complete text of the first proposed ordinance shall be:

**“AN ORDINANCE OF THE TOWN OF ATHERTON
AUTHORIZING THE RENEWAL OF A SPECIAL TAX TO
CONTINUE TO PROVIDE FUNDING FOR TOWN POLICE
AND EMERGENCY SERVICES , INCLUDING
MAINTAINING NEIGHBORHOOD POLICE PATROLS
AND THE TOWN’S ABILITY TO RESPOND TO
EMERGENCIES, REPAIRING AND MAINTAINING
STREETS, AND REPAIRING AND CONSTRUCTING
STORM DRAINS, FOR FOUR YEARS**

The people of the Town of Atherton do ordain as follows:

SECTION 1. AUTHORITY TO ADOPT MEASURE. This ordinance and the tax authorized herein are adopted pursuant to the provisions of the California Constitution, Articles XIII A §4 and XIII C §2, and pursuant to Sections 50075 and following and 53722 of the California Government Code.

SECTION 2. AUTHORIZATION TO LEVY SPECIAL TAX. If, for any fiscal year commencing on or after July 1, 2010, the City Council shall determine that certain police, emergency response services, street repair and maintenance, and drainage facility repair and maintenance are necessary for the public good, welfare, and safety, and that the cost of providing such services will exceed the amount of funds generated through other revenue and income, and/or if capital improvements are required, the cost of which exceeds the amount of funds generated through other revenues and receipts, then it may levy a special tax for such fiscal year on each parcel of property within the Town in the manner provided herein. This special tax shall be in addition to the annual tax rate allowed by law.

SECTION 3. DETERMINATION OF AMOUNT TO BE RAISED. Each year following adoption of the Town’s annual budget, the City Council will determine the total amount of expenditures necessary to provide adequate levels of the municipal services identified in Section 2 above and capital improvements and deduct therefrom the projected revenue to be

gathered from sources other than this special tax. The difference, if any, shall be the maximum amount of funds to be derived from the tax authorized by this ordinance for such year.

SECTION 4. MAXIMUM TAX RATE/METHOD OF ASSESSMENT. After determining the amount of tax to be raised under Section 3, the City Council shall apportion said amount among the parcels of real property within the Town not exempted by law as follows:

		MAXIMUM TAX IN GIVEN YEAR			
		2010-11	2011-12	2012-13	2013-14
1.	For each dwelling on a parcel with an area of less than 1/4 acre:	450	450	450	450
2.	For each unimproved parcel with an area of less than 1/4 acre:	225	225	225	225
3.	For each dwelling on a parcel with an area of 1/4 acre or more, but less than 1/2 acre:	570	570	570	570
4.	For each unimproved parcel with an area of 1/4 acre or more, but less than 1/2 acre:	285	285	285	285
5.	For each dwelling on a parcel with an area of 1/2 acre or more, but less than 2 acres:	750	750	750	750
6.	For each unimproved parcel with an area of 1/2 acre or more, but less than 2 acres:	375	375	375	375
7.	For each dwelling on a parcel with an area of 2 acres or more:	960	960	960	960
8.	For each unimproved parcel with an area of 2 acres or more:	480	480	480	480
9.	For each private club:	10,000	10,000	10,000	10,000
10.	For each parcel available for tax owned by a utility which serves the Atherton community:	450	450	450	450
11.	For each parcel available for tax owned by a utility which does not directly serve the Atherton community:	750	750	750	750

The records of the San Mateo County Assessor, as of each year, shall determine whether or not any particular lot is unimproved for purposes of this ordinance.

SECTION 5. HEARING, TAX LIEN AND INCLUSION IN CITY TAXES. Prior to levying a special tax under this ordinance in any fiscal year, the City Council shall conduct a public hearing on the proposed tax. Such hearing shall be conducted after the City Council has adopted an annual budget for that year. Notice of such hearing shall be posted in at least three public places within the Town of Atherton at least fifteen days prior to the hearing. All of the information and material which the City Council intends to consider at such hearing and the amount of tax to be raised shall be made available to the public by being on file in the office of the City Clerk for at least fifteen days prior to said hearing. Following said hearing, the City Council may adopt a resolution fixing the amount of tax to be raised which shall not exceed the amount contained in the material on file in the Clerk's office. Any tax levied under this ordinance shall become a lien upon the properties against which it is assessed and collectible in the manner provided by applicable law and by the levying resolution.

SECTION 6. COLLECTION. The City Council may elect to have any special tax authorized under this Chapter either collected by the Town or, in the alternative, by the Tax Collector of San Mateo County. If the services of the Tax Collector of the County of San Mateo are elected, the special tax may only be included on the annual tax bill sent out by such Tax Collector. A certified copy of the resolution electing to use the service of the Tax Collector of San Mateo County shall be filed with said Tax Collector prior to September 1st of the fiscal year for which the tax is assessed and shall include a list of all parcels of real property to be taxed and the amount of each parcel.

SECTION 7. FUNDING AND EXPENDING PROCEEDS. Proceeds of any tax levied under this ordinance shall be deposited in a Special Fund and expended only for the purposes stated in this ordinance.

SECTION 8. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or applications, and to this end the provisions of this ordinance are declared to be severable.

SECTION 9. DURATION AMENDMENT OR REPEAL. The authorization to levy a tax under this ordinance shall commence with the Fiscal Year 2010-2011, beginning July 1, 2010 and shall continue through and including June 30, 2014.

This ordinance shall be adopted if approved as an initiative measure by two-thirds of the voters voting at a Special Election to be held on November 3, 2009, and go into effect ten (10) days after the City Council has, by resolution, declared that such initiative measure was approved by two-thirds of the voters voting thereon.”

SECTION 3. FULL TEXT OF THE SECOND MEASURE

**AN ORDINANCE OF THE TOWN OF ATHERTON
INCREASING THE APPROPRIATION LIMIT FOR FOUR
YEARS TO PERMIT SPENDING OF THE PROCEEDS OF
A VOTER-APPROVED PARCEL TAX.**

The people of the Town of Atherton do ordain as follows:

SECTION 1. AUTHORITY TO ADOPT MEASURE. This ordinance and the tax authorized herein are adopted pursuant to the provisions of the California Constitution, Article XIII B,

SECTION 2. INCREASE IN APPROPRIATIONS LIMIT. Pursuant to Article XIII B of the California Constitution, the appropriations limit for the Town of Atherton will be increased for four fiscal years, commencing with the 2010-2011 fiscal year, by the amount of money levied under a voter-approved parcel tax.

This ordinance shall be adopted if approved as an initiative measure by a majority of the voters voting at a Special Election to be held on November 3, 2009, and go into effect ten (10) days after the City Council has, by resolution, declared that such initiative measure was approved by a majority of the voters voting thereon.”

SECTION 4. CONDENSED STATEMENT OF MEASURES. The manner in which the two proposed measures shall appear on the ballot shall be:

<p>“To continue providing funding to maintain neighborhood police patrols and the Town’s ability to respond to emergencies, repairing and maintaining streets, and repairing and constructing storm drains, shall an ordinance be adopted to continue the existing Town of Atherton Special Parcel Tax for four years?”</p>	YES
	NO
<p>“To permit the Town to spend the proceeds of a special parcel tax approved by Atherton voters, shall an ordinance be adopted increasing the appropriations limit for four years?”</p>	YES
	NO

SECTION 5. PUBLICATION. This ordinance shall be posted in at least three public places within the Town of Atherton, and shall become effective immediately upon its passage and approval. The City Clerk is authorized and directed to give notice of election in accordance with Chapter 2 (commencing with section 12100) of Division 12 of the California Elections Code.

SECTION 6. CONSOLIDATION. Due to the economics involved, the public interest would best be served by consolidating such Special Election with any other elections to be held on

Tuesday, November 3, 2009 and by contracting with the County of San Mateo for election services. The Town of Atherton does hereby request the Board of Supervisors of the County of San Mateo to consolidate said Special Election with any other election to be held on November 3, 2009. The City Manager is hereby authorized and directed to enter into a contract with the Chief Elections Official of the County of San Mateo for the purpose of providing election services in connection with said Special Election.

SECTION 7. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of the ordinance are declared to be severable.

SECTION 8. EFFECTIVE DATE. This ordinance calling an election shall become effective immediately upon its adoption by the City Council of the Town of Atherton.

* * * * *

I hereby certify that the foregoing ordinance was adopted at a regular meeting of the City Council of the Town of Atherton held on July 15, 2009, by the following roll call vote:

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

Jerry Carlson, Mayor
Town of Atherton

ATTEST:

Theresa DellaSanta, Deputy City Clerk

APPROVED AS TO FORM:

Wynne Furth, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JEROME GRUBER, CITY MANAGER**

FROM: LOUISE HO, FINANCE DIRECTOR

DATE: FOR THE MEETING OF JULY 15, 2009

**SUBJECT: ADOPTION OF THE APPROPRIATIONS LIMITS FOR FY 2009-10
AND REVISING THE GANN APPROPRIATIONS LIMIT FOR FY 2002-
03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, AND 2008-09**

RECOMMENDATION

Adopt the attached resolution setting the Appropriation Limit for FY 2009-10 at \$7,456,359 and revise FY 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, and 2008-09 Gann appropriation limits.

DISCUSSION

In November of 1979, the voters of the State of California approved Proposition 4, commonly known as the Gann Initiative. This Proposition created Article XIII B of the State Constitution, placing limits on the amount of tax revenue that can be appropriated by local governments.

The Finance Director has calculated the FY 2009-10 limit using the percentage change in population and the cost of living as provided by the State Department of Finance. The limit for 2009-10 is \$7,456,359. Atherton's tax proceeds subject to the limit are below the Gann limit. Therefore, the Town is in compliance with the Gann limit requirements.

For FY 2009-10, there is no adjustment for parcel tax because the State Constitution prohibits electors from creating or continuing such change to the appropriation limit by more than four years from the most recent vote of said electors. FY 2009-10 is the fifth year of Ordinance No. 555 adopted by City Council on February 16, 2005, authorizing the renewal of a special tax.

In addition to calculating the limit for FY 2009-10, staff worked with Caporicci & Larson to revise the Gann appropriation limits previously established for FY 2002-03 through FY 2008-09 to correct an error in the limit calculation. The correction is necessary because the adjustment approved by Atherton voters when they passed the parcel tax was not taken into consideration correctly. That adjustment factor ends with the Fiscal Year 2008-09.

FISCAL IMPACT

None

Prepared by:

Approved by:

Louise Ho, Finance Director

Jerome D. Gruber, City Manager

Attachment: Resolution Adopting the Appropriation Limit for FY 2009-10 and Revising the
Appropriation Limit for FY 2002-03 through FY 2008-09
Attachment 1 through 8

Town of Atherton
Appropriations Limit Schedule
For the fiscal year ending June 30, 2003

Attachment 2

	Amount	Source
A. Appropriations FYE 6/30/02:	\$ 5,544,810	Prior year Town worksheet
B. Calculation Factors:		
1) Population increase % *	1.0065	State Department of Finance
2) Inflation increase %	0.9873	State Department of Finance
3) Total adjustment %	0.9937	B1xB2
C. Annual Adjustment Increase	(34,836)	{(B3-1)xA}
D. Other Adjustments:		
1) Loss responsibility (-)	-	N/A
2) Transfer to private (-)	-	N/A
3) Transfer to fees (-)	-	N/A
4) Assumed responsibility (+)	-	N/A
E. Total Adjustments	(34,836)	(C+D)
F. Adjusted Appropriations Limit FYE 6/30/03	\$ 5,509,974 **	(A+E)

* Greater of population increase % for:
 Atherton 1.0000
 San Mateo County 1.0065

** Note - The Resolution submitted to the Atherton City Council presented \$5,474,391 due to a mathematical miscalculation. The correct amount should be \$5,509,974.

Town of Atherton
Appropriations Limit Schedule
For the fiscal year ending June 30, 2004

Attachment 3

	Amount	Source
A. Adjusted Appropriations FYE 6/30/03:	\$ 5,509,974	Prior year Town worksheet
B. Calculation Factors:		
1) Population increase % *	1.0037	State Department of Finance
2) Inflation increase %	1.0231	State Department of Finance
3) Total adjustment %	1.0269	B1xB2
C. Annual Adjustment Increase	148,138	{(B3-1)xA}
D. Other Adjustments:		
1) Loss responsibility (-)	-	N/A
2) Transfer to private (-)	-	N/A
3) Transfer to fees (-)	-	N/A
4) Tax Adjustment (+)	2,655,000	N/A
E. Total Adjustments	2,803,138	(C+D)
F. Adjusted Appropriations Limit FYE 6/30/04	\$ 8,313,112 **	(A+E)

* Greater of population increase % for:
 Atherton 1.0025
 San Mateo County 1.0037

** Note - The Resolution submitted to the Atherton City Council presented \$7,992,725 due to a mathematical miscalculation. The correct amount should be \$8,313,112.

Town of Atherton
Appropriations Limit Schedule
For the fiscal year ending June 30, 2005

Attachment 4

	Amount	Source
A. Adjusted Appropriations FYE 6/30/04:	\$ 5,658,112	Prior year Town worksheet less \$2,655,000
B. Calculation Factors:		
1) Population increase % *	1.0063	State Department of Finance
2) Inflation increase %	1.0328	State Department of Finance
3) Total adjustment %	1.0393	B1xB2
C. Annual Adjustment Increase	222,401	{(B3-1)xA}
D. Other Adjustments:		
1) Loss responsibility (-)	-	N/A
2) Transfer to private (-)	-	N/A
3) Transfer to fee (-)	-	N/A
4) Parcel Tax Adjustment (+)	2,787,000	N/A
E. Total Adjustments	3,009,401	(C+D)
F. Adjusted Appropriations Limit FYE 6/30/05	\$ 8,667,513 **	(A+E)

* Greater of population increase % for:
 Atherton 1.0063
 San Mateo County 1.0044

** Note - The Resolution submitted to the Atherton City Council presented \$8,478,966 due to a mathematical miscalculation. The correct amount should be \$8,667,513.

Town of Atherton
Appropriations Limit Schedule
For the fiscal year ending June 30, 2006

Attachment 5

	Amount	Source
A. Adjusted Appropriations FYE 6/30/05:	\$ 5,880,513	Prior year Town worksheet less \$2,787,000
B. Calculation Factors:		
1) Population increase % *	1.0062	State Department of Finance
2) Inflation increase %	1.0526	State Department of Finance
3) Total adjustment %	1.0591	B1xB2
C. Annual Adjustment Increase	347,692	{{(B3-1)xA}}
D. Other Adjustments:		
1) Loss responsibility (-)	-	N/A
2) Transfer to private (-)	-	N/A
3) Transfer to fees (-)	-	N/A
4) Parcel Tax Adjustment (+)	2,787,000	N/A
E. Total Adjustments	3,134,692	(C+D)
F. Adjusted Appropriations Limit FYE 6/30/06	\$ 9,015,205 **	(A+E)
* Greater of population increase % for:		
Atherton	1.0022	
San Mateo County	1.0062	

** Note - The Resolution submitted to the Atherton City Council presented \$8,779,022 due to a mathematical miscalculation. The correct amount should be \$9,015,205.

Town of Atherton
Appropriations Limit Schedule
For the fiscal year ending June 30, 2008

Attachment 7

	Amount	Source
A. Adjusted Appropriations FYE 6/30/07:	\$ 6,514,986	Prior year Town worksheet less \$2,787,000
B. Calculation Factors:		
1) Population increase %	1.0191 *	State Department of Finance
2) Inflation increase %	1.0442	State Department of Finance
3) Total adjustment %	1.0641	B1xB2
C. Annual Adjustment Increase	417,899	{(B3-1)xA}
D. Other Adjustments:		
1) Loss responsibility (-)	-	N/A
2) Transfer to private (-)	-	N/A
3) Transfer to fees (-)	-	N/A
4) Parcel Tax Adjustment (+)	2,787,000	N/A
E. Total Adjustments	3,204,899	(C+D)
F. Adjusted Appropriations Limit FYE 6/30/08	\$ 9,719,885 **	(A+E)

* Greater of population increase % for:
 Atherton 1.0191
 San Mateo County 1.0097

** Note - The Resolution submitted to the Atherton City Council presented \$9,296,482 due to a mathematical miscalculation. The correct amount should be \$9,719,885.

Town of Atherton
Appropriations Limit Schedule
For the year ending June 30, 2009

Attachment 8

	<u>Amount</u>	<u>Source</u>
A. Adjusted Appropriations limit for the year ended June 30, 2008	\$ 6,932,885	Prior year Town worksheet less \$2,787,000
B. Calculation factors:		
Population increase *	1.0127	State Department of Finance
Inflation increase	1.0429	State Department of Finance
Total adjustment factor	<u>1.0561</u>	B1 * B2
C. Annual adjustment increase	388,935	[(B3-1)A]
D. Other adjustments:		
Loss responsibility (-)	-	N/A
Transfers to private (-)	-	N/A
Transfers to fees (-)	-	N/A
Parcel Tax Adjustment(+)	<u>2,787,000</u>	N/A
E. Total adjustments	<u>3,175,935</u>	(C+D)
F. Adjusted Appropriations limit for the year ending June 30, 2009	<u>\$ 10,108,820</u>	(A+E)

* Greater of population increase % for:
 Atherton 1.0114
 San Mateo County 1.0127

** Note - The Resolution submitted to the Atherton City Council presented \$9,818,431 due to a mathematical miscalculation. The correct amount should be \$10,108,820.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JEROME D. GRUBER, CITY MANAGER**

**FROM: JEROME D. GRUBER, CITY MANAGER
THERESA DELLASANTA, DEPUTY CITY CLERK**

DATE: FOR THE MEETING OF JULY 15, 2009

**SUBJECT: (1) RESOLUTION SETTING PRIORITIES FOR FILING WRITTEN
PRIMARY ARGUMENT(S) REGARDING THE MEASURES AND
DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL
ANALYSIS TO BE PRINTED IN THE SAMPLE BALLOT AND (2)
RESOLUTION PROVIDING FOR THE FILING OF REBUTTAL
ARGUMENT(S)**

RECOMMENDATION:

Pursuant to the Elections Code and the Government Code, if City Council adopts the Ordinance No. 581 on tonight's Agenda, it also needs to pass the following resolutions to establish election procedures:

- (1) Adopt a resolution setting priorities for filing written primary argument(s) regarding the measure and directing the City Attorney to prepare an impartial analysis to be printed in the sample ballot; and
- (2) Adopt a resolution providing for the filing of rebuttal arguments.

BACKGROUND:

Before you tonight, is an Ordinance of the Town of Atherton calling an election to submit to the voters two ordinances. The ordinance asks the voters to vote Yes or No on the following questions:

“To continue providing funding to maintain neighborhood police patrols and the Town’s ability to respond to emergencies, repairing and maintaining streets, and repairing and constructing storm drains, shall an ordinance be adopted to continue the existing Town of Atherton Special Parcel Tax for four years?”

AND

“To permit the Town to spend the proceeds of a special parcel tax approved by Atherton voters, shall an ordinance be adopted increasing the appropriations limit for four years?”

Primary Arguments

If the City Council adopts the ordinances placed before the Atherton voters at the November 3, 2009 General Election, in accordance with California Elections Code Section 9282, the City Council must determine whether it wishes to exercise its rights to author and sign ballot arguments regarding the measure. The argument for or against a ballot measure shall not exceed 300 words. The final date for filing a primary argument is 5:00 p.m. on Friday, August 14, 2009.

The Elections Code allows any of the following to file a written primary argument not to exceed 300 words in length for or against any city measure:

1. The City Council or any member of members of the City Council authorized by it;
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure;
3. Bona fide associations of citizens; or
4. Individual voters who are eligible to vote on the measure

If all of the Council Members wish to sign the argument in favor of the measure, it is suggested that a less-than-a-quorum committee convene to write the argument and bring it to the Council for approval and signature at a special City Council meeting during the first week of August, in order to meet the August 14th deadline.

If more than one argument for or against is submitted to the City Clerk, the City Clerk shall select the argument in favor and the argument against to be printed in the sample ballot in accordance with California Elections Code Section 9287.

The draft resolution as attached gives the Council the alternatives of appointing one or more, or all, of the Council Members to write the argument. Staff is asking for direction on this matter and the resolution will be finalized as appropriate. The resolution needs to be enacted upon at the present Council meeting if the Council wishes to designate itself or one of its members.

The resolution also directs the City Attorney to prepare and submit an impartial analysis of each measure not to exceed 500 words showing the effect of the measure on the existing law for print in the sample ballot. The impartial analysis would be given to the City Clerk no later than the deadline set for filing primary arguments which is 14 days after adoption of the resolution or by 5:00 p.m. on Friday, August 14, 2009 per San Mateo County Elections Manager.

Rebuttal Arguments

Pursuant to Elections Code 9285, if any person submits arguments against a City measure, and an argument has been filed in favor of a City measure, copies of argument against the City measure will immediately be sent to the person or persons filing the argument in favor of the City measure. The person or persons filing the arguments in favor of a City measure may prepare and submit a rebuttal argument not to exceed 250 words. Upon receipt of the proponent's direct argument in favor of the measure, a copy shall be sent to the person or persons filing the argument against the City measure who may submit a rebuttal argument not to exceed 250 words. The rebuttal arguments shall be filed with the City Clerk not more than 10 days after the final date for filing primary arguments. The final date to submit a rebuttal argument to the City Clerk is 5:00 p.m., Monday, August 24, 2009. Rebuttal arguments shall be printed in the same manner as the primary arguments and shall immediately follow the primary argument it seeks to rebut.

FISCAL IMPACT:

The County Elections Official has said the costs associated with adding a City measure to a regularly scheduled municipal election would be approximately \$12,800. The FY2009/10 budget adjustments approved by the City Council included an authorization to utilize \$13,000 from the Appropriation for Contingencies Account (101-00-3702-000) for election expenses.

Prepared by:

Approved by:

Theresa N. DellaSanta
Deputy City Clerk

Jerome D. Gruber
City Manager

Attachments: Resolution 09-xx setting priorities for filing primary arguments
Resolution 09-xx authorizing rebuttal arguments
Information Sheet: Guidelines for submission of arguments and statement of
Author(s) of Argument
November 3, 2009 Elections Calendar

Resolution No. 09-24

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON, CALIFORNIA, SETTING PRIORITIES FOR FILING
WRITTEN ARGUMENTS REGARDING A CITY MEASURE AND
DIRECTING THE CITY ATTORNEY TO PREPARE AN
IMPARTIAL ANALYSIS**

WHEREAS, a Special Municipal Election is to be held in the Town of Atherton, California, on November 3, 2009, at which there will be submitted to the voters the following measure:

“To continue providing funding to maintain neighborhood police patrols and the Town’s ability to respond to emergencies, repairing and maintaining streets, and repairing and constructing storm drains, shall an ordinance be adopted to continue the existing Town of Atherton Special Parcel Tax for four years?”	YES
	NO
“To permit the Town to spend the proceeds of a special parcel tax approved by Atherton voters, shall an ordinance be adopted increasing the appropriations limit for four years?”	YES
	NO

NOW, THEREFORE, the City Council of the Town of Atherton, California, does resolve, declare, determine and order as follows:

1. That the City Council authorizes

[All Members of the City Council

(OR)

(Name certain Members of the City Council)]

to file a written argument in favor of the City measure as specified above, accompanied by the printed name(s) and signature(s) of the person(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed by the City Clerk after which no arguments for or against the City measure may be submitted to the City Clerk, which is set for August 14, 2009.

2. That the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. If the measure affects the organization or salaries of the office of the City Attorney, the City Clerk shall prepare the impartial analysis. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments (August 14, 2009).

3. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 15th day of July, 2009 by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

Jerry Carlson, Mayor
Town of Atherton

ATTEST:

Theresa DellaSanta

APPROVED AS TO FORM:

Wynne Furth
City Attorney

Resolution No. 09-25

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON, CALIFORNIA, PROVIDING FOR THE FILING OF
REBUTTAL ARGUMENTS FOR THE TOWN MEASURES
SUBMITTED AT THE NOVEMBER 3, 2009 GENERAL
MUNICIPAL ELECTION RELATING TO RENEWAL OF A
MEASURE AND INCREASING APPROPRIATIONS LIMIT**

WHEREAS, §9220 and §9285 of the Elections Code of the State of California authorizes the City Council, by majority vote, to adopt provisions for the filing of rebuttal arguments for the city measures submitted at municipal elections.

NOW THEREFORE, THE CITY COUNCIL OF THE TOWN OF ATHERTON, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to §9220 and §9285 of the Elections Code of the State of California, when the City Clerk has selected the arguments for and against the measure which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors may prepare and submit rebuttal arguments not exceeding 250 words, a rebuttal argument may not be signed by more than five (5) authors. The rebuttal arguments shall be filed with the City Clerk no later than 10 days after the final date for filing primary arguments. Rebuttal arguments shall be printed in the same manner as the primary arguments. Each rebuttal argument shall immediately follow the primary argument which it seeks to rebut.

SECTION 2. That all previous resolutions providing for the filing of rebuttal arguments for city measures are repealed.

SECTION 3. That the provisions of Section 1 shall apply only to the General Municipal Election to be held on November 3, 2009, and shall be repealed.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 15th day of July, 2009 by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

Jerry Carlson, Mayor
Town of Atherton

ATTEST:

Theresa DellaSanta

APPROVED AS TO FORM:

Wynne Furth
City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JEROME D. GRUBER, CITY MANAGER.

DATE: FOR THE MEETING OF JULY 15, 2009

SUBJECT: ENVIRONMENTAL COMMITTEE RECOMMENDS
APPROVAL OF RECOLOGY (FORMERLY NORCAL WASTE
INC) AS THE COLLECTION CONTRACTOR.

RECOMMENDATION:

Council to consider the Environmental Programs Committee recommendation to approve Recology (formerly Norcal Waste Inc.) as the Collection Contractor for the Town of Atherton.

BACKGROUND:

On July 1, 2009 the Environmental Programs Committee met to discuss recommending Norcal Waste Inc. as the Town of Atherton's Collection Contractor. The premise behind the recommendation was that ten of the twelve member agencies that are a part of the SBWMA have recommended the selection of Recology. The Town of Atherton and the City of Burlingame have not. A brief discussion ensued at the Environmental Programs Committee meeting regarding the need for Recology to order the necessary trucks and related equipment in a timely manner within the next month or so in order to fulfill their contractual obligation to the SBWMA.

As a point of clarification the Environmental Programs Committee wanted the City Council to understand that the request is to acknowledge Recology as the Collection Contractor and not enter into contract negotiations until a comprehensive survey is completed or the previous survey as deemed adequate by the City Council.

FISCAL IMPACT:

There is no fiscal impact associated with the City Council recognizing Recology as the Collection Contractor.

Attachment: 1- SBWMA Member Agency Actions

SBWMA MEMBER AGENCY ACTIONS

<u>Agency</u>	<u>Recommend Selection of Norcal</u>	<u>Bond Financing</u>	<u>San Carlos Agreement</u>	<u>% *</u>
Redwood City	Approved 7-0 (9/8/08)	Approved 7-0 (9/8/08)	Approved 7-0 (9/8/08)	21.1
San Mateo	Approved 5-0 (10/6/08)	Approved 5-0 (10/6/08)	Approved 5-0 (11/17/08)	22.7
Foster City	Approved 5-0 (10/6/08)	Approved 3-2 (10/6/08)	Failed 2-3 (10/6/08)	7.1
Menlo Park	Approved 4-1 (10/7/08)	Approved 5-0** (2/24/09) Plan Of Finance Consideration July 14th	Approved 5-0 (2/24/09)	9.4
San Carlos	Approved 3-1 (10/13/08)	Approved 3-1 (10/13/08)	Approved 5-0 (10/13/08)	7.7
East Palo Alto	Approved 3-1-1 (11/18/08)	Approved 4-1 (12/16/08)	Approved 3-1 (1/20/09)	5.7
Belmont	Approved 4-1 (12/9/08)	Approved 3-2** (3/10/09) Plan Of Finance Consideration June 23rd	Approved 5-0	5.4
San Mateo County	Approved 4-0 (3/3/09)	Approved 5-0** (4/28/09) Plan Of Finance Approved 5-0 (6/16/09)	Approved 5-0	3.6
Hillsborough	Approved 4-0 (4/13/09)	Approved 5-0** (3/9/09) Plan Of Finance Voted 4-0 (6/8/09) against Plan of Finance Approved by SBWMA Board	TBS	1.8
West Bay Sanitary District	Approved 5-0 (2/23/09)	June 22	June 22	1.1
Atherton	TBS	Voted No 5-0 (2/18/09)	TBS	1.4
Burlingame	TBS	Voted No 5-0 (2/17/09) Plan Of Finance/Bond Consideration Approved 4-0 Authorization limit of \$56.5 million with City to loan \$3 million (6/15/09)	TBS	13.1



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
CITY MANAGER, JERRY GRUBER**

FROM: JERRY GRUBER CITY MANAGER

DATE: FOR THE MEETING OF JULY 15, 2009

**SUBJECT: ENVIRONMENTAL PROGRAMS COMMITTEE
RECOMMENDS APPROVAL OF AN APPROPRIATE
SURVEY TO GAUGE RESIDENT PREFERENCES FOR
SERVICE LEVELS AS WE NEGOTIATE THE
COLLECTION CONTRACT.**

RECOMMENDATION:

Council to consider the Environmental Programs Committees recommendation for approving an appropriate survey to gauge resident preferences for service levels as we negotiate the collection contract.

INTRODUCTION:

On July 1, 2009 the Environmental Programs Committee met and discussed soliciting community input from Atherton residents for the levels of services they want provided for recycling and refuse from Recology (formerly Norcal Waste). In the past, a series of study sessions have been offered to the community to solicit input and meet with the proposed contractor to discuss weekly recycling pick-up, organic food waste collection, single stream recycling and existing rear yard trash collection.

The consensus among Committee members who were involved in the previous study sessions which had low attendance was that (Option 1) a mail out survey to all Atherton residents would be more effective as it has been in the past. If Council approves I will work with Kathy Hughes Anderson and (Option 2) Lisa Costa Sanders in creating a mail-out survey regarding Recycling and Refuse Collection. If the City Council deems necessary, the Environmental Programs Committee could hold study sessions in addition to the mail-out survey to solicit community input, and (Option 3) A third and final option, that seems the most viable due to significant time restraints, is to use the residential recycling study Atherton survey results dated July 2006. After brief conversation with Recology (previously Norcal Waste), determining residential needs for levels of service needs to be accomplished as soon as possible so the trucks and containers can be ordered.

FISCAL IMPACT:

No fiscal impact.

Attachment: Residential Recycling Study Atherton



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JEROME D. GRUBER, CITY MANAGER.

DATE: FOR THE MEETING OF JULY 15, 2009

SUBJECT: ENVIRONMENTAL PROGRAMS COMMITTEE
RECOMMENDS CITY COUNCIL RECONSIDER THEIR VOTE
AND APPROVE BOND FINANCING FOR THE SHOREWAY
FACILITY IN VIEW OF COST NUMBERS THAT ADDRESS
COUNCILS CONCERNS.

RECOMMENDATION:

Council to consider the Environmental Programs Committee recommendation to reconsider their vote and approve bond financing for the Shoreway Facility. The recommendation is based on the Committee's view of significant construction cost reduction for the shoreway facility and a final plan of financing for the shoreway facility.

BACKGROUND:

On July 1, 2009 the Environmental Programs Committee approved a motion asking the Atherton City Council to reconsider its vote opposing bonding for the Shoreway facility. A brief conversation ensued regarding the South Bay Waste Management Authority (SBWMA) staff report dated April 23, 2009. I have attached a copy of the staff report for the City Council to review. This material was received subsequent to the Council's last consideration of this issue. The SBWMA staff report, on page 2 under "analysis," reports that all bids for the Shoreway Facility received were below the 100% design level

engineer's cost estimates and the low bid was \$ 10, 941,455 or 38% below the engineers estimate for the project. I have also attached a list of the SBWMA Member Agency Actions regarding the Shoreway facility and a comprehensive timeline. I have also attached a copy of the SBWMA staff report dated May 28, 2009 from Board Member Brian Ponty and Finance Manager titled "Approval of Final Plan of Finance for the Shoreway Master Plan." The Board approved Option A, public sale of 100% fixed rate tax exempt bonds for a period of 27 years. Member agencies have been given the option to contribute to the overall financing of the project with the deadline being June 15, 2009. To date, Burlingame is the only agency that has agreed to contribute funds with Hillsborough still bringing another financial option to the Board. On page 2 of the staff report is a table that shows the estimate rate impact of 2.91% for Option A on monthly garbage rates for member agencies with a minimal monthly increase to Atherton residents.

FISCAL IMPACT:

Although a decision has not been made regarding financing of the facility I thought the information provided as part of the staff report may be helpful. In closing I have attached an email from Martha DeBry, Chair of SBWMA, to me and other Board Members regarding critical decisions that will need to be made within the next several months.

- Attachments:
- 1- SBWMA Staff Report – April 23, 2009 Shoreway Master Plan
 - 2- SBWMA Staff Report – May 28, 2009 Final Plan of Finance
 - 3- Email from Martha Debry



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
CITY MANAGER, JERRY GRUBER**

FROM: NEAL MARTIN, TOWN PLANNER

DATE: FOR THE MEETING OF JULY 15, 2009

**SUBJECT: POLICY DIRECTION ON THE 2007-14 HOUSING
ELEMENT UPDATE**

RECOMMENDATION:

It is requested that the City Council provide direction to Staff as to whether the Council wishes to amend the adopted 2009-10 Town Budget in the amount of \$13,280 (\$5,000 for Planning services, \$8,280 for Legal Consultant services) in order to proceed with the Planning Commission recommendation to revise the draft 2007-2014 Housing Element Update per Option 2 below.

Alternatively, the Council may direct Staff to place the Draft Housing Element on the Council's August, together with the Planning Commission's comments, and decide at that time whether to submit the Draft Housing Element to the Department of Housing and Community Development for review in the form recommended by Staff and the General Plan Committee.

BACKGROUND:

City Council Goal to Obtain HCD¹ Certification of the Housing Element Update

During the City Council's "Goal Setting" meetings held in 2008, the goal to obtain HCD certification of the 2007-14 Housing Element Update was established. Staff and consultants have been working toward achieving this goal throughout the update process.

¹ California Department of Housing and Community Development

Staff and General Plan Committee Recommended Approach Based on Community Input, other Similar Cities Experience and Experience with HCD

Atherton’s share of the “Regional Housing Needs Allocation (RHNA)” was established at 83 new housing units for the planning period of 2007-14. In addition, a new State law requires a carry-over of units from the previous planning period if Atherton failed to identify adequate sites to meet its 1999-2006 RHNA allocation of 166 units. HCD gave the Town credit for only 90 units (those shown in the master plans for the Menlo School and College), and an additional 9 new homes and second units were built, leaving a carry-over from 1999-2006 (as viewed by HCD) of 67 units. The carryover plus the Town’s RHNA allocation for 2007-14 totals 150 new housing units. The Town is not required to assure that this number of units are built, but it must provide an adequate number of sites for such new housing.

The staff-recommended approach combines the 90 units at the two school sites plus new second units, which include second units allowed under the Town’s current ordinance, and changes in the zoning ordinance to allow permanent occupancy of guest houses and full kitchens in internal living quarters in the main dwelling. Experience with HCD’s reviews has shown that they usually accept projections for second units based on actual construction experience and surveys and usually reject projections that do not have this kind of data supporting them.. This approach was also recommended by the General Plan Committee.

The Staff and the General Plan Committee recommended approach is summarized below:

Sites Required

Basic 2007-14 Allocation	83
Carry-over from 1999-2006 (per HCD; 166 basic allocation <u>minus</u> 90 sites at Menlo School & Menlo College <u>minus</u> 9 sites actually built	67
Total	<u>150</u>

Sites Planned

Menlo School & College (not built; recycled)	90
Conventional Houses (from 1999-2006 experience)	5
Second Units (from 1999-2006 experience)	4
New Guest Houses (112 x 50% occupied)	56
Internal Living Quarters (42 x 50% occupied)	<u>21</u>
Total	176

Note: Number of sites planned in excess of required provides room for discussion with HCD. HCD suggests a 20% buffer, or 180 sites for new units.

The strategy shown above includes two policy changes:

1. Allowing full time occupancy of guest houses where there is adequate separation from main building areas on adjoining properties. Current Town code restricts guest house

occupancy to 30 days per year. The projected number of new guest houses is based on actual construction experience over the past several years of accessory buildings (pool houses, etc). Occupancy is projected to be 50% based on the Town survey taken in December 2008. Affordability is also based on the Town survey taken in December 2008. Surveys of second units in other similar communities support the occupancy and affordability assumptions made in the draft Housing Element.

2. Allowing a full kitchen to be included in internal living quarters in the main dwelling. Current Town code allows only one full kitchen in a house. The Planning Commission is proposing no limit on the number of kitchens in a house in its review of the Zoning Code. The Housing Element however, only contemplates allowing one additional living unit per se in a main dwelling unit. . It is anticipated that most (but not all) of the new second kitchen construction will be in the form of internal living unit (containing a kitchen, bedroom and bathroom). The projected number of internal living units is based on Building Department experience over the past several years (where partial kitchens; e.g.. sink and refrigerator, have been included). Occupancy is projected to be 50% based on the Town survey taken in December 2008. Affordability is also based on the Town survey taken in December 2008. As noted above, to be considered a “new unit” the second kitchen would need to be constructed adjacent to a bedroom and bathroom.

Community Input

The City Council, Planning Commission and General Plan Committee were briefed on the proposed general approach at a joint workshop held on September 23, 2008.

An extensively publicized community-wide workshop on the Atherton Housing Element was held on October 29, 2008 where the proposed general approach was described.

An article about the Housing Element Update process and a local survey about second dwelling units, guest houses and internal living quarters were included in the Athertonian in early October 2008.

Other Peninsula Cities' Approaches

The General Plan Committee requested information about second dwelling unit ordinances in other small Peninsula cities, specifics about the Town of Hillsborough second dwelling unit experiences and strategies being employed by Woodside, Portola Valley, Los Altos Hills and Hillsborough in their efforts to obtain HCD certification for the 2007-2014 planning period. Woodside, Portola Valley, Los Altos Hills and Hillsborough are all following strategies similar to Atherton's: they are placing a strong emphasis on the development of new second units, as well as planning for additional faculty housing at private schools within their jurisdictions. The Priory in Portola Valley is an example where additional faculty housing is proposed. No jurisdiction listed above are proposing higher density housing within their Town.

General Plan Committee's Recommendation

The General Plan Committee reviewed the draft Housing Element Update at two meetings; on January 7 and April 1, 2009. While the Committee suggested several changes to the draft, they recommended approval of the general approach outlined above with a vote of 6-0. Specifically, the Committee added the wording for new second units; "with adequate separation from adjacent main building areas".

Planning Commission's Recommendation

The Planning Commission reviewed the draft Housing Element Update at two meetings; on April 29 and June 18, 2009. At the conclusion of the second meeting the Planning Commission by a 3 to 2 vote recommended a different approach utilizing larger Second Dwelling Units and Internal Living Quarters, all within the main building area, with an expanded public out-reach effort. They directed Staff to change the draft Update to:

1. Expand the Town's Second Dwelling Unit Program by increasing the allowable size up to 1,200 square feet and continue allowing the Second Dwelling Unit to be attached to the main dwelling or, if detached, to be located within the main building area..
2. Allow full kitchens in internal living quarters in the main dwelling and increase the projected internal living quarters and second unit construction numbers and occupancy by an amount necessary to meet the remaining basic and carry-over allocation.
3. Include a statement in the "Internal Living Quarters" and "Second Unit" Programs in the draft Update that the Town will conduct a major "community out-reach" to increase the number of internal living quarters and second units constructed in the 2007-14 planning period, to justify the increased construction and occupancy.
4. Reduce the added site capacity projections to near 150 units, rather than providing a surplus over the RHNA numbers.

The Planning Commission majority's reasons for the recommendation were based on concerns for the proximity of occupied dwellings to neighbors. They determined that in order to maintain the rural Atherton environment it would be best to locate full-time habitable buildings within the main building setback area. They also determined that larger Second Dwelling Units would be more attractive to older residents who may want to continue living on their property but may not want to occupy the main residence. Further, larger Second Dwelling Units could provide an opportunity for extended families to live on the same site. The Commission majority concluded that this approach, along with significant community out-reach, would result in the construction of an adequate number of Second Dwelling Units and Internal Living Quarters during the 2007-2014 planning period.

The Planning Commission recommendation included an increase in the projected number of Second Dwelling Units to 10, an increase in the number of Internal Living Quarters to

75 and an increase in projected occupancy of Internal Living Quarters to 60% and would have the result shown below:

Sites Required

Basic 2007-14 Allocation	83
Carry-over from 1999-2006 (per HCD; 166 basic allocation <u>minus</u> 90 sites at Menlo School & Menlo College <u>minus</u> 9 sites actually built)	67
Total	<u>150</u>

Sites Planned

Menlo School & College (not built; recycled)	90
Conventional Houses (from 1999-2006 experience)	5
Second Units (from 1999-2006 experience)	4 10
New Guest Houses 112 x 50% occupied	56
Internal Living Quarters (42 75 x 50% 60% occupied)	21 45
Total	176 150

The Planning Commission minority expressed a desire to follow the General Plan Committee recommendation.

Deadline for Adoption of Housing Element

The deadline for adoption of the 2007-14 Housing Element was June 30, 2009. The deadline has passed. However, the majority of Bay Area communities have not yet adopted their Housing Element, and legal action is unlikely and the Town is diligently proceeding with preparation of the Housing Element. Several Peninsula cities have already submitted their drafts to HCD for comments. However, there are some that have not yet submitted. An extended delay could be ~~more~~ problematic.

ANALYSIS:

The Planning Commission’s recommendation is a change in direction from that presented throughout the entire Atherton Housing Element Update process. It would require numerous changes to the draft Update document and to the CEQA Initial Study.

More importantly, the number and/or occupancy of projected second units and internal living quarters suggested by the Planning Commission cannot be substantiated by actual construction experience. Four second units were constructed in the 1999-2006 planning period; the Planning Commission approach predicts ten new second units in the current period. The prediction may be accurate, either because of the increased attractiveness of a larger second unit or because of changing preferences on the part of residents. However, the absence of past history means that HCD may be skeptical. Similarly, the 75 projected internal living quarters suggested by the Planning Commission cannot be substantiated by actual construction experience. The Planning Commission suggested an

occupancy rate of 60%, but that occupancy rate is higher than any surveys that have been done by Atherton or other communities. Experience with HCD suggests that the projections will probably be rejected and may make future projections subject to greater scrutiny by HCD. A negative comment letter from HCD would require further changes to the draft Update and CEQA Initial Study, perhaps reverting back to the current propo

Staff and the General Plan Committee share the concern of the Planning Commission about the proximity of habitable buildings to adjoining neighbors. However, they propose that this be addressed with changes to the zoning code after the Housing Element has been adopted.

Staff is also concerned about the Planning Commission's recommendation eliminates any significant surplus site capacity from the draft Update. The Commission was concerned that showing additional site capacity would result in the Town's having fewer sites to show in the next Housing Element period (after 2014). Staff does not agree. The more successful the second unit program is under the new Housing Element, the more likely HCD is to allow the Town to utilize optimistic second unit production to meet its requirements in the next Housing Element period. If many second units, guest houses, and internal living quarters are constructed between 2007 and 2014, HCD will allow the Town to claim more second units in the next Housing Element cycle. So showing excess capacity in this cycle will not reduce – and may even help – the Town's ability to have a certified housing element in 2014.

In conclusion, Staff concludes that the proposal as recommended by the General Plan Committee is more likely to be approved by HCD, but will required additional zoning code work subsequent to Housing Element adoption.

SUMMARY:

Option 1(As Recommended by the Staff and General Plan Committee)

Submit a draft Housing Element Update to HCD that provides for:

1. Allowing full-time occupancy of guest houses with adequate separation from the main building area on adjoining properties.
2. Allowing a full kitchen to be included in internal living quarters in the main dwelling.
3. Projecting development and occupancy of second units, guest houses, and internal living quarters based on construction records, the Town's survey, and similar surveys in other communities.
4. Showing capacity for 176 total new dwelling units.

Option 2 (As Recommended by the Planning Commission)

Submit a draft Housing Element Update to HCD that provides for:

1. Expanding the Town's Second Dwelling Unit Program by increasing the allowable size up to 1,200 square feet but continue to allow the Second Dwelling Unit only within the main building area, whether attached or detached. .
2. Allowing a second kitchen in a main dwelling (internal living quarters.)
3. Increasing the projected internal living quarters occupancy and increasing projected construction of internal living quarters and second units by an amount necessary to meet the Town's housing allocation.
4. Predicting increased construction and occupancy based a new program that would provide for major community out-reach to increase the number of internal living quarters and second units constructed in the 2007-14 planning period, and the attractiveness of larger second units.
5. Showing capacity for approximately 150 total new dwelling units.

FISCAL IMPACTS:

The City Council has adopted the budget for FY 2009-10 that includes \$7,340 for Planning Services to complete the 2007-14 Housing Element Update. That includes minor modifications to the draft Update and CEQA Initial Study, transmittal to HCD for comments, modifications to the Housing Element and Initial Study required to address the HCD comments, additional Planning Commission and City Council meetings to address HCD comments and facilitation of Element adoption.

Should the Council wish to proceed with the Planning Commission recommendation, changes to the draft Update and CEQA Initial Study would require an estimated additional \$5,000 for Planning Staff and 8,280 for the legal consultant. It would also absorb a larger share of the City Attorney's budget for the current fiscal year than anticipated. It is assumed that the source of funds would be from unappropriated reserves.

ENVIRONMENTAL IMPACT:

No CEQA determination is required at this time. A CEQA determination will be made after HCD review of the draft Update and prior to Planning Commission approval and City Council adoption of the Element.

Prepared By:

Approved by:

Neal Martin
Town Planner

Jerry Gruber
City Manager

Attachments:

1. Draft 2007-2014 Housing Element Update
2. Memorandum to Lisa Costa Sanders from Barbara Kautz re: Consequences of an Inadequate Housing Element
3. City-County Litigation Results (Santa Barbara County, 2007)



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Eileen Wilkerson, Assistant City Manager

DATE: FOR THE MEETING OF July 15, 2009

SUBJECT: REQUEST TO ISSUE A REQUEST FOR PROPOSALS (RFP)
FOR PROFESSIONAL PUBLIC INFORMATION
CONSULTING SERVICES

RECOMMENDATION:

Authorize the City Manager to solicit Requests for Proposals (RFP) from qualified consultants, firms, and consulting teams to provide professional public information consulting services related to public education of services, policy, and programs provided by the Town.

FISCAL IMPACT:

The cost of publicizing the RFP is estimated to be \$800 for a local media ad.

Prepared By:

/s/ Eileen Wilkerson

Eileen Wilkerson
Assistant City Manager

Approved:

Jerome D. Gruber
City Manager

Attachment:

- 1) Request for Proposals



**TOWN OF ATHERTON
91 Ashfield Road
Atherton, CA 94027**

Date: July 16, 2009

To: Interested Parties

From: Eileen M. Wilkerson, Assistant City Manager

Re: Request for Proposal – Professional Public Information Consulting Services

The Town of Atherton (the Town) is soliciting proposals from qualified consultants, firms, and consulting teams to provide professional public information consulting services related to public education of services, policy, and programs provided by the Town.

If you are a consultant, firm, or consulting team and would like to be considered for this engagement, you are invited to submit your written response to the following Request for Proposals by 4:00 p.m., July 30, 2009, to the following address:

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

TOWN OF ATHERTON

REQUEST FOR PROPOSAL

**Professional Public Information
Consulting Services**

July 30, 2009 4:00 p.m.

TOWN OF ATHERTON

RFP - Professional Public Information Consulting Services

I. General Information

The Town of Atherton is requesting proposals from qualified consultants, firms, and consulting teams, to provide professional public information consulting services related to public education of services, policy, and programs provided by the Town.

There is no expressed or implied obligation for the Town to reimburse responding consultants, firms, and consulting teams for any expenses incurred in preparing proposals in response to this request. Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code Sec. 6250 et seq.), unless exempt. Any language purporting to render the entire proposal confidential or proprietary will be ineffective and will be disregarded.

A Selection Committee consisting of City staff will evaluate proposal submitted.

During the evaluation process, the Selection Committee and the Town reserve the right - where it may service the Town of Atherton best interests - to request additional information or clarifications from the proposers. At the discretion of the Selection Committee and the Town, consultants, firms, and consulting teams submitting proposals may be requested to make oral presentations as part of the evaluation process.

The Town reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether the proposal was selected. Submission of a proposal indicates acceptance by the consultant, firm, or consulting team of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and in the contract between the Town of Atherton and the consultant, firm, or consulting team selected.

II. Nature of Services Required

Timeline: As recommended by the consultant. Provide tentative timeline for deliverables in technical proposal.

A. Scope of the Work to be performed

The scope of work will be formalized through meetings between the consultant, firm, or consulting team and the City Manager. The selected consultant, firm, or consulting team will be expected to perform all technical and other analyses necessary to complete the scope of work. The consultant, firm, or consulting team will receive general direction from the Town of Atherton's City Manager. Tasks may include, but are not limited to, the following:

Tasks:

- Develop strategies and messages to provide the public with information on the effects of the upcoming Parcel Tax measure using past and present facts, avoiding rhetoric and actions that urge a particular result.
- Assist Town in refining and focusing key messages for use in all public information vehicles with a focus on articulating the cost benefits and services for local residents.
- Develop and refine messages for inclusion in existing communications vehicles to deliver respective messages, including Town newsletters, copy for links on the Town website, focused Power Point Presentations, and for media/press.
- Recommend methods to message-target existing networks and organizations in Town, to focus the messages, and solicit and respond to questions from the public. User-friendly messaging, consistency, and accuracy of message is important.
- Production of materials.

Contract deliverables may include a variety of communication formats such as written, audio, video, etc.

B. Working Paper Retention and Access to Working Papers

All work papers and reports must be retained, at the Contractor's expense, for the minimum of three (3) years, unless the Contractor is notified in writing by the Town of Atherton of the need to extend the retention period. The Contractor may be required to make working papers available, upon request, to parties specifically designated by the Town as reasonable.

III. Description of the Government

A. Background Information

The Town of Atherton is a general law city incorporated under the California law in 1923. The Town serves a population of approximately 7,475 and is located in San Mateo County. The governing body is a five-member City Council composed of the Mayor and four Council members all of whom are elected at-large and serve four-year terms.

The Town provides administration services, police, planning, building, public works, and park services. Fire services are provided by the Menlo Fire Protection District. The Library is run by the County through the Library Joint Powers Agreement.

The Town operates the Atherton Channel District. The District is established to assist in the maintenance of areas within the Town determined to be in the flood plain of the local stream.

IV. Time Requirements

A. Proposal Calendar

<u>Date</u>	<u>Activity</u>
July 16, 2009	Request for Proposal issued
July 30, 2009	Due date for technical and cost proposals (due by 4:00 p.m.)
August 7, 2009	Selected consultant, firm, and consulting team notified
August 19, 2009	Contract awarded

V. Assistance to be provided to the consultant, firm, and consulting team

A. Town Departments and Clerical Assistance

The Town's Department staff and responsible management personnel will be available to assist the Contractor by providing information, documentation, and explanations.

B. Work Area, Telephone, Photocopying, and Fax Machine

The Town of Atherton will provide the Contractor with a reasonable workspace, access to telephone lines, photocopying facilities and a fax machine when the consultant, firm, and consulting team is on site.

VI. Proposal Requirements

A. General Requirements

Any questions regarding this proposal or additional information required by the respondents should be directed to:

Eileen M. Wilkerson, Assistant City Manager
Town of Atherton
91 Ashfield Road
Atherton, CA 94027
ewilkerson@ci.atherton.ca.us
(650) 752-0546

- a. Submission of Technical Proposal. An original and five (5) copies of the Technical Proposal shall be received **by 4:00 p.m. on July 30, 2009**, for a proposal to be considered.
- b. Submission of Cost Proposal. An original and five (5) copies of the Cost Proposal shall be received **by 4:00 p.m. on July 30, 2009, under separate cover in a sealed envelope** to be considered. The requirements of the cost proposal are described below.

Both the Technical Proposal and the Cost Proposal should be sent to the attention of the Assistant City Manager at the address noted above.

B. Format for Technical Proposal

The format of the Technical Proposal shall be as follows:

1. Transmittal Letter

General introduction and briefly stating the proposer's understanding of the services to be performed; a positive commitment to perform the service within the time period specified; the name(s) of the person(s) authorized to represent the proposer, title, address, and telephone number.

2. Detailed Proposal

The detailed proposal should follow the format set out in Section C below.

C. Contents of Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the consultant, firm, or consulting team. As such, the substance of proposals will carry more weight than their form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the consultant, firm, or consulting team and of the particular staff to be assigned to this engagement. It should also specify a variety of approaches that will meet the Request for Proposal requirements.

THERE SHOULD BE NO DOLLAR UNITS OR TOTAL COSTS INCLUDED IN THE TECHNICAL PROPOSAL DOCUMENT.

The Technical Proposal should address all the points outlined in the RFP (excluding any cost information which should only be included in the sealed dollar cost bid). The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the request for proposal. While additional data may be presented, the areas detailed below must be included. They represent the criteria against which the proposal will be evaluated.

1. License to Practice in California.

An affirmative statement should be included that the consultant, firm, or consulting team and all assigned key professional staff are properly licensed to practice in California.

2. Independence

The consultant, firm, or consulting team should provide an affirmative statement that it is independent of the Town of Atherton.

3. Business License

The consultant, firm, or consulting team selected must possess a Town of Atherton Business License while conducting any work under this contract.

4. *Insurance*

The selected consultant, firm, or consulting team will maintain professional liability, workers' compensation, and automobile insurance limits as required by the Town during the entire term of their engagement.

5. *Consultant, firm, and consulting team Qualifications and Experience*

a) To qualify, the proposer must have experience in providing **Professional Public Information Consulting Services** to local governments. The proposer should state the size of the firm or team, the size of the consultant, firm, or consulting team's staff, the location of the office from which the work on this engagement is to be performed.

b) In addition, the proposer shall provide information on the circumstances and status of any disciplinary action taken or pending against the consultant, firm, and consulting team during the past three (3) years with state regulatory bodies or professional organizations.

6. *Partner, Supervisory and Staff Qualifications and Experience*

a) Identify the principal supervisory and management staff, including engagement partners, managers, and other supervisors and specialists, who would be assigned to the engagement.

b) Principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists may be changed during the course of the agreement, however, the Town of Atherton reserves the right to approve or reject replacements.

7. *Similar Engagements with Other Government Entities*

Please provide a list of not less than three client references for which services similar to those outlined in this RFP are currently being provided. For each reference listed provide the name of the organization, address, and telephone number of the responsible person within the reference's organization.

D. Contents of Cost Proposal

1. *Total All-Inclusive Maximum Price*

The sealed dollar cost bid should contain all pricing information relative to performing the professional services. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs including all out-of-pocket expenses.

The Town of Atherton will not be responsible for expenses incurred in preparing and submitting the technical proposal or the sealed dollar cost bid. Such costs should not be included in the proposal.

The first page of the sealed dollar cost bid should include the following information: (a) name of consultant, firm, or consulting team; (b) certification that the person signing

the proposal is authorized to represent the consultant, firm, or consulting team, empowered to submit the bid, and authorized to sign a contract with the Town of Atherton; and (c) a total all-inclusive maximum price for the engagement.

2. *Rates by Partner, Supervisory and Staff*

The cost proposal should include detailed information regarding the estimated number of hours to be dedicated to the Town's engagement, delineated by staffing level and the hourly rate for each unless services are provided on a flat fee basis, in which case the flat fee must be indicated.

3. *Rates for Additional Professional Services*

If it should become necessary for the Town to request the Contractor to render additional services, then such additional work agreed to between the Town and the contractor shall be performed at the same rates set forth in this cost proposal or on a fixed fee arrangement as negotiated in advance of performing such additional services.

4. *Manner of Payment*

Progress payments will be made on the basis of pro-rated work completed during the course of the engagement or as agreed upon in the contract.

VII. Evaluation Methodology

A. Selection Committee

The Selection Committee will review and arrive at a composite technical score for each consultant, firm, and consulting team. At this point in the process consultants, firms, and consulting teams with an unacceptably low technical score will be eliminated from further consideration.

B. Evaluation Criteria

Proposals will be evaluated using three sets of criteria. Proposers meeting the mandatory criteria will have their proposal evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria which will be considered during the evaluation process.

1. Mandatory Elements

- a. The Proposer is independent and licensed to practice in California
- b. The Proposer has no conflict of interest with the Town of Atherton
- c. The Proposer follows the instructions set forth in the RFP

2. Technical Qualifications

3. Price

C. Selection of Consultant, firm, or consulting team

Based on evaluation criteria and reference checks, the Selection Committee will recommend the best qualified consultant, firm, or consulting team to the City Council for final award of

contract. It is anticipated the selection of a consultant, firm, or consulting team will be completed by August 7, 2009. Following the notification of the selected consultant, firm, or consulting team, it is expected a contract will be executed between both parties shortly thereafter.

D. Right to Reject Proposals

The Town of Atherton reserves the right to reject any and all proposals submitted and to request additional information from proposers. If the Town cannot successfully negotiate a professional agreement acceptable to both parties, the Town reserves the right to award the contract to any consultant, firm, or consulting team determined to be qualified to perform the services.