



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
JUNE 20, 2007
6:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

6:00 P.M. ROLL CALL Janz, J. Carlson, Marsala, A. Carlson, McKeithen

6:02 P.M. PUBLIC COMMENTS

6:05 P.M. CLOSED SESSION

**CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant
to Subsection (a) of Government Code Section 54956.9**

Lamb vs. Town of Atherton, et al.
Superior Court of California, San Mateo County, CIV 461630

RECONVENE TO OPEN SESSION

Report of action taken.

ADJOURN

Agendas and staff reports may be accessed on the Town website at: www.ci.atherton.ca.us

☛ Please contact the City Clerk's Office at 650.752.0500 with any questions.

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk at (650) 752-0500. Notification of 48 hours prior to the meeting will enable the Town 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
JUNE 20, 2007

7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

- 7:00 P.M. 1. **PLEDGE OF ALLEGIANCE**
- 7:03 P.M. 2. **ROLL CALL** Janz, J. Carlson, Marsala, A. Carlson, McKeithen
- 7:05 P.M. 3. **PRESENTATIONS**
- A. Proclamation Recognizing Public Works Supervisor Troy Henderson for his 30 years of service to the Town
- B. BKF Drainage Study
- C. Darin Duncan from California Water Service
- 7:40 P.M. 4. **PUBLIC COMMENTS** (only for items which are not on the agenda – limit of three minutes per person)
- 7:50 P.M. 5. **STAFF REPORTS**
- 8:00 P.M. 6. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** (Directed by Resolution No. 99-6)
- None
- 8:00 P.M. **CONSENT CALENDAR** (Items 7–21)
7. **APPROVAL OF MINUTES OF THE SPECIAL CITY COUNCIL CLOSES SESSION OF MAY 7, 2007; THE SPECIAL CITY COUNCIL CLOSED SESSION AND REGULAR MEETINGS OF MAY 16, 2007; AND THE SPECIAL JOINT MEETING OF THE CITY COUNCIL AND THE MENLO PARK FIRE PROTECTION DISTRICT BOARD OF MAY 21, 2007**
8. **APPROVAL OF BILLS AND CLAIMS FOR MAY 2007 IN THE AMOUNT OF \$ 1,113,305**

9. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR MAY 2007

10. AUTHORIZATION TO PURCHASE THE CRW PERMIT TRACKING SOFTWARE SYSTEM

Recommendation: Staff recommends that City Council authorize staff to enter into an agreement and purchase the CRW Permit Tracking Software System.

11. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH REDWOOD CITY TO PROVIDE INFORMATION TECHNOLOGY SERVICES

Recommendation: The City Council authorize the Mayor to execute an agreement with Redwood City for Information Technology Services.

12. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH URS, CORPORATION, FOR GEOTECHNICAL ENGINEERING SERVICES FOR THE MARSH ROAD CHANNEL WALL PROJECT

Recommendation: Accept the proposal and authorize the Mayor to sign a Professional Services Agreement with URS Corporation to provide Geotechnical Engineering services for the Marsh Road Channel Wall Project in an amount not exceed \$39,644.20, plus a 10% contingency, for a total authorization of \$43,608.62.

13. AWARD OF CONTRACT FOR THE VALPARAISO AVENUE OVERLAY PROJECT, PROJECT NO. 06-001

Recommendation: Award the contract for the Valparaiso Avenue Overlay Project, Project No. 06-001, to Granite Construction Company, the low bidder on the June 14, 2007, bids, for \$590,615.50, with a 10% construction contingency of \$59,061.55, for a total authorization of \$649,677.05; and authorize the Mayor to sign the contract on behalf of the Town.

14. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH ANTONIA BAVA LANDSCAPE ARCHITECTS FOR LANDSCAPE DESIGN SERVICES FOR THE TOWN CENTER LANDSCAPE PROJECT

Recommendation: Accept the proposal and authorize the Mayor to sign a Professional Services Agreement with Antonia Bava Landscape Architects to provide landscape design services for the Town Center

Landscape Project in an amount not to exceed \$18,005.00, plus a 10% contingency, for a total authorization of \$19,805.50.

15. AWARD OF CONTRACT FOR THE EOC GENERATOR AND APPROVAL OF INFORMAL BIDDING PROCEDURES

Recommendation: Award the contract for the EOC Generator to Intermountain Electric Company, the low bidder on informal bids, for \$67,250, with a 10% construction contingency of \$6,725, for a total authorization of \$73,975; to authorize the use of informal bidding procedures; and to authorize the Mayor to sign the contract on behalf of the Town.

16. APPROVAL OF AN AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN OF ATHERTON AND TIM WULFF FOR PLAN CHECKING SERVICES FOR FISCAL YEAR 2007-08

Recommendation: Approve the amendments proposed herein between the Town of Atherton and Mr. Tim Wulff for contract plan check services.

17. RENEWAL OF THE PROFESSIONAL SERVICES AGREEMENT FOR TENNIS PRO ALAN MARGOT

Recommendation: The City Council approve the amended agreement to show an effective date of March 1, 2007, with the expiration date of June 30, 2009.

18. APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR MUNICIPAL CIVIL ENGINEERING SERVICES FOR THE REVIEW OF DEVELOPMENT PROJECTS

Recommendation: Approve an Amendment to the Professional Services Agreement with CSG Consultants, Inc. for Municipal Civil Engineering services for the review of development projects, in an amount not to exceed \$50,000 for Fiscal Year 2007-08.

19. AMENDMENT TO AGREEMENT BETWEEN SAN MATEO COUNTY AND TOWN OF ATHERTON FOR ANIMAL CONTROL SERVICES

Recommendation: The City Council approve and authorize the Mayor to execute the agreement.

20. **APPROVE THE RECOMMENDATION OF THE CITY COUNCIL SCREENING COMMITTEE TO INCREASE THE RESIDENT MEMBERS OF THE GENERAL PLAN COMMITTEE FROM FIVE MEMBERS TO SIX MEMBERS; ACCEPT THE RECOMMENDATION FOR APPOINTMENTS TO THE GENERAL PLAN COMMITTEE**

Recommendation: Approve the recommendation of the City Council Screening Committee to increase the resident members of the General Plan Committee from five members to six members; accept the recommendation of the Steering Committee for appointments to the General Plan Committee

21. **THERE IS NO ITEM NO. 21.**

PUBLIC HEARINGS (Items 22-29)

- 8:00 P.M. 22 **APPEAL REGARDING 94 TALLWOOD** Continued from May 16, 2007)

Recommendation: At the request of the appellant, this item will be continued to the City Council meeting of July 18, 2007.

- 8:01 P.M. 23. **APPEAL REGARDING 55 BELBROOK WAY** (Continued from May 16, 2007)

Recommendation: At the request of the appellant, this item will be continued to the City Council meeting of July 18, 2007.

- 8:02 P.M. 24. **APPEAL REGARDING 70 BARRY LANE** (Continued from May 16, 2007)

Recommendation: Conduct the public hearing, affirm the Notice of Abatement, and deny the appeal. Direct staff to prepare written findings for consideration and adoption at a subsequent meeting.

- 8:30 P.M. 25. **INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 17 OF THE ATHERTON MUNICIPAL CODE REGULATING BASEMENTS** (Continued from the City Council Meeting of May 16, 2007. **PUBLIC HEARING CLOSED**)

Recommendation: Introduce the attached Ordinance based on the following finding for the reasons outlined in this staff report: The proposed amendment is required to achieve the objectives of the Zoning Plan and the General Plan.

- 9:00 P.M. 26. **ADOPTION OF A RESOLUTION MODIFYING FEES FOR SERVICES RELATED TO PLANNING AND BUILDING** *(If action is taken on June 18, 2007, this item will not be heard.)*

Recommendation: Conduct the public hearing and adopt the attached resolution modifying fees for services related to planning and building.

- 9:20 P.M. 27. **ADOPTION OF A RESOLUTION APPROVING THE FY 2007-08 OPERATING AND CAPITAL BUDGET** *(If action is taken on June 18, 2007, this item will not be heard.)*

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, adopt a Resolution adopting Fiscal Year 2007-08 Operating and Capital Budget.

- 9:30 P.M. 28. **ADOPTION OF A RESOLUTION APPROVING THE FISCAL YEAR 2007-08 APPROPRIATIONS LIMIT AND CALCULATIONS** *(If action is taken on June 18, 2007, this item will not be heard.)*

Recommendation: Adopt a Resolution approving the Fiscal Year 2007-08 Appropriations Limit and Calculations

- 9:35 P.M. 29. **ADOPTION OF A RESOLUTION ESTABLISHING A SPECIAL TAX FOR MUNICIPAL SERVICES FOR THE FISCAL YEAR 2007-2008** *(If action is taken on June 18, 2007, this item will not be heard.)*

Recommendation: Open public hearing, receive testimony, and close public hearing. After consideration, adopt a Resolution establishing a Special Tax for Municipal Services for the Fiscal Year 2007-2008 as set forth in Ordinance No. 555.

NOTE: Ordinance No 555 approved by the voters on June 7, 2005, provided for the authorization to levy a Special Tax for Municipal Services and Capital Improvements and for the expenditure of the funds derived from the tax. The Special Tax was to commence in FY 2005-2006 and continue through June 30, 2010. Each year, following the adoption of the Budget, it is necessary to hold a Public Hearing and adopt a Resolution levying a Special Tax for Municipal Services and instructing the Tax Collector of the County of San Mateo to collect the tax rates as identified within the Adopted Resolution.

REGULAR AGENDA (Items 30-36)

- 9:40 P.M. 30. **DISCUSSION AND POSSIBLE ACTION REGARDING THE FIRE SPRINKLER ORDINANCE AND A REQUEST FROM THE MENLO PARK FIRE PROTECTION DISTRICT THAT THE TOWN OF ATHERTON FORMALLY AUTHORIZE THE RESPONSIBILITY FOR “FIRE DEPARTMENT ACCESS AND WATER SUPPLY” PER ARTICLE 9 TO THE MPFPD**

Recommendation: The City Council consider the existing Atherton Sprinkler Ordinance and attached request from the MPFPD dealing with access and water supply and provide appropriate direction to staff.

- 10:00 P.M. 31. **DISCUSSION AND POSSIBLE ACTION REGARDING THE REVIEW OF OPEN BUILDING PERMITS BY MENLO PARK FIRE PROTECTION DISTRICT**

Recommendation: The City Council consider the process for the review of open building permits by Menlo Fire Protection District

- 10:20 P.M. 32. **DISCUSSION AND REVIEW OF SPECIAL EVENTS ORDINANCE AND GUIDELINES FOR NON-SCHOOL SPONSORED EVENTS**

- 10:40 P.M. 33. **DISCUSSION AND POSSIBLE ACTION REGARDING CODE ENFORCEMENT SERVICE ALTERNATIVES**

Recommendation: The City Council accept the status report of the Code Enforcement Program, consider alternatives for continuation of code enforcement services, and provide appropriate direction to staff to continue these services for FY 2007/08.

- 11:00 P.M. 34. **DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING THE SAN MATEO COUNTY GANG TASK FORCE**

Recommendation: Staff recommends that the City Council review this report and provide direction regarding the indemnification provisions.

- 11:15 P.M. 35. **CONSIDERATION AND POSSIBLE ACTION TO SELECT CONSULTING FIRM(S) TO BE INTERVIEWED BY THE CITY COUNCIL TO ASSIST IN THE RECRUITMENT OF THE CITY MANAGER**

Recommendation: Staff recommends that the City Council select a list of candidate firms for interviews from the proposals submitted for the recruitment of the City Manager.

11:30 P.M. 36. POSSIBLE CANCELLATION OF AUGUST CITY COUNCIL MEETING

Recommendation: If the City Council desires to cancel its regularly scheduled meeting of August 15, 2007, a motion is needed to cancel the August meeting.

11:35 P.M. 37. COUNCIL REPORTS

11:50 P.M. 38. PUBLIC COMMENTS

12:00 A.M. 39. ADJOURNMENT

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DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
MONDAY, MAY 7, 2007
8:00 AM
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

Mayor Alan Carlson called the meeting to order at 8:00 a.m.

1. ROLL CALL

PRESENT: James R. Janz, Jerry Carlson, Charles E. Marsala, Alan B. Carlson,
Kathy McKeithen

City Manager Jim Robinson and City Attorney Marc Hynes were also present.

REGULAR AGENDA

2. ADOPTION OF A RESOLUTION REQUESTING THAT THE PUBLIC EMPLOYEE RETIREMENT SYSTEM BOARD OF DIRECTORS APPROVE THE EXTENSION OF TEMPORARY SERVICE FOR KATHLEEN HAMILTON, ACTING CITY CLERK, PURSUANT TO GOVERNMENT CODE SECTION 21221(h); AUTHORIZATION FOR THE MAYOR TO SIGN THE LETTER OF REQUEST

MOTION – to adopt Resolution No. 07-12, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON REQUESTING THAT THE PUBLIC EMPLOYEE RETIREMENT SYSTEM BOARD OF DIRECTORS APPROVE THE EXTENSION OF TEMPORARY SERVICE FOR KATHLEEN HAMILTON, ACTING CITY CLERK, PURSUANT TO GOVERNMENT CODE SECTION 21221(h)”

M/S McKeithen/J.Carlson Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

Mayor Carlson adjourned the meeting at 8:10 a.m. to a Closed Session. The Closed Session was reconvened in the Council Chambers at 94 Ashfield Road.

CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9**

Charles W. King III and Leslie King v. Town of Atherton, et al. Superior Court of California, San Mateo County, CIV 461513

- B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:**

One (1) potential case

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes reported out of Closed Session that no reportable action was taken on either Item A or B.

PUBLIC COMMENTS

City Manager Jim Robinson formally announced to the City Council his plans to retire from the Town of Atherton, to be effective July 31, 2007, or soon thereafter. He expressed his appreciation for a supportive City Council and great staff with which he has had the privilege of working the past six years. He also recommended that the City Council utilize the services of a professional recruiter to help fill the position of City Manager.

ADJOURN

The meeting was adjourned by Mayor Alan Carlson at 11:50 a.m.

Respectfully submitted,

**Alan B. Carlson
Mayor**

**Minutes Prepared by:
Kathi Hamilton**



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
MAY 16, 2007
5:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

Mayor Alan Carlson called the meeting to order at 5:00 p.m.

ROLL CALL

PRESENT: James R. Janz
Jerry Carlson
Charles E. Marsala
Alan B. Carlson
Kathy McKeithen

PUBLIC COMMENTS

There were no public comments.

CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Initiation of litigation pursuant to subsection (c) of Government Code Section 54956.9:

Four (4) potential cases

- B. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9**

Town of Atherton vs. Sequoia Union High School District, et al.
Superior Court of California, San Mateo County, CIV 458899

Charles W. King III and Leslie King v. Town of Atherton, et al. Superior Court of California, San Mateo County, CIV 461513

Lamb vs. Town of Atherton, et al.
Superior Court of California, San Mateo County, CIV 461630

C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95

Claimant: RJR Transportation, Inc.
Agency Claimed Against: Town of Atherton

D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

City Manager

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes reported out of Closed Session as follows:

With respect to Item A, four potential cases, there was no reportable action. With respect to Item B, three cases, there was no reportable action. With respect to Item C, Liability Claim, the claim was denied by unanimous vote of the Council. With respect to Item D, there was no reportable action.

ADJOURN

The meeting was adjourned by Mayor Alan Carlson at 6:48 p.m.

Respectfully submitted,

Alan B. Carlson
Mayor

Minutes Prepared by:
Kathi Hamilton



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT

May 16, 2007

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Alan Carlson called the meeting to order at 6:59 p.m.

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**

PRESENT: James R. Janz
Jerry Carlson
Charles E. Marsala
Alan B. Carlson
Kathy McKeithen

City Manager Jim Robinson and City Attorney Marc Hynes were also present.

3. **PRESENTATIONS**

- A. **Certificate of Appreciation to Sherman Hall from REACT**

Brian Boetig, Supervisory Special Agent, Federal Bureau of Investigation (FBI), also served as the Task Force Manager for the Rapid Enforcement Allied Computer Team (REACT), a multi-agency task force that targeted high technology crime and identity theft in the Bay Area. Officer Sherman Hall, Atherton Police representative, served on the task force and provided a valuable resource by keeping the Police Department apprised of current trends in cyber crime. Mr. Boetig, on behalf of the Director of the FBI, presented a certificate to Officer Sherman Hall.

- B. **Recognition of Outgoing Planning Commission Members**

Mayor Alan Carlson presented a Certificate of Appreciation to Rose Hau, outgoing Planning Commissioner, for her service to the Town. Outgoing Planning Commissioner Robert Andrews was not present.

C. Certificates for Young Artists' Environmental Art Contest

Town Arborist Kathy Hughes Anderson presented awards/certificates to the Art Contest winners in grades K-2, 3-5, and 6-8.

4. PUBLIC COMMENTS

Richard Moore, President of the Atherton Civic Interest League (ACIL), announced that ACIL's annual meeting would take place the next evening at 7 p.m. at Holbrook-Palmer Park. Everyone in attendance would receive a hand tool for turning off the gas in case of an emergency. He presented each Council Member with a tool. He thanked Jim Robinson for his outstanding service to the Town as City Manager.

5. STAFF REPORTS

- **City Attorney Marc Hynes reported out of Closed Session as follows:**

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Initiation of litigation pursuant to subsection (c) of Government Code Section 54956.9:

Four (4) potential cases

There was no reportable action.

B. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9

**Town of Atherton vs. Sequoia Union High School District, et al.
Superior Court of California, San Mateo County, CIV 458899**

**Charles W. King III and Leslie King v. Town of Atherton, et al.
Superior Court of California, San Mateo County, CIV 461513**

**Lamb vs. Town of Atherton, et al.
Superior Court of California, San Mateo County, CIV 461630**

There was no reportable action.

C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95

**Claimant: RJR Transportation, Inc.
Agency Claimed Against: Town of Atherton**

By unanimous vote of the City Council, the claim was denied.

D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

City Manager

There was not reportable action.

- **City Manager Jim Robinson reminded those in attendance of the Joint Meeting of the City Council and Menlo Park Fire Protection District Board scheduled for Monday, May 21, 2007, at the Pavilion in Holbrook-Palmer Park, at 5:00 p.m.**
- **Public Works Director Duncan Jones said there was a good turn out for the drainage workshop presented by BKF Engineers. Comments would be incorporated into a report that would be returned to Council in June. The draft Regional Water Quality Control Board permit was distributed on May 1st and staff would give a synopsis to the City Council in June.**
- **Assistant to the City Manager Wendé Protzman informed Council that the City of Palo Alto was raising its fee for providing Information Technology (IT) services to the Town as much as five times the current fee. She was seeking/researching other possible providers. The proposed permit tracking software implementation might possibly be delayed due to the change in IT services.**

6. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

Lindenwood Homes Association

Philip Lively, President, said the Lindenwood Homes Association (LHA) was established in 1945 and would be celebrating its 62nd Anniversary. LHA was one of the oldest homeowners' associations in California. Sixty percent of Lindenwood homes were members. He noted some Lindenwood concerns: 1) compliance with building codes and ordinances; 2) Menlo-Atherton High School issues; 3) Menlo Park City School District issues; 4) traffic on Middlefield Road from Marsh Road to Ringwood; and 5) construction traffic.

Mayor Alan Carlson said the City Council was aware that LHA was a very active homes association and appreciated its input.

CONSENT CALENDAR (Items 7– 14)

MOTION – to approve the Consent Calendar as presented.

City Manager Jim Robinson requested that the motion be amended with respect to Item No. 12 to allow staff to proceed with the agreement after the City Attorney approved it as to form.

The amendment was accepted by the maker and seconder.

AM/S J.Carlson/McKeithen

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

7. **APPROVED MINUTES OF THE SPECIAL CITY COUNCIL CLOSES SESSION AND SPECIAL MEETINGS OF APRIL 9, 2007; SPECIAL CITY COUNCIL CLOSED SESSION AND REGULAR MEETINGS OF APRIL 18, 2007**
8. **APPROVED BILLS AND CLAIMS FOR APRIL 2007 IN THE AMOUNT OF \$ 1,127,031**
9. **ACCEPTED OF MONTHLY FINANCIAL REPORT FOR APRIL 2007**
10. **ACCEPTED THE QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED MARCH 31, 2007**
11. **AUTHORIZATION FOR THE POLICE CHIEF TO ACCEPT A CITIZEN DONATION TO THE POLICE DEPARTMENT**

The Council authorized the Police Chief to accept the donation of \$1,200 from a citizen and to use the funds to sponsor an event that benefits the police department as a whole.

12. **ACCEPTANCE OF A PROPOSAL FROM PMC FOR THE TOWN OF ATHERTON ZONING ORDINANCE UPDATE**

The City Council accepted a proposal from PMC to complete a focused update of the Town of Atherton Zoning Ordinance and directed the City Manager to prepare a Professional Services Agreement and to move forward after the City Attorney approved it as to form.

13. **REVIEW AND APPROVAL OF A RESOLUTION AUTHORIZING CONTINUED PARTICIPATION IN THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY (C/CAG) AND APPROVAL OF THE JOINT POWERS AGREEMENT**

Adopted Resolution No. 07-13, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AUTHORIZING CONTINUED PARTICIPATION IN THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY (C/CAG) AND APPROVAL OF THE JOINT POWERS AGREEMENT AND AUTHORIZING THE MAYOR TO EXECUTE THE JOINT POWERS AGREEMENT."

14. **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH KIKUCHI & ASSOCIATES FOR LANDSCAPE DESIGN SERVICES FOR THE HOLBROOK-PALMER PARK MAIN HOUSE LAWN, PLAYGROUND RESTROOMS AND TENNIS COURT BUFFER LANDSCAPE PROJECT, IN AN AMOUNT NOT TO EXCEED \$15,500 PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$17,050.**

Accepted the proposal and authorized the Mayor to sign a Professional Services Agreement with Kikuchi & Associates to provide landscape design services for the

Holbrook-Palmer Park Main House Lawn, Playground Restrooms and Tennis Court Buffer Landscape Project in an amount not exceed \$15,500, plus a 10% contingency, for a total authorization of \$17,050.

PUBLIC HEARINGS (Items 15-18)

15. APPEAL REGARDING 94 TALLWOOD (Continued from April 18, 2007)

Mayor Alan Carlson announced the item was continued to the City Council meeting of June 20, 2007.

16. APPEAL REGARDING 55 BELBROOK WAY (Continued from April 18, 2007)

Mayor Alan Carlson announced the item was continued to the City Council meeting of June 20, 2007. City Attorney Marc Hynes stated a further continuance might be requested depending on the availability of the appellant's counsel.

17. APPEAL REGARDING 70 BARRY LANE (Continued from April 18, 2007)

Mayor Alan Carlson announced the item was continued to the City Council meeting of June 20, 2007. City Attorney Marc Hynes noted he received a letter that day from the attorney representing the builder of the property, who provided possible dates for meeting sooner than June 20th, requiring a special meeting. After a short discussion, the Council determined the matter would be heard on June 20, 2007.

18. INTRODUCTION OF AN ORDINANCE AMENDMENT CHAPTER 17 OF THE ATHERTON MUNICIPAL CODE REGULATING BASEMENTS

Deputy Town Planner Lisa Costa Sanders said the item before the Council was an amendment to the ordinance regulating basements. Currently, basements were permitted under the footprint of the main dwelling and were not allowed outside the main building area under accessory structures. The Planning Commission recommended allowing the same floor area of the first floor to be in the basement area, with a little flexibility on how it was sited so it could extend beyond the footprint as long as 80% of the basement area remained under the footprint. If a larger basement was desired, a Conditional Use Permit (CUP) could allow up to 120% of the first floor, floor area in the basement area. Additionally, with a CUP, a basement could be located under an accessory structure. The CUP allowed discretion that would allow the Planning Commission to review them on a case-by-case basis. Some items for consideration were: 1) increased setbacks; 2) landscape screening; and 3) light well location. Regulating garages in basements remained the same with the addition of a screening requirement such as a gate in the front, landscape screening, or driveway design. No changes were made to the floor area calculations. Deputy Town Planner Costa Sanders responded to Council's questions.

Mayor Alan Carlson opened the public hearing.

Deputy Town Planner Costa Sanders read a letter from Steve Dostart into the record in support of the ordinance.

Steven Ackley, Bellbrook Way, presented slides indicating good and bad examples of underground garages, built within the past 5 years, and believed landscape screening was the key. He was currently in the appeal process with his home where he built a basement under an accessory structure. He urged Council to approve the ordinance.

Herman Christensen, Park Lane, believed the ordinance lacked criteria to ensure that allowing 120% of the floor area for a basement under the main building was a rare occurrence. The fact that a basement garage did not count toward the Floor Area Ratio (FAR) indicated a preference for underground garages. He believed a surface garage could be just as nicely designed. In fairness, all basements should be part of the FAR. The ordinance itself did not address the issue of light wells.

Bill Carlomagno, Walsh Road, supported the amended ordinance. He believed basements increased property values in Atherton and, when properly designed, had no visual impacts.

Todd Beardsley, Atherton, said the General Plan Committee and Planning Commission had put forth a reasonable solution. He believed it was counterproductive to keep looking at new angles and new possibilities to regulate.

Mary Ann Ackley, Bellbrook Way, said her home was the original home built 50 years ago and had a lot of character. The ability to put a basement under an accessory structure was a cost-effective way to add onto the property without changing the footprint of the existing home. She believed there would be more historic homes if people were allowed to put more of the modern additions underground. She urged Council to pass the ordinance.

Dave Welsh, Ralston Avenue, supported the ordinance as recommended. He believed all ordinances had room for abuse. Generally, there was a need for clarity around what could be done. Putting more mass underground would continue to make the greenery and shrubbery a highlight.

Carol Flaherty, Camino Los Arboles, supported the ordinance. She believed the proposed ordinance represented a good, reasonable compromise. She did not see the reason for a CUP due to timelines for going to the Planning Commission and being within the guidelines as defined. She believed any drainage problem could be solved with the right type of drainage plan.

Brad Smith, Menlo Park, Peninsula Pacific Group, had many clients in the Town. Prior to 1992, basements were allowed under accessory structures. The issues had been discussed at all levels and he urged Council to pass the ordinance.

George Garrick, Barry Lane, had been following the process, as he wanted to put a basement under an accessory structure on his property. A basement was an opportunity to have additional space at a reasonable cost. He urged Council to

approve the recommendation of the Planning Commission; the ordinance was a great compromise.

Paul Reyff, Atherton Avenue, supported underground basements and thought they should be allowed anywhere within the buildable area. He supported basements under accessory structures and underground garages, neither of which should count in the FAR. He urged Council to adopt the ordinance.

Mayor Carlson closed the public hearing.

Council Member Jerry Carlson was concerned that with the drainage study underway and not yet concluded, possible findings might affect basements. Additionally, he thought criteria needed to be defined regarding CPUs.

Vice Mayor Janz was also concerned about the timing of the drainage study. He questioned the process PMC would use for updating the zoning code.

Deputy Town Planner Costa Sanders said PMC was to look throughout the zoning code for any inconsistencies and to look at some best practices that might be added as well. Every zoning code was unique to its own community, and Atherton was one of the more unique. The consultant would need to understand Atherton and its goals and objectives.

City Manager Jim Robinson said the purpose of the study was to clarify what was in the code to make it more readable and understandable.

Council Member Marsala said the issue of basements had been reviewed for over a year and he wanted to move forward that evening. Both the General Plan Committee and Planning Commission reviewed the issue, and a large percentage of residents saw the value in basements. He did not see the need for a CPU. If drainage became an issue, it could be resolved at a later time.

Council Member McKeithen thought basements were a good idea. The issue was with how much space should be allowed. New facts were about to come forward in the drainage study and not to pay heed to the study would be fool-hearty. She believed problems could be avoided by delaying the decision another month. Additionally, she was not entirely convinced there was a need for a CUP; however, if there were the requirement, criteria should be defined.

Mayor Carlson said he and Vice Mayor Janz had the advantage of sitting through several meetings regarding the issue. Basements were allowed in the Town and what was being considered that evening was the possibility of lifting restrictions on basements. The proposed ordinance expanded the ability of residents to have basements; but if a resident wanted to expand further, there was the requirement for a CUP to be reviewed by the Planning Commission on a case-by-case basis. The CUP was intended for circumstances for those wanting to go beyond the limits. A possible flaw in the ordinance regarded provision C1. He suggested adding language that said, "When there was a light well beyond a certain size, landscape screening be required."

He agreed with Council Member McKeithen that Council needed to wait for the completion of the drainage study. He also thought Council needed to revisit the sprinkler ordinance to require sprinklers in all basements, without exception. He thought the decision should be delayed to the next meeting.

Council Member Carlson concurred the item should be continued to the next meeting.

Vice Mayor Janz agreed the drainage study and sprinkler ordinance were both issues currently; however, he was a concerned about how long it might get dragged out. The drainage study would only affect basements built under the new criteria, not those built under the current criteria. He thought the benefit for waiting for the drainage study was reduced. He agreed with adding landscape screening for light wells. He was not opposed to continuing it; however, he was also not opposed to passing it that evening with the amendment regarding landscape screening for light wells.

Council Member Marsala believed that 95% of basements worked. He supported the sprinkler requirement but thought that could be handled through the sprinkler ordinance. There had been a lot of input over a long period of time. He made the following motion:

MOTION – to introduce the ordinance, adding Section 17.08.032, and amending Section 17.08.020, 17.08.054, and 17.36.190 of the Atherton Municipal Code placing limits on basements within the Town of Atherton, with the an amendment to C1 regarding landscape screening on light wells

Council Member McKeithen reiterated the need to wait to hear the results from the consultant regarding the drainage study.

Mayor Carlson said Council needed to delay its decision for 30 days to give staff an opportunity to draft language for screening light wells and to develop some standards for a CUP. Currently, sprinklers were required in all newly constructed basements over 250 square feet. He would personally like to include a sprinkler requirement in basement remodels.

Building Official Mike Wasmann clarified that sprinklers were required in any new structure over 1,000 square feet. Any basement under an existing building did not require sprinklers at the current time.

The motion died for lack of a second.

MOTION – to continue the item to the City Council meeting of June 20, 2007, with direction to staff to prepare additional language consistent with Council’s discussion

M/S J.Carlson/McKeithen

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

REGULAR AGENDA (Items 19-26)

19. CONSIDERATION OF ADOPTION OF A RESOLUTION MAKING FINDINGS ON APPEAL OF THE PROPERTY OWNERS AT 84 WALNUT AVENUE FROM A DETERMINATION BY THE BUILDING OFFICIAL CHAPTER 17.44 OF THE ATHERTON MUNICIPAL CODE)

City Attorney Marc Hynes said the draft resolution set forth findings to Council's action regarding the appeal from the determination of the Building Official for 84 Walnut Avenue.

Council Member McKeithen said the resolution needed to reflect that the appeal was considered on one date and reconsidered on another date. Additionally, No. 2 needed to be changed to indicate the appellant was present at both hearings. She did not agree with the statement in No. 3 that indicated all the testimony and evidence was received without objection. She had objected to some of the evidence.

Mayor Alan Carlson said, "without objection" referred to "evidentiary objection," such as hearsay. He suggested restating the wording to say, "*without evidentiary objection.*"

Council Member Jerry Carlson did not believe evidence had been presented to indicate that the removal of the original walls was accidental.

Vice Mayor Janz suggested changing the language in section D to say, "during the course of construction the contractor involved in demolition, *without authority*, knocked down...."

Council Member McKeithen did not agree to the findings. She would vote in opposition to the resolution.

MOTION – to adopt Resolution No. 07-14, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON UPHOLDING APPEAL OF BUILDING OFFICIAL DETERMINATION FOR 84 WALNUT AVENUE, ATHERTON," with changes as discussed,

M/S Janz/Marsala Ayes: 4 Noes: 1 (McKeithen) Absent: 0 Abstain: 0

20. CONSIDERATION OF ADOPTION OF A RESOLUTION MAKING FINDINGS ON APPEAL OF THE PROPERTY OWNERS AT 370 ATHERTON AVENUE FROM A DETERMINATION BY THE BUILDING OFFICIAL RELATED TO 384 ATHERTON AVENUE (CHAPTER 17.64 OF THE ATHERTON MUNICIPAL CODE)

City Attorney Marc Hynes said the draft resolution set forth findings to Council's action regarding Council's action, upholding in part and denying in part, the determination by the Building Official regarding 384 Atherton Avenue.

Council Member McKeithen requested that the resolution be split into two resolutions; one upholding part of the appeal, and one denying part of the appeal. She agreed with

By consensus, Council authorized the expansion of services provided by Neal Martin and Associates to provide the services of a part-time planner in the Building Department to assist in the review of building permit plans.

22. REQUEST TO REFER THE REVIEW OF BUILDING HEIGHT LIMITS WITH SOLAR PROJECTS TO THE GENERAL PLAN COMMITTEE

Deputy Town Planner Lisa Costa Sanders said a recommendation from the General Plan Committee and the Environmental Programs Committee was to refer the item to the General Plan Committee for further discussion. As an alternate recommendation, she believed the issue could also be handled along with the zoning code update.

Mayor Alan Carlson did not have objection to either referring the item to the consultant reviewing the zoning code or to the General Plan Committee. He noted there was a height limit in Town and believed neighbors would not want to see a higher building regardless of it being solar panels. He believed it was inconsistent with the intent of the zoning code.

Council Member Jerry Carlson thought the issued should be studied.

Vice Mayor Janz thought the consultant from PMC should review the issue, along with chimneys.

Council Member Marsala said there were roofs in Town that were built to the height maximum, but by allowing them to extend a foot or two, could allow for solar. The trees in Atherton also prohibited sun from generating electricity in some areas which limited where solar panels could be placed. He wanted to expand the item so that the General Plan Committee could consider solar in the setback areas.

Council Member McKeithen agreed that PMC should review the issue.

Mayor Carlson concurred that PMC should look at all aspects of solar with respect to zoning.

By consensus, Council directed staff to refer the issue to PMC for review. Deputy Town Planner Costa Sanders was designated to keep a list of the items to be reviewed by PMC.

23. CONSIDERATION OF A MASTER RESOLUTION FOR COMMITTEES

City Attorney Marc Hynes said the draft resolution before the Council was an attempt to put all of the Town's committees/commissions in one place and suggested changing the Park & Recreation Commission to the Park & Recreation Committee in the interest of uniformity. Some of the committees needed to better define their powers and duties. With the regard to the Tree Committee, members currently served indefinitely, and the blanks were left intentionally.

Council Member Jerry Carlson, agreed that the duties needed to be better defined.

City Attorney Hynes clarified that the Planning Commission was not included because it was required to be established by ordinance and would remain in the Municipal Code.

Council Member Marsala thought the Park and Recreation Commission should not be changed to the Park and Recreation Committee.

Council Member McKeithen noted the Emergency Preparedness Committee needed to be added. She suggested circulating the draft resolution to each committee for its input.

By consensus, the City Council directed staff to circulate to the draft resolution to the committees/commissions for their input.

Mayor Carlson called for a recess at 9:45 p.m. The meeting was reconvened at 9:52 p.m.

24. DISCUSSION AND FINALIZATION OF GOALS AND OBJECTIVES

City Manager Jim Robinson said the objective that evening was to add any additional goals, the list would be circulated among the Council for ranking, and the item would be returned to the meeting of June 20, 2007. In addition, some items had been added after staff reviewed agendas from the previous 9 months and included a number of other suggestions.

Council Member McKeithen suggested combining the items into a single list, removing any of those that had been completed, circulate the list for Council to rate, and return the comprehensive list to Council for consideration and determination for future review.

Council Member Jerry Carlson asked Assistant to the City Manager Wendé Protzman to explain how goals and objectives were used for evaluation purposes in the City of San Mateo where she previously worked. He envisioned in the future, that the Town would have a set of goals and objectives that could be used for evaluation purposes for the City Manager and staff.

Assistant to the City Manager Wendé Protzman described the process of using goals and objectives as a means to develop work plans that were ultimately tied to staff evaluations at all levels, as well as tied to the budget with performance standards. Each department reviewed the work plans/goals on a quarterly basis with the Manager's office to determine status, funding, other priorities, whether performance measure had been met, etc.

City Manager Jim Robinson noted he had seen the annual report that was distributed to all the residents in San Mateo and was impressed with the document and the fact that the residents were made aware of the accomplishments that had been achieved.

By consensus, the City Council asked for the item to be scheduled on the same agenda as the meeting to discuss the Fiscal Year 2007/2008 Budget.

25. DISCUSSION AND CONSIDERATION TO SCHEDULE A SPECIAL MEETING TO DISCUSS THE FISCAL YEAR 2007/2008 BUDGET

Recommendation: The City Council to select a date for a Special Meeting to consider the Draft FY 2007-2008 Operating and Capital Budget.

After a short discussion to determine a date, the item was continued to the Special meeting of May 21, 2007.

26. DISCUSSION AND POSSIBLE ACTION REGARDING A RECRUITMENT PROCESS FOR A CITY MANAGER

City Manager Jim Robinson provided the Council with three alternatives including the steps necessary for recruiting a City Manager: 1) the City Council, with staff support, could do the recruitment; 2) consider the services of a professional recruitment firm to assist the Council; and 3) a hybrid process. Other cities on the Peninsula were involved in a recruitment process for a new City Manager. One advantage of using a professional recruiter was the ability to get the word out, as well as taking the burden off a small staff that was already involved in two recruitment processes. His recommendation was to use, for at least part of the process, a professional recruitment firm.

Council Member McKeithen said the Town did not have good results when it used a professional recruiting firm previously. She believed the Council could do the recruitment on its own. Résumés could be sent to a post office box to ensure anonymity, reviewed by Council and pared down to five or so, a citizens committee could be formed, etc. The process was far less expensive, expeditious, and more inclusive.

Mayor Alan Carlson thought the advantage of using a professional search firm was the fact the firm had contacts and could ferret out applicants that might not otherwise apply. He was in favor of using a search firm and included City Council participation in the process.

Council Member Jerry Carlson was in favor of a hybrid process, utilizing a professional firm for establishing criteria for a preferred candidate, etc., which would expedite the process.

Vice Mayor Janz leaned toward using a professional recruiting firm with Council and public participation. He thought there would be some advantage in talking to Bob Murray, Associates, a recruiter who was engaged in other processes on the Peninsula and might have insight as to who might be interested in making a change.

Council Member McKeithen was in favor of a hybrid process as long as participation of the Council and residents was included in the process. She suggested securing some bids.

City Manager Robinson suggested soliciting proposals from search firms asking them to identify key steps, determining those that the Town could do, with an emphasis on public participation.

By consensus of the City Council, the City Manager was directed to solicit a request for proposals from approximately five consultant firms to make a presentation before the Council.

27. COUNCIL REPORTS

- Vice Mayor Janz noted an ABAG meeting the next evening where the main item was a presentation regarding the Sub-regional Housing Needs Application with a discussion regarding the assignment of regional needs and details of the allocation process. He announced the CETS group would be meeting the next week.**
- Council Member Marsala participated in a bocce tournament. Earth week events were successful thanks to Valerie Gardner and the Environmental Programs Committee, Town Arborist Kathy Hughes Anderson, and other staff members.**
- Council Member McKeithen noted the Finance Committee discussed the zoning code update by PMC, the request for a part-time planner through Neal Martin and Associates, and the budget. Additionally, the adjustment to building fees was discussed with direction to Mike Wasmann to ensure the costs of the Building Department were recovered, e.g., the part-time planner, the permit technician and the permit tracking software. In addition to increases, decreases would be evaluated to ensure fairness. The Peninsula Traffic Congestion Alliance met and also had a retreat where staffing and shuttle ridership were discussed. The Office of Emergency Services met and discussed the tsunami notification system with many layers. A CERT program was being contemplated to include makeup classes within the county.**
- Vice Mayor Janz noted a communication from the Transportation Authority indicating it would no longer fund the train shuttle service after the end of the fiscal year. He suggested some of the other shuttle services might be able to perform the service.**

28. PUBLIC COMMENTS

Dr. Norman Tong, Walsh Road, thanked the City Council for its patience while he built his home. Additionally, he was the President of the Board of Governors of the Stanford University Medical Center Alumni Association and offered his help to the Town and its residents who might need medical care.

29. ADJOURNMENT

Mayor Alan Carlson adjourned the meeting at 10:38 p.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**



DRAFT MINUTES
Town of Atherton
JOINT MEETING OF THE
CITY COUNCIL/MENLO
PARK FIRE PROTECTION
DISTRICT BOARD
MAY 21, 2007

5:00 p.m.

Pavilion

**Holbrook-Palmer Park, 150 Watkins Avenue
Atherton, California**

SPECIAL MEETING

The meeting was called to order by Mayor Alan Carlson at 5:04 p.m.

ROLL CALL

PRESENT: City Council Members James R. Janz, Jerry Carlson, Charles E. Marsala, Alan B. Carlson, Kathy McKeithen ; MPFPD Directors John Osmer, Peter Carpenter, Ollie Brown, Bart Spencer, Rex Ianson

Also present were City Manager Jim Robinson, City Attorney Marc Hynes, MPFPD Chief Harold Shapelhouman, District Counsel Bryan Otate, and various staff members from both organizations.

COMMENTS BY THE MAYOR/BOARD PRESIDENT

MPFPD President Ollie Brown and Mayor Alan Carlson made opening comments, welcoming everyone to the Joint meeting.

REGULAR AGENDA

- 3. GENERAL POLICY OF COOPERATION BETWEEN THE TOWN COUNCIL AND THE MENLO PARK FIRE PROTECTION DISTRICT (MPFPD) BOARD**
 - A. DISCUSS AND CONSIDER THE POLICY QUESTION OF DELEGATION OF DEVELOPMENT PLAN REVIEWS BY THE TOWN TO THE MPFPD**
 - B. DISCUSS AND CONSIDER THE MPFPD'S REQUEST AND CIVIL GRAND JURY RECOMMENDATION TO REQUIRE MPFPD APPROVAL PRIOR TO ISSUANCE OF A BUILDING PERMIT**

suggestion was the item could be in written format scheduled on the Consent Calendar. Staff was directed to work out the details.

5. DEVELOP PROCEDURES FOR NOTIFICATION OF NEW RISKS AND SIGNIFICANT INFRASTRUCTURE ISSUES

- A. THE TOWN AND MPFPD JOINTLY LOOK AT A BROADER FIRE RISK ANALYSIS OF THE TOWN INVOLVING WATER SUPPLY, MAIN SIZE, HYDRANT FLOW, HYDRANT SPACING, GATE ACCESS, HOME LOCATION ON LOTS AND BASEMENT LOCATIONS**
- B. DISCUSS AND CONSIDER THE MPFPD STRATEGIC PLAN AS IT RELATED TO THE FIRE FLOW/INFRASTRUCTURE NEEDS OF THE DISTRICT**

A discussion took place regarding the roles of the MPFPD/California Water Service/Town of Atherton and water flow/infrastructure needs. Darin Duncan, Cal Water, was present for the discussion. There were many areas in the Town with tremendous water flow, while some areas had less. Eighty percent of the system provided 1000-2000 gallons per minute; however, that did not meet the need for big houses. The MPFPD and Cal Water reviewed new development. The California Public Utilities Commission required the homeowner to pay for additional fire demand water flow. Cal Water was developing a specific plan and needed to raise rates to pay for infrastructure. Cal Water already worked closely with both agencies. Further discussion ensued regarding how new issues would be resolved between the jurisdictions. Mayor Carlson asked City Manager Robinson to schedule a presentation from Cal Water at the City Council meeting of June 20, 2007.

6. DISCUSS AND CONSIDER A VOLUNTARY PROGRAM FOR HOME OWNERS TO SUBMIT INFORMATION FOR PRE-FIRE PLANS

The MPFPD provided free safety inspections. Mayor Carlson suggested developing a survey form that could be distributed with the Town's newsletter, the *Athertonian*, whereby residents could voluntarily send it back to the MPFPD. Chief Shapelhouman thought scheduling a meeting for the City Council showing how the MPFPD operated would be beneficial. Having fire plans was critical, tactical information for firefighters.

No. 6 & 7 could both be incorporated into the *Athertonian* to explain what an inspection would do, how pre-information would help firefighters such as whether anyone had a medical condition. Chief Shapelhouman and City Manager Robinson were to coordinate articles for the *Athertonian*.

7. DISCUSS AND CONSIDER AN INSPECTION PROGRAM FOR EXISTING STRUCTURES

Director Carpenter suggested a citywide inspection program should be developed to inspect basements built years ago and designated as unoccupied space. In his opinion, a number of basements had been converted to livable space without permits, were nonconforming, without secondary exists, etc. A discussion ensued regarding the danger and life-safety issues, as well as the legality/merits of an annual Town-wide inspection program. Some participants believed the issue was one of education, i.e., informing residents to think about the consequences/risks to firefighters. Another suggestion was to provide a visual display, a demonstration where residents could see how fast fire spread. Another alternative was suggested that the Town consider imposing a selling requirement with respect to basements. The basement was to be inspected and brought up to code before a sale was completed ensuring that whatever was done in the basement was done with a permit.

Adam Montgomery, representative of the Silicon Valley Association of Realtors, spoke regarding the point of sale requirement and believed it would be ineffective and was not supportive. He supported full disclosure.

After further discussion, the consensus was to use the *Athertonian* as a forum to educate residents to the risks of nonconforming basements and ask for voluntary inspection/compliance.

8. DISCUSS AND CONSIDER INSPECTING DEED RESTRICTIONS FOR NEW BASEMENTS

This item was not discussed.

9. DISCUSS THE REVIEW OF “SUBSTANTIAL” OPEN BUILDING PERMITS BY THE MPFPD; THE GRAND JURY RECOMMENDED THE CITY MANAGER REQUEST THE MPFPD EXAMINE ALL OPEN SUBSTANTIAL CONSTRUCTION PROJECTS

The discussion centered on whether the Building Department and Fire Prevention Office should work together to review open construction projects as they related to fire apparatus access and water flow. Acting Senior Building Official Mike Cully estimated there were 226 open permits and thought 200 man hours (100 for each jurisdiction) would be needed to review the files. The MPFPD wanted to review the open permits for Article 9 and life safety issues to let homeowners know if there was a problem. The MPFPD wanted to formalize a process to apply to open permits. New construction permits were already being reviewed by the MPFPD. Remodels needed to be defined as to what percentage (50% or other %) alteration or addition would be the threshold. The MPFPD wanted to go back and review all open permits that were new/and or 50% or more alteration or addition for site access and water flow. The Town would pull the plans for the MPFPD and the MPFPD would negotiate between

the MPFPD and the resident for a resolution. Mayor Carlson was agreeable except when/if the MPFPD and the resident could not come to an agreement for a remedy. He did not want it to fall back to the Town for resolution. He suggested the MPFPD develop a policy when/if a homeowner did not agree.

Director Peter Carpenter made a motion for staff to review open permits regarding Article 9 issues, working with the Building Department to resolve issues to the maximum degree possible.

Following further discussion and the inability to agree on additional language regarding the remedy for a failure to come to agreement between the resident and the MPFPD, the motion was withdrawn.

Mayor Carlson believed the City Council needed to discuss the issue further and asked for the item to be placed on the City Council agenda of June 20, 2007. Additionally, he believed there was a third category to discuss regarding already occupied residences.

10. DISCUSS AND CONSIDER REVIEWING THE EXISTING TOWN SPRINKLER ORDINANCE THAT WAS ADOPTED IN NOVEMBER 2004

A. THE CITY COUNCIL AND MPFPD BOARD DISCUSS AND AGREE UPON POTENTIAL REVISIONS TO THE ATHERTON SPRINKLER ORDINANCE, SPECIFICALLY FOR ALL BASEMENT SUBMITTALS AND 50% THRESHOLDS FOR REMODELED RESIDENTIAL STRUCTURES

A short discussion ensued regarding the requirements for sprinklers, specifically in basements and 50% or more alterations/additions in remodels. The City Council was agreeable to discussing an amendment and asked that the item be put on the City Council agenda for June 20, 2007.

11. PUBLIC COMMENTS

Council Member Marsala asked for the record to be changed regarding a Council vote on an issue in a previous Closed Session. The record indicated a unanimous vote of the Council, and Council Member Marsala had actually voted “no.” The City Clerk would amend the record.

12. DISCUSSION AND CONSIDERATION TO SCHEDULE A SPECIAL MEETING TO DISCUSS THE FISCAL YEAR 2007/2008 BUDGET

The City Council agreed to set Monday, June 18, 2007, as the date for a Special Meeting to consider the Draft FY 2007-2008 Operating and Capital Budget.

13. ADJOURNMENT

The meeting was adjourned at 9:28 p.m.

Respectfully submitted,

Kathi Hamilton
Acting City Clerk

TOWN OF ATHERTON
CLAIMS LIST
 May, 2007

| | | |
|----------------------|---------------|--------------------|
| Payroll Checks | 9645 - 9716 | \$ 15,994 |
| Electronic Transfers | | 366,026 |
| A/P Checks | 23985 - 24162 | 731,285 |
| TOTAL | | \$1,113,305 |

I, James H. Robinson, City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 9645 - 9716 (payroll) and 23985 - 24162 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$1,113,305; are true and correct, and that there are sufficient funds for payment.

James H. Robinson
City Manager

The above claims, check numbers 9645 - 9716 (payroll) and 23985 - 24162 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$1,113,305; are true and correct, and are authorized for payment.

Alan Carlson
Mayor, Town of Atherton

SOURCE OF FUNDS

| | | |
|--------------|-------------------------------|--------------------|
| 101 | General Fund | \$765,652 |
| 105 | Tennis Fund | - |
| 201 | Special Parcel Tax | 283,124 |
| 202 | Transportation | - |
| 203 | Gas Tax Fund | - |
| 210 | Road Construction Impact Fees | 988 |
| 211 | Park Grants Fund | - |
| 213 | Library Special Revenue Fund | 1,654 |
| 401 | General Capital Projects | - |
| 402 | Storm Drainage | - |
| 403 | Atherton Channel District | 1,837 |
| 406 | Facilities Construction | - |
| 610 | Vehicle Replacement | - |
| 611 | Computer Maint. & Replacement | 56,903 |
| 612 | Administrative Services | 2,919 |
| 715 | Evans Estate | 228 |
| 740 | Tree Committee | - |
| TOTAL | | \$1,113,305 |



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: JOHN P. JOHNS, FINANCE DIRECTOR

DATE: FOR THE MEETING OF JUNE 20, 2007

SUBJECT: MONTHLY FINANCIAL REPORT, MAY 2007

RECOMMENDATION:

Receive the Monthly Financial Report for May 2007.

INTRODUCTION:

The attached schedules show revenues, expenditures and fund balance for all funds as of May 31, 2007.

HIGHLIGHTS

General Fund expenditures for the eleven months ended May 31, 2007, have amounted to \$8,279,674, or 87% of the \$9,480,065 budgeted for the fiscal year. For the eleven months ended May 31, 2007, General Fund revenues amounted to \$8,431,747, or 105% of the \$8,018,670 estimated for the year.

By comparison, General Fund expenditures amounted to 84% of appropriations for the eleven months ended May 31, 2006. Additionally, General Fund revenues amounted to 98% of estimated revenues for the eleven months ended May 31, 2006.

FISCAL IMPACT:

None

Prepared by:

Approved by:

John P. Johns
Finance Director

James H. Robinson
City Manager

TOWN OF ATHERTON
Revenue Summary
For the Month ended May 31st, 2007

| Fund | Revenue Source | 2006-07 Estimate | Current Period Revenues | Year to Date Revenues | % Received |
|-------------|------------------------------------|-----------------------------|------------------------------------|----------------------------------|-----------------------|
| | Property Tax | \$ 4,135,402 | 262,302 | 4,109,651 | 99% |
| | Sales and Use Tax | 157,500 | 13,886 | 194,034 | 123% |
| | Other Taxes | 1,111,546 | 47,573 | 1,259,769 | 113% |
| | Licenses & Permits | 1,466,200 | 242,049 | 1,426,670 | 97% |
| | Fines & Forfeitures | 35,000 | 4,317 | 49,227 | 141% |
| | Revenue from Other Agencies | 395,215 | 4,020 | 175,715 | 44% |
| | Charges for Services | 176,500 | 19,049 | 271,597 | 154% |
| | Investment & Rental Income | 307,852 | 8,754 | 414,660 | 135% |
| | Other Revenues | 229,000 | 5,867 | 530,424 | 232% |
| | Total General Fund Revenues | <u>8,014,215</u> | <u>607,817</u> | <u>8,431,747</u> | <u>105%</u> |
| | Interfund (Operating) Transfers In | 4,455 | - | - | 0% |
| 101 | General Fund Total | <u>8,018,670</u> | <u>607,817</u> | <u>8,431,747</u> | <u>105%</u> |
| | Special Revenue Funds: | | | | |
| 105 | Tennis | 8,000 | 1,620 | 8,391 | 105% |
| 201 | Special Parcel Tax | 1,858,000 | 137,495 | 1,728,749 | 93% |
| 202 | Transportation | 265,000 | 21,639 | 257,832 | 97% |
| 203 | Street Improvement (Gas Tax) | 150,000 | 23,190 | 171,236 | 114% |
| 209 | Law Enforcement | 100,000 | - | 100,796 | 101% |
| 210 | Road Construction Impact Fees | 1,100,000 | 129,286 | 170,779 | 16% |
| 211 | State Park Grants Fund | 313,910 | - | - | 0% |
| 213 | Library | 200,000 | - | 93,914 | 47% |
| | Total | <u>3,994,910</u> | <u>313,230</u> | <u>2,531,697</u> | <u>63%</u> |
| | Capital Project Funds: | | | | |
| 401 | Capital Improvement | - | - | 8,556 | |
| 402 | Storm Drainage | 20,000 | - | 1,384 | 7% |
| 403 | Channel Drainage District | 50,000 | 3,819 | 60,135 | 120% |
| 406 | Facilities Construction | - | - | 2,090 | |
| | Total | <u>70,000</u> | <u>3,819</u> | <u>72,165</u> | <u>103%</u> |
| | Internal Service Funds: | | | | |
| 610 | Vehicle Replacement | 120,919 | - | 55,606 | 46% |
| 611 | Information Technology | 104,670 | - | 56,586 | 54% |
| 612 | Administrative Services | 303,221 | - | 158,703 | 52% |
| 614 | Workers Compensation Insurance | - | - | - | |
| | Total | <u>528,810</u> | <u>-</u> | <u>270,895</u> | <u>51%</u> |
| | Trust and Agency Funds: | | | | |
| 715 | Evans Creative Design | 14,500 | - | 5,489 | 38% |
| 740 | Tree Committee | 1,400 | 6,580 | 33,986 | 2428% |
| | Total | <u>15,900</u> | <u>6,580</u> | <u>39,475</u> | <u>248%</u> |
| | Total Revenues | <u>12,628,290</u> | <u>931,446</u> | <u>11,345,979</u> | <u>90%</u> |

TOWN OF ATHERTON
Expenditure Summary
For the Month Ended May 31st, 2007

| Fund | Description Department | 2006-07 Budget | Current Period Expenditures | Year to Date Expenditures | % Spent |
|--------------------------------|-------------------------------------|----------------------------|--|--------------------------------------|--------------------|
| 101 | General Fund | | | | |
| | 11 City Council | \$ 21,749 | \$ - | \$ 21,263 | 98% |
| | 12 City Manager | 504,360 | 36,424 | 431,745 | 86% |
| | 16 City Attorney | 188,337 | 66,878 | 376,509 | 200% |
| | 18 Finance | 448,576 | 34,067 | 393,361 | 88% |
| | 25 Building | 1,364,503 | 90,049 | 1,082,124 | 79% |
| | 40 Police | 4,696,248 | 366,371 | 4,129,452 | 88% |
| | 50 Public Works | 2,036,292 | 186,338 | 1,845,220 | 91% |
| | Disaster Preparedness | 120,000 | - | - | 0% |
| | Contingency | 100,000 | - | - | 0% |
| | Total General Fund Expenditures | <u>9,480,065</u> | <u>780,127</u> | <u>8,279,674</u> | <u>87%</u> |
| | Interfund (Operating) Transfers Out | - | - | - | 0% |
| 101 | General Fund Total | <u>\$ 9,480,065</u> | <u>\$ 780,127</u> | <u>\$ 8,279,674</u> | <u>87%</u> |
| Special Revenue Funds: | | | | | |
| 105 | Tennis | 5,522 | - | 3,670 | |
| 201 | Special Parcel Tax | 1,910,535 | 283,124 | 2,840,405 | 149% |
| 202 | Transportation | 444,500 | - | 15,000 | 3% |
| 203 | Street Improvement (Gas Tax) | 150,000 | - | 23,234 | 15% |
| 209 | Law Enforcement | 100,000 | 6,130 | 106,130 | 106% |
| 210 | Road Impact Fees | 1,470,000 | - | 1,523,736 | 104% |
| 211 | State Park Grants | 277,040 | - | 82,167 | 30% |
| 213 | Library Fund | 78,326 | 1,654 | 39,558 | 51% |
| | Total | <u>4,435,923</u> | <u>290,908</u> | <u>4,633,900</u> | <u>104%</u> |
| Capital Project Funds: | | | | | |
| 401 | Capital Improvement | - | - | - | |
| 402 | Storm Drainage | 21,394 | - | 2,963 | 14% |
| 403 | Channel Drainage District | 60,000 | 1,837 | 12,556 | 21% |
| | Total | <u>81,394</u> | <u>1,837</u> | <u>15,519</u> | <u>19%</u> |
| Internal Service Funds: | | | | | |
| 610 | Vehicle Replacement | 76,000 | - | 45,343 | 60% |
| 611 | Information Technology | 116,120 | 56,903 | 108,163 | 93% |
| 612 | Administrative Services | 288,342 | 14,135 | 276,604 | 96% |
| 614 | Workers Compensation Insurance | - | - | - | |
| | Total | <u>480,462</u> | <u>71,038</u> | <u>430,110</u> | <u>90%</u> |
| Trust and Agency Funds: | | | | | |
| 715 | Evans Creative Design | 11,500 | 228 | 1,403 | 12% |
| 740 | Tree Committee | - | - | 2,159 | |
| | Total | <u>11,500</u> | <u>228</u> | <u>3,562</u> | <u>31%</u> |
| | Total Expenditures | <u>14,489,344</u> | <u>1,144,138</u> | <u>13,362,765</u> | <u>92%</u> |

TOWN OF ATHERTON
Budget Summary
Fiscal Year 2006-07
As of May 31st, 2007

| Fund | Description | Beginning Fund Balance July 1, 2006 | Revenues to Date | Transfers to Date | Expenditures To Date | Ending Fund Balance to Date |
|-------------|--------------------------------|--|-----------------------------|------------------------------|---------------------------------|--|
| 101 | General Fund | 9,344,474 | 8,431,747 | - | 8,279,674 | 9,496,547 |
| | Special Revenue Funds: | | | | | |
| 105 | Tennis | 23,692 | 8,391 | | 3,670 | 28,413 |
| 201 | Special Municipal Tax | 1,005,832 | 1,728,749 | | 2,840,405 | (105,824) |
| 202 | Transportation | 527,577 | 257,832 | | 15,000 | 770,409 |
| 203 | Street Improvement (Gas Tax) | 102,874 | 171,236 | | 23,234 | 250,876 |
| 209 | Law Enforcement | 10,437 | 100,796 | | 106,130 | 5,103 |
| 210 | Road Construction Impact Fees | 1,373,559 | 170,779 | | 1,523,736 | 20,602 |
| 211 | State Park Grants | - | - | | 82,167 | (82,167) |
| 213 | Library Special Revenue Fund | 1,947,286 | 93,914 | | 39,558 | 2,001,642 |
| | Sub Total | 4,991,256 | 2,531,697 | - | 4,633,900 | 2,889,053 |
| | Capital Projects Funds: | | | | | |
| 401 | Capital Improvement | 258,424 | 8,556 | | - | 266,980 |
| 402 | Storm Drainage | 43,455 | - | | 2,963 | 40,492 |
| 403 | Channel Drainage District | 36,039 | 60,135 | | 12,556 | 83,618 |
| 406 | Facilities Construction | - | 2,090 | | - | 2,090 |
| | Sub Total | 337,919 | 70,781 | - | 15,519 | 393,181 |
| | Internal Service Fund | | | | | |
| 610 | Vehicle Replacement | 440,370 | 55,606 | | 45,343 | 450,633 |
| 611 | Information Technology | 89,739 | 56,586 | | 108,163 | 38,162 |
| 612 | Administrative Services | 198,175 | 158,703 | | 276,604 | 80,274 |
| 614 | Workers Compensation Insurance | 10,871 | - | | - | 10,871 |
| | Sub Total | 739,155 | 270,895 | - | 430,110 | 579,940 |
| | Trust and Agency Funds | | | | | |
| 715 | Evans Creative Design | 117,345 | 5,489 | | 1,403 | 121,431 |
| 740 | Tree Committee | 24,558 | 6,580 | | 2,159 | 28,979 |
| | Sub Total | 141,903 | 12,069 | - | 3,562 | 150,410 |
| | Grand Total | \$ 15,554,708 | \$ 11,317,189 | \$ - | \$ 13,362,765 | \$ 13,509,132 |



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: WENDÉ C. PROTZMAN, ASSISTANT TO THE CITY MANAGER

DATE: FOR THE MEETING OF JUNE 20, 2007

**SUBJECT: AUTHORIZATION TO ENTER INTO AN AGREEMENT AND PURCHASE
THE CRW PERMIT TRACKING SOFTWARE SYSTEM**

RECOMMENDATION

Staff recommends that City Council authorize staff to enter into an agreement and purchase the CRW Permit Tracking Software System.

BACKGROUND

During the January 17, 2007, Council meeting, City Council authorized staff to enter into negotiations with CRW Systems to develop a purchase agreement for subsequent consideration and approval by Council. Since then, staff has coordinated a presentation of the software system and provided CRW Systems a request for proposal outlining all the system and support requirements the Town has deemed to be essential. CRW came back with a response to the proposal and a price quote for staff review.

ANALYSIS

CRW Permit Tracking System meets all of the Town's requested system and support requirements, as well as many features the Town is interested in implementing in the future. As stated in a previous staff report, CRW System's permit tracking software and customer service support rated high among current users and is used by many Bay Area cities.

FISCAL IMPACT

CRW is offering the Town a bundled package of all the modules with ten licenses for \$153,500. This includes implementation, data conversion, CRW business expenses, and training. This quote is well within the amount budgeted for this project. In preparation for the system, we have also budgeted for upgrading the capacity of our server system to handle the new software. The new server, which also provides backup protection for other Town applications, is \$6,000.

Funding for the system will be coming from the reserve for future building inspection fund. Funding for additional modules will be requested based upon the progress of implementation and the Department's business requirements in FY 2007-08.

CONCLUSION

In order to move forward with Council's request to purchase a permit tracking software system, Council should instruct staff to enter into negotiations with CRW Systems and develop a purchase agreement.

Prepared by:

Approved by:

Wendé C. Protzman
Assistant to the City Manager

James H. Robinson
City Manager

Attachment

COST SUMMARY

CRW Systems has provided the City of Atherton with a reasonable assessment based on your Agency's needs for the TRAKIT system. Our Proposal is for a lump-sum, or fixed-fee based project. CRW's policy for pricing is not to bill on a T&M or hourly basis; instead we offer a 'turnkey' approach to project implementation, so that your agency is fully aware of the total project cost at the beginning of the project. This Cost Proposal is valid for a period of 90 days from the below-mentioned date.

Below is a cost breakdown of our licensing, implementation, data conversion, training, travel, and any customized service expenditures required for a successful execution of the TRAKIT system. Based on our prior experience for projects of similar size to the one proposed, CRW has prepared the following:

| | | 5 User License | |
|--|----|--------------------|----------------------------|
| 1. Licensing Fees | | | |
| TRAKIT License (includes all modules) | \$ | 50,000 | - 5 users |
| Observer License (if required) | \$ | - | 0 observers |
| IVR Interface (if required) | \$ | - | 0 interface |
| 3rd Party IVR System | \$ | - | |
| Sub-total: | | | \$ 50,000 |
| 2. Implementation | | | |
| Kick-off Meeting | \$ | 2,500 | - 1 days |
| Business Process Review (BPR Meeting) | \$ | 2,500 | - 1 days |
| Project Meetings (on-site) | \$ | 7,500 | - 3 days |
| System Configuration | \$ | 15,000 | - 10 class. types |
| Setup of Basic Control Tables | \$ | 15,000 | - 10 class. types |
| Development of Custom Reports | \$ | - | 0 reports |
| Development of Custom Forms | \$ | 3,000 | - 2 forms |
| System Installation | \$ | 1,500 | |
| CRW Go-Live Support | \$ | 2,500 | - 1 days |
| Sub-total: | | | \$ 49,500 |
| 3. Data Conversion (if required) | | | |
| LandTRAK, GIS, Assessor, etc. | \$ | 3,000 | |
| Permits & Inspections | \$ | 3,000 | |
| Planning | \$ | 2,000 | |
| Code Enforcement | \$ | 2,000 | |
| Sub-total: | | | \$ 10,000 |
| 4. Training Services | | | |
| End User Training | \$ | 10,000 | - 4 days |
| Power User Training | \$ | 7,500 | - 3 days |
| System Administrator Training | \$ | 1,500 | - 1 seats |
| Report Writing Course | | | Included in Admin Training |
| Sub-total: | | | \$ 19,000 |
| 5. Travel & Expenses | | | |
| | | | \$ 15,000 |
| 6. Contingencies / Customizations | | | |
| Financial System Integration | \$ | - | none required |
| Other Customizations | \$ | - | none required |
| Sub-total: | | | \$ - |
| Total of TRAKIT Installation: | | | \$ 143,500 |
| | | Annual Maintenance | |
| TRAKIT Annual Maintenance Fee | \$ | 8,000 | - 5 users |
| Observer Annual Maintenance Fee | \$ | - | 0 observers |
| IVR Annual Maintenance Fee | \$ | - | 0 interface |
| Total of Annual Maintenance: | | | \$ 8,000 |

* Annual Maintenance Fee is waived for first 12 months from date of System Acceptance.

TRAKIT License Fees

The **TRAKIT** license fees shown below include all **TRAKIT** modules, including PermitTRAK, ProjectTRAK, CodeTRAK, LicenseTRAK, CRM TRAK, AEC TRAK, LandTRAK, eTRAKIT, MobileTRAK, as well as all standard Reports and System Utilities.

| # of Users | License Fee | Annual Maintenance Fee * |
|------------|-------------|--------------------------|
| 5 | \$50,000 | \$8,000 |
| 10 | \$60,000 | \$10,000 |
| 15 | \$70,000 | \$12,000 |
| 20 | \$80,000 | \$14,000 |
| 25 | \$90,000 | \$16,000 |
| 30 | \$100,000 | \$18,000 |
| 35 | \$110,000 | \$20,000 |
| 40 | \$120,000 | \$22,000 |
| 50 | \$130,000 | \$24,000 |
| 60 | \$140,000 | \$26,000 |
| 70 | \$150,000 | \$28,000 |
| 75 | \$160,000 | \$29,000 |
| Unlimited | \$200,000 | \$40,000 |

Two (2) optional licensing items:

Observer-only License - per 5 Observers

License fee: \$ 2,500
Annual Maintenance: \$ 500

API Interface for IVR system

License fee: \$ 10,000
Annual Maintenance: \$ 1,000

* Annual Maintenance fee is waived for the first year (12 months) from date of System Acceptance.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: WENDÉ C. PROTZMAN, ASSISTANT TO THE CITY MANAGER

DATE: FOR THE MEETING OF JUNE 20, 2007

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

RECOMMENDATION

Staff recommends that City Council authorizes the Mayor to execute an agreement with Redwood City for Information Technology services.

BACKGROUND

Since FY 2003/04, the Town has contracted with the City of Palo Alto for its information technology services. As of July 1, 2007, the City of Palo Alto will no longer be in the business of providing Information Technology services to outside agencies.

ANALYSIS

The current service level provided by the City of Palo Alto has sufficiently met the needs of the Town, and staff wants to ensure that, at a minimum, the same level of service is maintained through the new provider. Due to previous experience with contracted services that did not have a full-service IT Department to fall back on for technical and managerial expertise, staff has made this specification, as well as an understanding of local government operations, a priority. Along with these two prerequisites, a list of operational requirements was developed to evaluate potential service vendors. Among them are helpdesk capabilities; remote access for off-site service; full-service support from a team of knowledgeable staff; hardware, software, and website support; the

ability to provide recommendations for current and future IT needs; and contact services for external IT vendors and contractors.

With these requirements determined, a list of potential vendors was developed and, working with Palo Alto's IT manager, Redwood City's Information Technology Department was identified as the preferred vendor. A subsequent meeting with all three parties established similarities of the service being offered and service level expectations. Redwood City is available to start the first business day in July 2007. Palo Alto has offered its support and knowledge of our operation for the first month to guarantee a smooth transition.

FISCAL IMPACT

Redwood City can offer the current level of support of 5 hours a week of in-house service for \$2,679.95 a month (five hours per week for 52 weeks divided by 12). Service above and beyond the contract will be billed in fifteen minute increments at an hourly rate of \$123.69. This service has been funded in the FY 2007/08 budget.

CONCLUSION

In order to secure Information Technology services for FY 2007/08, Council should instruct staff to enter into an agreement with Redwood City's Information Technology Department.

Prepared by:

Approved by:

Wendé C. Protzman
Assistant to the City Manager

James H. Robinson
City Manager

Attachment: A. Redwood City Contract for Services
B. Insurance Coverage

Bay Cities Joint Powers Insurance Authority

1831 K Street, Sacramento, CA 95814

(916) 244-1170 ~ Fax (916) 244-1198

LIABILITY CERTIFICATE OF COVERAGE ADDITIONAL COVERED PARTY

CERTIFICATE NUMBER: 2007 - 4

CERTIFICATE HOLDER: **City of Atherton**

ATTN: Wendy Protzman
91 Ashfield Road
Atherton, CA 94027

COVERED PARTY: **City of Redwood City**

DESCRIPTION OF COVERED ACTIVITY:

As respects the City of Redwood City's contract to provide Information Technology services to the City of Atherton; the City of Atherton, its officers, employees, and agents are additional covered parties with regard to any negligent acts or omissions of the City of Redwood City, its officers, officials, employees, or volunteers.

MEMO POLICY NUMBER: BCJPIA 2006-1GL

EFFECTIVE DATE: 7/1/2007

LIMITS: \$1,000,000
(per occurrence)

EXPIRATION DATE: 6/30/2008

THE FOLLOWING COVERAGE IS IN EFFECT:

General and automobile liability as defined in the memorandum of coverage on file with the Covered Party named above.

This is to certify that the coverage listed above has been issued to the covered party named above for the policy period indicated, notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The coverage afforded as described herein is subject to all the terms, exclusions, and conditions of the memorandum of coverage of the Bay Cities Joint Powers Insurance Authority which is available for your review upon request.

Pursuant to Section (c) of the definition of "Covered Party" in the memorandum of coverage, the certificate holder named above is an additional covered party for covered claims arising out of the covered activity stated above and is subject to the limits stated above.

Coverage is in effect as stated above and will not be canceled, limited, or allowed to expire except upon 30-days written notice to the certificate holder.

Date Issued: 5/31/2007

Renewal: No

Excess Coverage Included: Yes

Risk Manager: _____



California Affiliated Risk Management Authorities

1831 K Street, Sacramento, CA 95814

(916) 244-1117 ~ Fax (916) 244-1198

LIABILITY CERTIFICATE OF COVERAGE ADDITIONAL COVERED PARTY

CERTIFICATE NUMBER: 2007 - 30

CERTIFICATE HOLDER: **City of Atherton**

ATTN: Wendy Protzman

91 Ashfield Road

Atherton, CA 94027

COVERED PARTY: **City of Redwood City**

DESCRIPTION OF COVERED ACTIVITY:

As respects the City of Redwood City's contract to provide Information Technology services to the City of Atherton; the City of Atherton, its officers, employees, and agents are additional covered parties with regard to any negligent acts or omissions for the City of Redwood City, its officers, officials, employees, or volunteers.

MEMO POLICY NUMBER: CARMA 2007-10GL

EFFECTIVE DATE: 7/1/2007

LIMITS: \$1,000,000
(per occurrence)

EXPIRATION DATE: 6/30/2008

EXCESS OF: \$1,000,000

THE FOLLOWING COVERAGE IS IN EFFECT:

General and Automobile Liability as defined in the memorandum of coverage on file with the Covered Party named above.

This is to certify that the coverage listed above has been issued to the Covered Party named above for the policy period indicated, notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The coverage afforded as described herein is subject to all the terms, exclusions, and conditions of the memorandum of coverage of the California Affiliated Risk Management Authorities, which is available for your review upon request.

Bodily injury and property damage coverage provided herein is as broad as general liability and auto liability ISO forms CG0001 and CA0001.

Pursuant to section (c) of the definition of "Covered Party" in the memorandum of coverage, the certificate holder named above is an additional covered party for covered claims arising out of the covered activity stated above and is subject to the limits stated above.

Coverage is in effect as stated above and will not be canceled, limited, or allowed to expire except upon 30 days written notice to the certificate holder.

Date: 5/31/2007

Renewal: No

Risk Manager: 



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JUNE 20, 2007

**SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH URS,
CORPORATION, FOR GEOTECHNICAL ENGINEERING SERVICES
FOR THE MARSH ROAD CHANNEL WALL PROJECT, IN AN
AMOUNT NOT TO EXCEED \$39,644.20 PLUS A TEN PERCENT
CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$43,608.62.**

RECOMMENDATION:

Accept the proposal and authorize the Mayor to sign a Professional Services Agreement with URS Corporation to provide Geotechnical Engineering services for the Marsh Road Channel Wall Project in an amount not exceed \$39,644.20, plus a 10% contingency, for a total authorization of \$43,608.62.

BACKGROUND:

In the summer of 2006, an emergency repair was performed on the Marsh Road wall of the Atherton Channel. URS Corporation provided geotechnical engineering services for that project on an emergency basis.

ANALYSIS:

Additional study is now needed to determine if additional remedial work is needed on the remainder of the wall, and if so, what type of repair would be most economical. Because URS already has considerable information about the site, it is recommended that they be retained to complete the geotechnical evaluation of the wall.

FISCAL IMPACT:

Parcel Tax funds in the amount of \$250,000 are budgeted for this project, including the emergency repairs that cost \$84,000 in FY 2006-07. The Scope of Services and Fee Estimate were negotiated with the selected firm. The final negotiated fee estimate is \$39,644.20. A 10% contingency of \$3,964.42 would bring the total authorization to \$43,608.62, which is within the approved budget.

Prepared by:

Approved by:

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

James H. Robinson
City Manager

Attachments: PSA with Scope of Services, Cost Estimate and Rate Sheet

**PROFESSIONAL SERVICES AGREEMENT FOR
Geotechnical Engineering Services for the Marsh Road Wall Project**

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and URS Corporation, hereinafter referred to as the "Consultant", in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. Project Designation. The Consultant is retained by the City to perform Geotechnical Engineering services in connection with the project designated as the Marsh Road Wall Project.
2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment and supplies.
3. Time for Performance. Work under this contract shall commence upon the giving of written notice by the City to the Consultant to proceed. Consultant receipt of a Purchase Order shall constitute said notice. Consultant shall perform all services and provide all work product required pursuant to this agreement within 90 calendar days from the date written notice is given to proceed, unless an extension of such time is granted in writing by the City.
4. Payment. The Consultant shall be paid by the City for completed work and for services rendered under this agreement as follows:
 - a. Payment for the work provided by Consultant shall be made as provided on Exhibit "B" attached hereto, provided that the total amount of payment to Consultant shall not exceed \$39,644.20, without express written modification of the agreement signed by the City.
 - b. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
 - c. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.
 - d. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.
 - e. The Consultant's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the City and state for a period of three (3)

Professional Services Agreement

years after final payments. Copies shall be made available upon request.

5. Ownership and Use of Documents. All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this agreement shall be the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Consultant's endeavors.

6. Compliance with laws. Consultant shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.

7. Indemnification. Consultant shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, including attorneys fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Consultant's own employees, or damage to property to the extent caused by a negligent act, omission or failure of the Consultant.

8. Insurance. The Consultant shall secure and maintain in force throughout the duration of this contract comprehensive general liability insurance with a minimum coverage of \$500,000 per occurrence and \$2,000,000 aggregate for personal injury, and \$500,000 per occurrence/aggregate for property damage. Said general liability policy shall name the Town of Atherton as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this section shall be delivered to the City within fifteen (15) days of execution of this agreement.

9. Independent Contractor. The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Consultant nor any employee of Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Consultant, or any employee of Consultant.

10. Covenant Against Contingent Fees. The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for

Professional Services Agreement

the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the City shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Assignment. The Consultant shall not sublet or assign any of the services covered by this agreement without the express written consent of the City.

12. Non-Waiver. Waiver by the City of any provision of this agreement or any time limitation provided for in this agreement shall not constitute a waiver of any other provision.

13. Termination.

a. The City reserves the right to terminate this agreement at any time by giving thirty (30) days written notice to the Consultant.

b. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this agreement between surviving members of the Consultant and the City, if the City so chooses.

14. Notices. Notices to the Town of Atherton shall be sent to the following address:

Duncan Jones, Atherton Public Works Director
91 Ashfield Road
Atherton, CA 94027

Notices to Consultant shall be sent to the following address:

Paul Boddie, URS Corporation
55 South Market Street. Suite 1500
San Jose, CA 95113

15. Integrated Agreement. This Agreement together with attachments or addenda represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only by written instrument signed by both City and Consultant.

Professional Services Agreement

DATED this _____ day of _____, 2007.

Town of Atherton

Consultant

By _____
City Manager

By _____

Approved as to Form

By: /s/ Marc G. Hynes
City Attorney



EXHIBIT A

SCOPE OF SERVICES

BACKGROUND

- Existing Atherton Channel is about 1,900 feet in length
 - Between Middlefield Road and Fair Oaks Avenue
 - Immediately adjacent to and parallel to southeast edge of Marsh Road
 - Open channel trapezoidal cross section
 - Lined with stones and mortar
 - Channel depth in 6 to 8 foot range
 - Built in 1940s and 1960s
 - Cracking along entire length of wall; some sections appear to be failing
 - No drawings or design information available
- Recent study limited to bulged wall (northwest side of channel) about 40 to 50 feet in length opposite house at 85 Marsh Road
 - One side adjacent to Marsh Road
 - Voids observed behind bulged wall, as deep as 2.5 feet
 - Settlement of asphalt concrete pavement immediately behind curb/hinge point; tension cracks observed along with suspect shear slide
 - Total height about 6.7 feet
- Present study is for full 1,900 foot length
 - Include results of recent study

URS SCOPE OF SERVICE

- Conduct reconnaissance of channel (Geotechnical Engineer, Structural Engineer and Staff Engineer)
 - Establish approximate stationing along alignment by roll-tape measurement
 - Document existing conditions of both channel side slopes and bottom for the full length, as well as adjacent 5 feet of pavement surface on Marsh Road



(written notes and photographs or video record); note types, approximate limits, and severity of distress

- Delineate approximate limits of distress on base map provided by Town
- Fill out forms and obtain drilling permit from County of San Mateo Health Department
- Clear utilities with USA
- Drill six borings to a depth of 30 feet with approximate spacings of 300 to 350 feet
- Tremie backfill borings with cement bentonite grout, cap with 6 inches of asphalt concrete or portland cement concrete
- Perform laboratory tests on soil samples
 - Moisture content, dry density
 - Unconfined compression
 - Direct shear to estimate residual shear strength for estimating soil nail bond stress
 - Atterberg limits
 - Gradation, if applicable
- Develop boring logs
 - Soil layers
 - Soil types using the USCS system
 - Include laboratory test results
- Provide geotechnical analysis
 - Discuss feasibility of upgrading/repairing the existing stone and mortar channel side slopes versus replacing them with a new wall similar to that recently constructed for emergency repair near 85 Marsh Road
 - Discuss feasibility of re-guniting upstream portion of channel north of Middlefield Road, where existing side slopes reportedly are not yet failing
 - Provide geotechnical design parameters (friction angle, cohesion, unit weight of soil) for soil nail wall
 - Provide preliminary design wall pressures, if needed
 - Bearing capacity, if applicable



- Prepare written report
 - Boring location plan
 - Boring logs
 - Subsurface conditions
 - Feasibility of wall repair
 - Wall pressure(s) for new construction
 - Bearing capacity
 - Estimated cost for wall repair or replacement with new soil nail wall
- Consult with wall designer/contractor
 - Evaluate retrofit vs. wall replacement strategy
 - Identify channel sections where wall replacement would be preferable
 - Estimate cost for channel upgrades
 - Meet with Town (one meeting)
- Review channel repair design package

ASSUMPTIONS

- Perform reconnaissance when channel is dry
- Borings drilled through pavement surface along Marsh Road
- Drill on weekdays between hours of 10am and 2pm
- Town provides all traffic control during
 - Reconnaissance along Marsh Road
 - Drilling
- Town cosigns County drilling permit
- Hazardous waste not encountered
- Cuttings can be disposed at the Town's corporation yard
- Total channel length is 1,900 feet
- Town provides base map suitable for documenting channel condition survey observations
- Town provides underdrain design along edge of Marsh Road, if needed



- Maximum of one meeting

BEYOND CURRENT SCOPE OF SERVICES

- Field survey of channel alignment and/or boring locations (horizontal and vertical control)
- Construction observations and testing
- Consultation during construction

Professional Services Agreement

EXHIBIT "B"
PAYMENT

1. Consultant shall be paid up to \$_____ as per Exhibit B-1 to complete the scope of work as outline in Exhibit "A".
2. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
3. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.

**URS CORPORATION
SAN JOSE OPERATIONS
FY 2007 SCHEDULE OF FEES AND CHARGES - TOWN OF ATHERTON**

The following describes the basis for compensation for services performed during the fiscal year 2007. This Schedule of Fees and Charges will be adjusted annually on January 1st to reflect merit and economic salary increases, and changes in the expected level and mode of operations for the New Year. The new Schedule of Fees and Charges will apply to existing and new assignments.

PERSONNEL CHARGES

The charge for all time required in the performance of the Scope of Services, including office, field and travel time, will be at the Unit Price Hourly Rates set forth below for the labor classifications indicated.

| Labor Classification | Hourly Rates |
|---|---------------------|
| Clerk* | \$68 |
| Technical Typist/Word Processor* | 72 |
| Drafter/Illustrator/Editor* | 89 |
| Senior Drafter/Illustrator* | 107 |
| Technician* | 79 |
| Senior Technician/Lab/Field Supervisor* | 113 |
| Assistant Staff Professional* | 92 |
| Staff Professional | 113 |
| Senior Staff Professional | 123 |
| Assistant Project Professional | 138 |
| Project Professional | 158 |
| Senior Project Professional | 179 |
| Consulting Professional | 189 |
| Senior Consulting Professional | 199 |
| Principal/Senior Principal Professional | 225 |

Charges for contract personnel under URS supervision and using URS facilities will be made according to the hourly rate corresponding to their classification. When staff are performing fieldwork on projects, a minimum daily charge of 4 hours will apply.

When URS staff appear as expert witnesses at court trials, arbitration hearings and depositions, their time will be charged at \$250 per hour.

Overtime (hours worked in excess of eight (8) hours per day) by exempt personnel will be charged at the above straight hourly rate. Overtime by non-exempt personnel (classifications identified by an asterisk “**”) will be charged at 1.5 times the above hourly rates.

Special project accounting reporting and financial services, including submission of invoice supporting documentation, will be charged at the rate of a clerk.

URS LABORATORY SERVICES

The charges for laboratory testing performed at URS facilities set forth in the Schedule of URS Laboratory Testing Charges.

OTHER PROJECT CHARGES

Subcontracts and other Non-Salary Expenses

The cost of services subcontracted by URS to others and other outside costs incurred by URS that are directly identifiable to the project will be charged at cost plus 10%.

Computers

The charge for use of in-house computers for spreadsheets, word processing and other similar functions is \$7.00 per hour. The charge for use of Computer-Aided Design and Drafting (CADD), graphics generation, modeling applications and similar technical computing is \$25.00 per hour. The charge for use of the Geographic Information Systems (GIS) is \$35.00 per hour.

In addition to the above, there will be a charge of \$5.00 each for paper plots and \$15.00 each for mylar plots generated by the CADD and GIS systems.

Document Reproduction

In-house reproduction will be charged a \$0.10 per page for black and white, and \$1.00 per page for color.

Specialized Equipment

The use of specialized equipment will be the fixed rental rates set forth in the schedule of URS Specialized Equipment Charges.

Vehicles and Mileage

The mileage charges for personal vehicles used on project assignments will be the then current mileage rate established by the Internal Revenue Service for tax purposes, which is currently \$0.485 per mile.

URS owned vehicles used on project assignments will be charged at \$90 per day, with a minimum charge of one-half day.

This Fee Schedule contains confidential business information and is not to be copied or distributed for any purpose other than the use intended in this contract.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JUNE 20, 2007

**SUBJECT: AWARD OF CONTRACT FOR THE VALPARAISO AVENUE
OVERLAY PROJECT, PROJECT NUMBER 06-001**

RECOMMENDATION:

Award the contract for the Valparaiso Avenue Overlay Project, Project No. 06-001, to Granite Construction Company, the low bidder on the June 14, 2007, bids, for \$590,615.50, with a 10% construction contingency of \$59,061.55, for a total authorization of \$649,677.05; and authorize the Mayor to sign the contract on behalf of the Town.

INTRODUCTION:

The Valparaiso Avenue Overlay Project is the final phase of the rehabilitation of Valparaiso Avenue, which began with the replacement of the water main in 2006. Atherton and Menlo Park jointly applied for and were approved for \$470,000 from the Surface Transportation Program (STP) from the federal highway funding program. These funds will pay for an overlay of the entire roadway after the individual cities' projects are completed. This is estimated to be 50% of the total cost of the project. Menlo Park's share of the project cost, and of the STP funds, was estimated to be 63%, with Atherton's share at 37%.

ANALYSIS:

Six (6) bids were received for the Valparaiso Avenue Overlay Project as follows:

| <u>CONTRACTOR</u> | <u>LOCATION</u> | <u>BID</u> |
|-----------------------------------|-----------------------|--------------|
| Interstate Grading & Paving, Inc. | So. San Francisco, CA | \$983,221.80 |
| G. Bortolotto & Co., Inc. | San Carlos, CA | \$878,828.91 |

| | | |
|------------------------------|-------------------|--------------|
| O'Grady Paving | Mountain View, CA | \$872,469.65 |
| C.F. Archibald Paving, Inc. | Redwood City, CA | \$764,668.15 |
| Top Grade Construction | Livermore, CA | \$656,701.06 |
| Granite Construction Company | Watsonville, CA | \$590,615.50 |

FISCAL IMPACT:

Federal funds in the amount of \$470,000 have been allocated and authorized for this project. A cooperative agreement with Menlo Park will result in reimbursement to Atherton of the Menlo Park share of the project costs, as determined by costs spent within each jurisdiction above the federal grant amount. Parcel Tax funds in the amount of \$360,000 are budgeted for this project in FY 2006-07 for Atherton's share. Of this amount, \$180,000 is Atherton's anticipated share of the federal funds and \$180,000 from Parcel Tax funds.

Bids were received for the project on June 14, 2007. Granite Construction Company was the low bidder at \$590,615.50. This bid was 21.5% below the engineer's estimate prepared by staff, in cooperation with Menlo Park staff, the designers of the project, of \$755,216. A 10% construction contingency of \$59,615.55 would bring the total authorization to \$649,677.05. The local share (less the \$470,000 federal grant) is \$179,677. Atherton's share of the local share is \$71,561 (the actual share will be based on the quantities placed within each jurisdiction), which is \$108,439 (60%) below the FY 2006-07 budget of \$180,000.

Prepared By:

Approved:

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

James H. Robinson
City Manager

Attachments: Bid Results

PROJECT: VALPARAISO AVENUE OVERLAY PROJECT

PROJECT NO. #06-001

| | | | | ENGINEER'S ESTIMATE | | Granite Construction Company | | O'Grady Paving, Inc. | | Interstate Grading & Paving | | C.F. Archibald Paving, Inc. | | G. Bortolotto & Co. Inc. | | Top Grade Construction, Inc. | | |
|--------------------------------|---|----------|------|---------------------|------------------|------------------------------|---------------------|----------------------|-------------------|-----------------------------|-------------------|-----------------------------|-------------------|--------------------------|-------------------|------------------------------|-------------------|------------|
| Bid Bond? (Y/N) | | | | | | | | | | | | | | | | | | |
| Sub-Contractor List? (Y/N) | | | | | | | | | | | | | | | | | | |
| Non-Collusion Affidavit? (Y/N) | | | | | | | | | | | | | | | | | | |
| ITEM NO. | DESCRIPTION | EST. QTY | UNIT | UNIT COST | TOTAL | UNIT COST | TOTAL | UNIT COST | TOTAL | UNIT COST | TOTAL | UNIT COST | TOTAL | UNIT COST | TOTAL | UNIT COST | TOTAL | |
| 1.00 | Mobilization | 1 | LS | \$32,581.41 | \$32,581.41 | \$42,600.00 | \$42,600.00 | \$75,000.00 | \$75,000.00 | \$35,000.00 | \$35,000.00 | \$10,000.00 | \$10,000.00 | \$39,000.00 | \$39,000.00 | \$65,000.00 | \$65,000.00 | 10,018.59 |
| 2.00 | Notification and Access | 1 | LS | \$5,000.00 | \$5,000.00 | \$2,000.00 | \$2,000.00 | \$2,000.00 | \$2,000.00 | \$15,000.00 | \$15,000.00 | \$10,000.00 | \$10,000.00 | \$10,000.00 | \$10,000.00 | \$2,600.00 | \$2,600.00 | -3,000.00 |
| 3.00 | Traffic Control | 1 | LS | \$50,000.00 | \$50,000.00 | \$17,500.00 | \$17,500.00 | ##### | \$130,000.00 | ##### | \$150,000.00 | \$90,000.00 | \$90,000.00 | ##### | \$150,000.00 | \$6,000.00 | \$6,000.00 | -32,500.00 |
| 4.00 | Tree Protection | 1,235 | LF | \$3.00 | \$3,705.00 | \$5.00 | \$6,175.00 | \$3.00 | \$3,705.00 | \$1.00 | \$1,235.00 | \$8.00 | \$9,880.00 | \$10.00 | \$12,350.00 | \$2.80 | \$3,458.00 | 2,470.00 |
| 5.00 | Remove Traffic Stripe (Atherton only) | 17,007 | LF | \$0.50 | \$8,503.50 | \$0.30 | \$5,102.10 | \$0.35 | \$5,952.45 | \$0.10 | \$1,700.70 | \$0.40 | \$6,802.80 | \$0.33 | \$5,612.31 | \$0.30 | \$5,102.10 | -3,401.40 |
| 6.00 | Remove Pavement Markings (Atherton only) | 32 | EA | \$65.00 | \$2,080.00 | \$35.00 | \$1,120.00 | \$40.00 | \$1,280.00 | \$5.00 | \$160.00 | \$30.00 | \$960.00 | \$30.00 | \$960.00 | \$35.00 | \$1,120.00 | -960.00 |
| 7.00 | AC Sawcut | 650 | LF | \$3.00 | \$1,950.00 | \$1.25 | \$812.50 | \$3.00 | \$1,950.00 | \$2.00 | \$1,300.00 | \$5.00 | \$3,250.00 | \$4.00 | \$2,600.00 | \$1.00 | \$650.00 | -1,137.50 |
| 8.00 | Concrete Sawcut | 100 | LF | \$8.00 | \$800.00 | \$3.50 | \$350.00 | \$2.00 | \$2,000.00 | \$3.00 | \$300.00 | \$8.00 | \$800.00 | \$5.00 | \$500.00 | \$3.00 | \$300.00 | -450.00 |
| 9.00 | Milling (1 1/2" to 0 - Wedge Cut) | 96,000 | SF | \$0.50 | \$48,000.00 | \$0.15 | \$14,400.00 | \$0.25 | \$24,000.00 | \$0.50 | \$48,000.00 | \$0.38 | \$36,480.00 | \$0.37 | \$35,520.00 | \$0.25 | \$24,000.00 | -33,600.00 |
| 10.00 | Milling (1 1/2") (SF) | 67,053 | SF | \$0.40 | \$26,821.20 | \$0.25 | \$16,763.25 | \$0.40 | \$26,821.20 | \$0.70 | \$46,937.10 | \$0.45 | \$30,173.85 | \$0.45 | \$30,173.85 | \$0.37 | \$24,809.61 | -10,057.95 |
| 11.00 | Milling (2" to 0 - Conform Wedge Cut) (SF) | 1,804 | SF | \$1.00 | \$1,804.00 | \$0.35 | \$631.40 | \$4.00 | \$7,216.00 | \$1.00 | \$1,804.00 | \$1.00 | \$1,804.00 | \$1.50 | \$2,706.00 | \$1.65 | \$2,976.60 | -1,172.60 |
| 12.00 | Scarification (6") (SF) | 310 | SF | \$0.50 | \$155.00 | \$2.00 | \$620.00 | \$2.00 | \$620.00 | \$1.00 | \$310.00 | \$10.00 | \$3,100.00 | \$5.00 | \$1,550.00 | \$4.85 | \$1,503.50 | 465.00 |
| 13.00 | Treated Wood Header Board (2"x4") | 100 | LF | \$10.00 | \$1,000.00 | \$15.00 | \$1,500.00 | \$20.00 | \$2,000.00 | \$10.00 | \$1,000.00 | \$15.00 | \$1,500.00 | \$20.00 | \$2,000.00 | \$10.00 | \$1,000.00 | 500.00 |
| 14.00 | AC Pavement Replacement 4.5" (SF) | 310 | SF | \$3.00 | \$930.00 | \$4.00 | \$1,240.00 | \$20.00 | \$6,200.00 | \$10.00 | \$3,100.00 | \$5.00 | \$1,550.00 | \$10.00 | \$3,100.00 | \$10.00 | \$3,100.00 | 310.00 |
| 15.00 | AC Pavement (Open Graded) 1"(SF) | 298,500 | SF | \$0.65 | \$194,025.00 | \$0.50 | \$149,250.00 | \$0.75 | \$223,875.00 | \$0.95 | \$283,575.00 | \$0.80 | \$238,800.00 | \$0.72 | \$214,920.00 | \$0.60 | \$179,100.00 | -44,775.00 |
| 16.00 | AC Pavement 1" (Leveling) (SF) | 298,500 | SF | \$0.55 | \$164,175.00 | \$0.60 | \$179,100.00 | \$0.73 | \$217,905.00 | \$0.85 | \$253,725.00 | \$0.70 | \$208,950.00 | \$0.76 | \$226,860.00 | \$0.64 | \$191,040.00 | 14,925.00 |
| 17.00 | Caltrans Type GI Drainage Inlet (EA) | 1 | EA | \$2,500.00 | \$2,500.00 | \$4,200.00 | \$4,200.00 | \$4,000.00 | \$4,000.00 | \$3,500.00 | \$3,500.00 | \$3,000.00 | \$3,000.00 | \$4,000.00 | \$4,000.00 | \$3,200.00 | \$3,200.00 | 1,700.00 |
| 18.00 | Concrete Apron (SF) | 15 | SF | \$15.00 | \$225.00 | \$85.00 | \$1,275.00 | \$165.00 | \$2,475.00 | \$75.00 | \$1,125.00 | \$20.00 | \$300.00 | \$100.00 | \$1,500.00 | \$250.00 | \$3,750.00 | 1,050.00 |
| 19.00 | 12" Concrete pipe (LF) | 60 | LF | \$120.00 | \$7,200.00 | \$85.00 | \$5,100.00 | \$150.00 | \$9,000.00 | \$150.00 | \$9,000.00 | \$170.00 | \$10,200.00 | \$250.00 | \$15,000.00 | \$185.00 | \$11,100.00 | -2,100.00 |
| 20.00 | Adjust Storm Manholes (EA) | 16 | EA | \$750.00 | \$12,000.00 | \$725.00 | \$11,600.00 | \$400.00 | \$6,400.00 | \$475.00 | \$7,600.00 | \$400.00 | \$6,400.00 | \$485.00 | \$7,760.00 | \$500.00 | \$8,000.00 | -400.00 |
| 21.00 | Adjust Sewer Manholes (EA) | 34 | EA | \$750.00 | \$25,500.00 | \$725.00 | \$24,650.00 | \$400.00 | \$13,600.00 | \$475.00 | \$16,150.00 | \$400.00 | \$13,600.00 | \$485.00 | \$16,490.00 | \$500.00 | \$17,000.00 | -850.00 |
| 22.00 | Adjust Manholes with rings (EA) | 16 | EA | \$450.00 | \$7,200.00 | \$200.00 | \$3,200.00 | \$200.00 | \$3,200.00 | \$150.00 | \$2,400.00 | \$200.00 | \$3,200.00 | \$485.00 | \$7,760.00 | \$200.00 | \$3,200.00 | -4,000.00 |
| 23.00 | Adjust Water valves with rings (EA) | 47 | EA | \$350.00 | \$16,450.00 | \$150.00 | \$7,050.00 | \$150.00 | \$7,050.00 | \$100.00 | \$4,700.00 | \$110.00 | \$5,170.00 | \$301.00 | \$14,147.00 | \$100.00 | \$4,700.00 | -9,400.00 |
| 24.00 | Adjust Water Valves (EA) | 16 | EA | \$300.00 | \$4,800.00 | \$400.00 | \$6,400.00 | \$200.00 | \$3,200.00 | \$250.00 | \$4,000.00 | \$250.00 | \$4,000.00 | \$310.00 | \$4,960.00 | \$350.00 | \$5,600.00 | 1,600.00 |
| 25.00 | Adjust Monuments (EA) | 6 | EA | \$400.00 | \$2,400.00 | \$400.00 | \$2,400.00 | \$200.00 | \$1,200.00 | \$450.00 | \$2,700.00 | \$300.00 | \$1,800.00 | \$310.00 | \$1,860.00 | \$350.00 | \$2,100.00 | 0.00 |
| 26.00 | Adjust pull boxes | 4 | EA | \$400.00 | \$1,600.00 | \$400.00 | \$1,600.00 | \$200.00 | \$800.00 | \$450.00 | \$1,800.00 | \$500.00 | \$2,000.00 | \$500.00 | \$2,000.00 | \$400.00 | \$1,600.00 | 0.00 |
| 27.00 | Adjust gas valves/electric vaults (Layout only) | 4 | EA | \$100.00 | \$400.00 | \$400.00 | \$1,600.00 | \$400.00 | \$1,600.00 | \$250.00 | \$1,000.00 | \$200.00 | \$800.00 | \$212.00 | \$848.00 | \$800.00 | \$3,200.00 | 1,200.00 |
| 28.00 | Inductive Loop Detector (Bike) (EA) | 1 | EA | \$400.00 | \$400.00 | \$650.00 | \$650.00 | \$600.00 | \$600.00 | \$850.00 | \$850.00 | \$700.00 | \$700.00 | \$5,000.00 | \$5,000.00 | \$550.00 | \$550.00 | 250.00 |
| 29.00 | Inductive Loop Detector (Vehicle) (EA) | 8 | EA | \$425.00 | \$3,400.00 | \$650.00 | \$5,200.00 | \$600.00 | \$4,800.00 | \$650.00 | \$5,200.00 | \$700.00 | \$5,600.00 | \$750.00 | \$6,000.00 | \$550.00 | \$4,400.00 | 1,800.00 |
| 30.00 | Thermoplastic Traffic Stripe - Detail 21 (LF) | 7,800 | LF | \$1.60 | \$12,480.00 | \$2.00 | \$15,600.00 | \$2.20 | \$17,160.00 | \$2.00 | \$15,600.00 | \$2.20 | \$17,160.00 | \$2.22 | \$17,316.00 | \$2.00 | \$15,600.00 | 3,120.00 |
| 31.00 | Thermoplastic Traffic Stripe - Detail 38A (LF) | 400 | LF | \$1.00 | \$400.00 | \$3.00 | \$1,200.00 | \$3.30 | \$1,320.00 | \$3.00 | \$1,200.00 | \$1.10 | \$440.00 | \$1.19 | \$476.00 | \$3.00 | \$1,200.00 | 800.00 |
| 32.00 | Thermoplastic Traffic Stripe - Detail 39 (LF) | 15,825 | LF | \$1.60 | \$25,320.00 | \$1.85 | \$29,276.25 | \$2.00 | \$31,650.00 | \$2.00 | \$31,650.00 | \$1.10 | \$17,407.50 | \$1.15 | \$18,198.75 | \$1.85 | \$29,276.25 | 3,956.25 |
| 33.00 | Thermoplastic Traffic Stripe - Detail 39A (LF) | 2,300 | LF | \$1.60 | \$3,680.00 | \$1.65 | \$3,795.00 | \$2.00 | \$4,600.00 | \$2.00 | \$4,600.00 | \$1.10 | \$2,530.00 | \$1.09 | \$2,507.00 | \$1.65 | \$3,795.00 | 115.00 |
| 34.00 | Thermoplastic Crosswalk and Limit Lines | 1,100 | LF | \$5.00 | \$5,500.00 | \$4.75 | \$5,225.00 | \$5.00 | \$5,500.00 | \$5.00 | \$5,500.00 | \$3.10 | \$3,410.00 | \$3.20 | \$3,520.00 | \$4.70 | \$5,170.00 | -275.00 |
| 35.00 | Thermoplastic Pavement Markings (Arrows) - (EA) | 14 | EA | \$125.00 | \$1,750.00 | \$145.00 | \$2,030.00 | \$175.00 | \$2,450.00 | \$150.00 | \$2,100.00 | \$90.00 | \$1,260.00 | \$86.00 | \$1,204.00 | \$150.00 | \$2,100.00 | 280.00 |
| 36.00 | Thermoplastic Pavement Markings (Words) (EA) | 37 | EA | \$125.00 | \$4,625.00 | \$200.00 | \$7,400.00 | \$220.00 | \$8,140.00 | \$200.00 | \$7,400.00 | \$120.00 | \$4,440.00 | \$120.00 | \$4,440.00 | \$200.00 | \$7,400.00 | 2,775.00 |
| 37.00 | Paint Pavement Markings (Symbols) (EA) | 120 | EA | \$60.00 | \$7,200.00 | \$100.00 | \$12,000.00 | \$110.00 | \$13,200.00 | \$100.00 | \$12,000.00 | \$60.00 | \$7,200.00 | \$50.00 | \$6,000.00 | \$100.00 | \$12,000.00 | 4,800.00 |
| TOTALS | | | | | \$686,560 | | \$590,615.50 | | 872,469.65 | | 983,221.80 | | 764,668.15 | | 878,838.91 | | 656,701.06 | |

Contingency 68,656
 Engineer's Estimate 755,216

SUBCONTRACTORS

Loop Instal Electrical Loop/RH Concrete Concrete Chrisp Co. Striping Linear Opti Striping Golden Ba Concrete El camino Adjust utilities
 Chrisp Co. Striping Columbia Ele Electrical LIR Electrical Loop/LIR Loops LIR Loops Statewide Construction Area Signs
 Statewide Construction Area Signs Chrisp Co. Striping Linear Opti Striping Chrisp Co. Striping
 El Camino Adjust utilities The Care of Tree Service

s/BidForms/BidResults-Bidders&EngEst



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JUNE 20, 2007

**SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH
ANTONIA BAVA LANDSCAPE ARCHITECTS FOR LANDSCAPE
DESIGN SERVICES FOR THE TOWN CENTER LANDSCAPE PROJECT**

RECOMMENDATION:

Accept the proposal and authorize the Mayor to sign a Professional Services Agreement with Antonia Bava Landscape Architects to provide landscape design services for the Town Center Landscape Project in an amount not to exceed \$18,005.00, plus a 10% contingency, for a total authorization of \$19,805.50.

BACKGROUND:

The entrance to Town Center from Fair Oaks Lane, including the garden in front of the Lloyd Park gates, has deteriorated since it was planted in the mid 1990s. Council directed that a landscape architect be hired to develop a new plan for the area.

Staff developed a Request for Proposals (RFP) to solicit proposals for the work. The RFPs were sent to 16 local firms listed as having expertise in landscape design work, and known to Town staff based on work performed in Atherton for private owners. An invitation was extended to these firms to attend an on-site review and explanation of the Holbrook-Palmer Park projects. Three consultant firms submitted proposals. A copy of the selected proposal is included in the packages prepared for Council members.

ANALYSIS:

Staff evaluated the RFPs and called at least three references for each firm. The selected firm scored well on the evaluation and received good comments from all references called.

FISCAL IMPACT:

Parcel Tax funds in the amount of \$20,000 are budgeted for this project in FY 2007-08. The Scope of Services and Fee Estimate were negotiated with the selected firm. The final negotiated fee estimate is \$18,005.00. A 10% contingency of \$1,800.50 would bring the total authorization to \$19,805.50, which is within the proposed budget.

Prepared by:

Approved by:

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

James H. Robinson
City Manager

Attachments: Proposal of Antonia Bava Landscape Architects
Professional Services Agreement

**PROFESSIONAL SERVICES AGREEMENT FOR
ATHERTON TOWN CENTER LANDSCAPE DESIGN SERVICES**

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and Antonia Bava Landscape Architects, hereinafter referred to as the "Consultant", in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. Project Designation. The Consultant is retained by the City to perform landscape design services in connection with the project designated as Atherton Town Center Landscape
2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment and supplies.
3. Time for Performance. Work under this contract shall commence upon the giving of written notice by the City to the Consultant to proceed. Consultant receipt of a Purchase Order shall constitute said notice. Consultant shall perform all services and provide all work product required pursuant to this agreement within 120 calendar days from the date written notice is given to proceed, unless an extension of such time is granted in writing by the City.
4. Payment. The Consultant shall be paid by the City for completed work and for services rendered under this agreement as follows:
 - a. Payment for the work provided by Consultant shall be made as provided on Exhibit "B" attached hereto, provided that the total amount of payment to Consultant shall not exceed \$18,005 without express written modification of the agreement signed by the City.
 - b. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
 - c. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.
 - d. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.
 - e. The Consultant's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the City and state for a period of three (3) years after final payments. Copies shall be made available upon request.
5. Ownership and Use of Documents. All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this

agreement shall be the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Consultant's endeavors.

6. Compliance with laws. Consultant shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.

7. Indemnification. Consultant shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, including attorneys fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Consultant's own employees, or damage to property to the extent caused by a negligent act, omission or failure of the Consultant.

8. Insurance. The Consultant shall secure and maintain in force throughout the duration of this contract comprehensive general liability insurance with a minimum coverage of \$500,000 per occurrence and \$2,000,000 aggregate for personal injury, and \$500,000 per occurrence/aggregate for property damage. Said general liability policy shall name the Town of Atherton as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this section shall be delivered to the City within fifteen (15) days of execution of this agreement.

9. Independent Contractor. The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Consultant nor any employee of Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Consultant, or any employee of Consultant.

10. Covenant Against Contingent Fees. The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the City shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Assignment. The Consultant shall not sublet or assign any of the services covered by this agreement without the express written consent of the City.

12. Non-Waiver. Waiver by the City of any provision of this agreement or any time limitation provided for in this agreement shall not constitute a waiver of any other provision.

13. Termination.

a. The City reserves the right to terminate this agreement at any time by giving thirty (30) days written notice to the Consultant.

b. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this agreement between surviving members of the Consultant and the City, if the City so chooses.

14. Notices. Notices to the Town of Atherton shall be sent to the following address:

Duncan Jones, Atherton Public Works Director
91 Ashfield Road
Atherton, CA 94027

Notices to Consultant shall be sent to the following address:

Antonia Bava, Principal
Antonia Bava Landscape Architects
490 2nd Street, Suite 104
San Francisco, CA 94107

15. Integrated Agreement. This Agreement together with attachments or addenda represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only by written instrument signed by both City and Consultant.

DATED this _____ day of June, 2007.

Town of Atherton

Consultant

By _____
City Manager

By _____

Approved as to Form

By /s/Marc Hynes
City Attorney

EXHIBIT "B"
PAYMENT

1. Consultant shall be paid up to \$18,005 as per Exhibit B-1 to complete the scope of work as outline in Exhibit "A".
2. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
3. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.

PROJECT OVERVIEW

SCOPE OF WORK

This proposal is submitted to the Town of Atherton, Public Works Department, Atherton, California. Atherton is the Client for the proposed project and Owner of the project site.

The following Project Scope and Work Plan outline our approach to provide planning and landscape architectural services for the development of the Town Center. The project site area includes: the entry to Lloyd Park Drive, the intersection of Lloyd Park Drive and Fair Oaks Lane, areas adjacent to the Cal Train Station and the West Parking Area.

A detailed site survey for the project site area is to be provided by the Town of Atherton.

As defined in the Basic Services, Antonia Bava Landscape Architects, referred herein as "ABLA", proposes to provide full landscape architectural services for site and landscape development.

PROJECT SCOPE OF WORK AND GOALS:

1. Develop a Comprehensive Plan that achieves the following:
Create a clear identity for the "Gateway" into Lloyd Park and the Fair Oaks Lane Intersection.
Visually integrate the Cal Train Station Area, West Parking Area, Lloyd Park and the Fair Oaks Lane Intersection.
 - Develop a clear, safe pedestrian circulation walkways.
 - Adjust parking area layout and circulation as needed.
 - Provide additional lighting as required.
 - Provide new vegetation that reinforces the overall "Gateway" design.
 - Provide new screening as needed.
 - Provide new site furniture as needed.
 - Provide signage as needed.
2. Identify existing site elements to be retained, including, but not limited to, existing shrub vegetation, existing trees, hardscape / walkways, fencing, site furniture, lighting.
3. Identify necessary new site development and landscape design elements including, but not limited to fencing, screening, paving, walkways, crosswalks, vegetation, drainage, lighting, screening, signage.
4. Identify site constraints such as easements and jurisdictional boundaries.
5. Incorporate comments from community design / review process and Town of Atherton staff review.

The proposed Basic Scope of Services are to be completed in three distinct phases of work as follows:

BASIC SCOPE OF SERVICES:

Phase 1 **Design** - See Attached Design Work Plan and Fee Breakdown Study

**WORK PLAN
TASKS**

PHASE I DESIGN

- 1.1 Site reconnaissance visit # 1. Determine the characteristics of the site, project area, surrounding community and to verify existing site conditions.
Town Staff Meeting # 1. Develop program, identify design process, identify community interest groups to be engaged in the design process.
- 1.2 Synthesis of site data, existing studies, reports, traffic analysis. Identify San Francisco PUC easement and other pertinent information relating, but not limited to geotechnical, soils, climatic factors, utilities, existing lighting, drainage, demographics, traffic patterns, pedestrian and vehicular access, zoning and any specialty requirements, existing trees, vegetation and irrigation to remain. Site survey, prepared by others will identify easements and jurisdictional boundaries. Services of an Arborist are not included in the Scope of Work.
- 1.3 Prepare site images and site analysis documents for Community Charrette Meeting # 1.
- 1.4 Community Design Charrette Meeting # 1.
- 1.5 Develop Alternate Design Studies for Community review.
Following Community Charrette #1, incorporating: comments from the community, synthesis of data and subsequent to each community review meeting, ABLA shall develop and refine Design studies indicating the general concept of site development for the following scope items:
- a. Location and material selection for exterior pedestrian pavements and specialty paving.
 - b. Conceptual planting design, including investigation of soil conditions.
 - c. Location of site and specialty elements including but not limited to planters, benches, walls, bollards, fences, site furniture.
 - d. Site lighting preliminary layout.
 - e. Site signage.
 - f. Parking area and curb layout.
- 1.6 Site reconnaissance visit # 2. Verify existing site conditions in context of Alternate Conceptual Design Studies.
Town Staff Meeting # 2. Review comments from Community Charrette #1, comment on Alternate Conceptual Design Studies.
- 1.7 Finalize documents of Alternate Conceptual Design Studies: images, plans, elevations for Community Review Meeting # 2.
- 1.8 Community Review Meeting # 2. ABLA to present Alternate Conceptual Design Studies. Community to review and comment upon Alternate Conceptual Design Studies and select preferred Alternate Conceptual Design Study.

**WORK PLAN
TASKS**

PHASE I DESIGN

- 1.9 Following Community Review Meeting #2, incorporate comments from the community and refine the preferred Alternate Conceptual Design Study or combination of Design Studies into a finalized Conceptual / Schematic Design. Finalize Design Documents for submittal to City Council.

- 1.10 Develop estimate of preliminary construction costs.
ABLA to prepare Scope of Services / Work Plan and associated Fees for Phase 2 Construction Documentation and Phase 3 Construction Observation.

- 1.11 Town Staff Meeting # 3. Review estimate of Preliminary Construction Costs and Scope of Services / Phase 2 and Phase 3 Work Plan and Fees

- 1.12 City Council Meeting Presentation. Submit / present Design Plan and Preliminary Cost Estimate to City Council.

FEE

See Design Phase Work Plan fee Breakdown.

REIMBURSABLE COSTS

The following costs are defined as reimbursable costs and will be billed at cost plus 10%. The total expenses have been summarized in the Design Phase Work Plan fee Breakdown.

- A. Cost of copies of drawings, plotting, reproduction of drawings and other documents furnished or prepared in connection with the work of this contract.
- B. Cost of delivery and shipping expenses.
- C. Photographic services, film and processing
- D. Local private automobile travel at \$0.50 per mile for travel.
- E. Long distance travel: commercial carrier and public transportation, auto rental and parking, hotel accommodations, sustenance and out-of pocket expenses.
- F. Fees for additional special consultants retained with the prior approval of the Client.

ASSUMPTIONS AND EXCLUSIONS TO SCOPE OF BASIC SERVICES

- A. The Client shall provide the following information or services as required, for performance of the work including: topographic and boundary surveys; legal descriptions of the property; environmental impact report; soils testing; engineering services (soils, traffic, civil, etc.); infrastructure and base information, services of an Arborist.
ABLA will be provided with a site survey plan background electronic format (AutoCAD release 2007 or 2008).
- B. ABLA assumes no responsibility for the accuracy of such information or services (as listed in A above) and shall not be liable for error or omission therein. Should ABLA be required to provide service in obtaining or coordination compilation of this information, such services shall be charged as Extra Services, but only after they are approved by the Client.
- C. The following services have also been excluded from the proposal: preparation of models; landscape maintenance guidelines; design and documentation of water features/fountains.
- D. The Client will provide the lead and coordinate ABLA's activities and contacts with regulatory officials and process all submittals to regulatory agencies.
- E. Structural and geotechnical engineers are to review and provide needed information regarding structural reinforcement of hardscape items including pavement, walls, bollards, trellises, etc.
- F. Written request to commence each phase constitutes approval of prior design, material selection, etc. Design revisions will be incorporated into the subsequent design phase. Changes in construction documents will be considered as additional services, after receipt of written approval
- G. Political processing, public hearings and special meetings / presentations to reviewing agencies beyond those meetings identified within the Basic Scope of Services.

ADDITIONAL SERVICES

- B. Extra Services include but are not limited to:
1. Revisions and change to approved drawings.
 2. The preparation of alternates after the completion of Construction Documents.
 3. Deductive change orders requested by the Client after completion of Construction Documents.
 4. Plan preparation for and Construction Observation of portions of a project let on a segregated bid basis to be phased during construction.
 5. Services with respect to replacement of any work damaged during construction.
 6. Services required as a result of the default or insolvency of the contractor.
 7. Preparation of record drawings or measured drawings of existing conditions.
 8. Providing prolonged construction observation should the construction time be substantially extended through no fault of ABLA.

HOURLY BILLING RATES

Additional Services are to be billed at hourly rates as indicated below.
ABLA billing rates, effective through the year 2007, are as follows:

| | |
|------------------------------|-----------|
| Principal | \$ 110.00 |
| Project Manager | \$ 100.00 |
| Professional Staff, Level I | \$ 85.00 |
| Professional Staff, Level II | \$ 75.00 |
| Administrative Staff | \$ 55.00 |
| Consultant, Studio 74 | \$ 95.00 |

**TOWN OF ATHERTON
TOWN CENTER PROJECT**

Antonia Bava Landscape Architects

DESIGN PHASE: WORK PLAN FEE BREAKDOWN DURATION: 5 Months

| Item | Task Description | Antonia Bava Landscape Architects Resources and Hours | | | | | |
|------|---|---|---------|---------|---------|-------|---------|
| | | Prin | PM | PS1 | PS2 | AD | CON |
| | | \$110 | \$100 | \$85 | \$75 | \$55 | \$95 |
| | PROJECT PLANNING AND MANAGEMENT | | | | | | |
| | Project Coordination, Contracts | | 4 | | | | |
| | Project Set Up | | 2 | | | 4 | |
| | Review Monthly Invoices | | 2 | | | | |
| | Total Hours | 0 | 8 | 0 | 0 | 4 | 0 |
| | DESIGN | | | | | | |
| 1.1 | Site Visit #1, Town Staff Meeting #1 | 4 | | 4 | | | 2 |
| 1.2 | Research and Synthesis of Site Data | 2 | | 3 | | | 0 |
| 1.3 | Prepare Documents for Community Design Charette #1 | 4 | | 16 | 8 | | |
| 1.4 | Community Design Charette #1 | 3 | | | | | 3 |
| 1.5 | Develop Alternate Conceptual Design Studies | 8 | | 16 | 8 | | 4 |
| 1.6 | Town Staff Meeting #2, Site Visit #2 | 4 | | 4 | | | 2 |
| 1.7 | Finalize Documents for Community Review Meeting #2 | 4 | | 8 | | | |
| 1.8 | Community Review Meeting #2 | 3 | | | | | 3 |
| 1.9 | Finalize Preferred Conceptual Design | 8 | | 24 | | | |
| 1.10 | Prepare Preliminary Cost Estimate for Project Construction and Design Fees for Construction Documentation and Observation | 1 | 6 | 4 | | | 2 |
| 1.11 | Town Staff Meeting #3 | 3 | | | | | 2 |
| 1.12 | City Council Meeting Presentation | 3 | | | | | 2 |
| | Total Hours | 47 | 6 | 79 | 16 | 0 | 20 |
| | Total Project Hours | 47 | 14 | 79 | 16 | 4 | 20 |
| | Labor Cost Subtotal | \$5,170 | \$1,400 | \$6,715 | \$1,200 | \$220 | \$1,900 |
| | Total Project Labor Cost | \$16,605.00 | | | | | |
| | Estimated Reimbursable Costs | \$1,400.00 | | | | | |
| | Total Design Phase Fees | \$18,005.00 | | | | | |

| | | | |
|------|-----------------|----|--------------------------|
| Prin | Principal | P1 | Professional Staff 1 |
| PM | Project Manager | P2 | Professional Staff 2 |
| CON | Consultant | AD | Administrative Assistant |



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JUNE 20, 2007

**SUBJECT: AWARD OF CONTRACT FOR THE EOC GENERATOR AND
APPROVAL OF INFORMAL BIDDING PROCEDURES**

RECOMMENDATION:

Award the contract for the EOC Generator to Intermountain Electric Company, the low bidder on informal bids, for \$67,250, with a 10% construction contingency of \$6,725, for a total authorization of \$73,975; to authorize the use of informal bidding procedures; and to authorize the Mayor to sign the contract on behalf of the Town.

INTRODUCTION:

In an evaluation of the Town's preparedness for emergencies, it was determined that the current EOC at the Council Chambers would be unlikely to survive an earthquake of sufficient magnitude to need the EOC. It was decided to transfer the EOC to the Town's newest building in the Public Works Corporation Yard. In order for the EOC to be operational in the event of an emergency involving a power outage, an emergency generator sufficient to power the building is needed.

A report was commissioned by Loren Burns, Consulting Engineer, which determined that a 40 kW generator with a 10 kW load bank would be necessary to provide the needed electricity to operate the EOC. Use of the existing emergency generator at the Police Department was considered, but because it is housed in a building that has not been seismically retrofitted, and because substantial cost would be incurred to connect it to the Corporation Yard building with no assurance that the generator would be functional after a seismic event, a new generator was recommended.

ANALYSIS:

Two informal bids were received for the EOC Generator as follows:

| <u>CONTRACTOR</u> | <u>LOCATION</u> | <u>BID</u> |
|------------------------|-----------------|------------|
| Intermountain Electric | San Carlos, CA | \$67,250 |
| Powerlink Corporaton | Los Gatos, CA | \$70,922 |

Informal bid procedures were used because it was necessary to work with several contractors, reviewing their proposals and requesting repeated modifications to obtain two bids on the same specification. Staff worked with four contractors who perform these types of services locally, and were only able to obtain two bids as of the time of preparation of this staff report. Staff will continue to attempt to obtain a third bid before the Council meeting, and if lower the award can be made to that contractor.

It was also determined that contractors capable of furnishing and installing generators were unlikely to bid under the standard bidding provisions of the State Contract Code due to the complex nature of the installation and their lack of familiarity with the bidding procedures. As it was, considerable cajoling was necessary by Public Works staff to obtain two bids.

FISCAL IMPACT:

Emergency Preparedness funds in the amount of \$120,000 were authorized for this project. Bids were received for the project in June 2007. Intermountain Electric Company was the low bidder at \$67,250. A 10% construction contingency of \$6,725 would bring the total authorization to \$73,975, which is within the authorized amount.

Prepared By:

Approved:

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

James H. Robinson
City Manager

Attachments: Consultant Generator Sizing Report

LOREN BURNS
CONSULTING ENGINEER
4414 Striped Maple Court
Concord, CA 94521-4329

925.383.4780

March 12, 2007

Town of Atherton
91 Ashfield Road
Atherton, CA 94027-3896

Attention: Mr. Steven Tyler
Public Works Superintendent

Re: Generator Sizing for Emergency Operational Center

Dear Steven:

As requested by your City Council we will herein explore the options concerning the sizing of a Diesel Driven Emergency Generator at your existing Public Works Building. This building will be equipped to act as an Emergency Operational Center (EOC).

The existing electrical loads in this building are:

| | | |
|----|---|--------------|
| 1. | Air Conditioning Compressor | 6,900 watts |
| 2. | Interior and Exterior Lighting | 2,100 " |
| 3. | Receptacles | 4,320 " |
| 4. | Furnace Motor | 1,200 " |
| 5. | 35% of Air Conditioning to Start Compr. | 2,415 |
| | TOTAL | 16 935 watts |
| | or | 16.94 kW |
| | Proposed change-hot water heater from gas to electric | 12.00 kW |
| | TOTAL | 28.94 kW |

DISCUSSION:

In the present situation with a minimum amount of future added electrical load we would recommend a 40 kW – 120/240- volt single phase diesel driven generator. The 40kW generator equates to 174 amps at 120/240 volts single phase. This will require a 200 amp single phase Automatic Transfer Switch. The existing Electrical Panel in the building is rated at 200 amps, therefore, the two items together are consistent.

We strongly recommend a generator mounted 10 kW resistive load bank to be automatically on-line for the generators' weekly testing under load. The load bank will be off-line when there is a utility outage.

Finally, the 40 kW generator will have a reserve capacity of approximately 10-12 kW depending upon the 4,320 watts of receptacle power that is actually connected. 10 kW equates to 42 amps at 240 volts or 84

Staff Report
July 20, 2007
Page 4 of 4

amps at 120 volts. This added capacity can serve the Police Department Command Center Trailer, ham radios, battery chargers and other essential equipment.

Steven, please call to discuss any additional options that will affect this generator sizing.

Sincerely,

Loren Burns, PE



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: MIKE WASMANN, BUILDING OFFICIAL

DATE: FOR THE MEETING OF JUNE 20, 2007

**SUBJECT: APPROVAL OF AN AMENDMENT TO THE AGREEMENT BETWEEN
THE TOWN OF ATHERTON AND TIM WULFF FOR PLAN
CHECKING SERVICES FOR FISCAL YEAR 2007-08**

RECOMMENDATION:

Approve the amendments proposed herein between the Town of Atherton and Mr. Tim Wulff for contract plan check services.

INTRODUCTION:

Since April of 2005, the Town of Atherton has retained Mr. Tim Wulff, an independent contractor, to provide plan check services. The utilization of Mr. Wulff and other contractors has provided the Building Department with the necessary degree of flexibility in staffing levels to accommodate fluctuations in building permit activity due to seasonal trends or other factors driving residential construction activity.

The proposed modifications in the agreement between Mr. Wulff and the Town of Atherton are as follows:

- A change in the contract termination provisions to eliminate a specific date of expiration and the inclusion of a clause indicating that said contract can be terminated upon 30 days notice for the convenience of either party;

- Insertion of a clause advising the contractor that continued use of his services is contingent upon Council approval of appropriations for contract plan check services as well as workload sufficient in volume to justify the continued retention of a contract resource; and
- An increase in the hourly rate of the contractor from \$50 per hour to \$55 per hour.

FISCAL IMPACT:

There is no direct fiscal impact from implementation of the contract amendment as proposed.

Prepared by:

Approved by:

Mike Wasmann
Building Official

James H. Robinson
City Manager

Attachment A:

Contract for Plan Check Services between the Town of Atherton and Tim Wulff

1. **Services of Contractor.** Contractor agrees to perform the services described in Exhibit A ("the Services") attached to this Agreement. Contractor will determine the method, details, and means of performing the Services.
2. **Compensation.** The Town agrees to pay Contractor \$55.00 per hour based upon a monthly itemized invoice Contractor provides to the Town. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation, including all estimated taxes, and shall provide the Town with proof of payment on demand. Contractor indemnifies Town for any claims, losses, costs, fees, liabilities, damages or injuries suffered by Town arising out of Contractor's breach of this provision. Contractor shall be responsible for all expenses incurred in association with the performance of Services.
3. **Term of Agreement.** This contract will become effective July 1st, 2007 and may be terminated at any time upon 30 days written notice for the convenience of either party.
4. **Relationship of the Parties.** Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor look to Town as his/her employer, or as a partner, agent or principal. Contractor shall not be entitled to any benefits accorded to Town employees, such as workers' compensation, disability insurance, vacation, sick pay, holiday pay, medical insurance, retirement benefits, or any other employee benefit. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, disability, workers' compensation or other insurance as well as licenses and permits usual or necessary for performing the Services. Contractor understands that the timing and extent of work to be performed on behalf of the Town will be at the discretion of the Building Official based upon the Building Official's assessment of permit activity and resultant staffing requirements and will be contingent upon the extent to which appropriations for plan check services are available.
5. **Contractor's Representations.** Contractor represents that he/she has the qualifications and ability to perform Services in a professional manner, without the advice, control or supervision of the Town. Contractor shall be solely responsible for the professional performance of the Services, and shall receive no assistance, direction, or control from the Town. Contractor shall have sole discretion and control of Contractor's services and the manner in which performed.

Attachment A:

Contract for Plan Check Services between the Town of Atherton and Tim Wulff

6. Indemnities. Except as set forth below, Contractor shall and does hereby indemnify, defend and hold harmless Town, and Town's Council members, managers, and department heads from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that Town may incur or suffer and that result from, or are related to any breach or failure of Contractor to perform any of the representations, warranties and agreements contained in this Agreement.
 - a) Town shall provide legal defense to Contractor in connection with claims related to the exercise of discretion by Contractor in the performance of duties hereunder to the same extent as a regular employee of the Town under the provisions of California Government Code sections 810 through 825.6.
 - b) Contractor agrees to maintain minimum limits of insurance no less than the following amounts during the term of this agreement:
 - c) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
 - d) Any deductibles or self-insured retentions must be declared to and approved by the town. The Town may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
7. Notices. All notices to Town shall be directed to: City Clerk, Town of Atherton, 91 Ashfield Road, Atherton, California, 94027. All notices to Contractor shall be directed to: Tim Wulff, 166 Monroe Street #10, Santa Clara, CA 95050.
8. Mediation. Should any dispute rise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. 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 and fees. Neither party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution.
9. Attorneys' Fees. In the event of litigation between the parties to enforce any provision of the Agreement, the unsuccessful party shall pay the costs of litigation including reasonable attorneys' fees of the successful party.
10. Conflict of Interest. Contractor may serve other clients, but none who are active

Attachment A:

Contract for Plan Check Services between the Town of Atherton and Tim Wulff
within the Town or who conduct business that would place Contractor in a
"conflict of interest" as the term is defined and understood in State law.

11. Entire Agreement. This Agreement and Exhibit A hereto constitute the entire agreement between the parties. All prior agreements, written or oral, are hereby superseded by this Agreement.
12. Amendment. This Agreement can only be amended by a writing that is signed and dated by both parties and approved by the Town's City Council.

The foregoing is agreed to by:

Town of Atherton:

Alan Carlson, Mayor

Date:

Contractor:

Tim Wulff

Date:

Approved as to Form:

/s/ Marc Hynes
Marc Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF JUNE 20, 2007

SUBJECT: RENEWAL OF CONTRACT WITH TENNIS PROFESSIONAL

EXECUTIVE SUMMARY AND RECOMMENDATION:

The Town has previously entered into an agreement for services of a teaching tennis professional. Mr. Alan Margot has provided services under an agreement originally entered into with an effective date of March 1, 2005. A copy of the existing agreement is attached as Exhibit A. The agreement expired on February 28, 2007. Since that time, Mr. Margot has continued to provide services in accordance with the terms of the agreement. The agreement has a termination date of February, 2007. It is recommended that the agreement be amended to show an effective date of March 1, 2007, and a termination date of June 30, 2009.

It is appropriate to amend the agreement for an additional two-year term with the further proviso that the termination date during this extension expire on the last day of June, 2009. The reason for the June expiration date is that it will be easier to monitor the expiration of the contract and hence to consider its renewal in a timely fashion. The amendment attached to this report as Exhibit B recognizes an effective date of the agreement from March 1, 2007, with the expiration date of June 30, 2009.

PROPOSED COUNCIL ACTION AND LANGUAGE:

Approval of the agreement may be made by motion. A majority of a quorum is required to pass the motion. Suggested language for the motion is: "I move that the Town enter into an agreement extending the existing contract for services of a teaching tennis professional in accordance with the recommendations in the Staff Report."

FISCAL IMPACT:

The Town will continue to receive revenue from Mr. Margot in accordance with the terms of the agreement.

Prepared By:

Approved By:

/s Marc Hynes

Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachments: Exhibits A and B.

AGREEMENT FOR SERVICES OF USPTA
TEACHING TENNIS PROFESSIONAL ALAN MARGOT

This agreement ("contract") is effective as of March 1, 2005 between the Town of Atherton, California ("Town"), a California Municipal Corporation, and Alan Margot, USPTA "Tennis Professional," ("Tennis Pro") on the following terms and conditions:

1. EMPLOYMENT AS TENNIS PROFESSIONAL

Position:

During the term of the contract, ALAN MARGOT shall serve as a Tennis Professional. Tennis Pro shall provide top quality services and instruction to members of the Atherton Tennis Club (ATC) and local area residents, and shall actively pursue fulfilling the Town's Tennis Mission Statement. Tennis Pro shall support the interests of the Town with undivided loyalties.

Tennis Mission Statement

- The Town shall provide Atherton residents an affordable tennis facility and program for recreation and to build a sense of community among the residents.
- The tennis operation should be self supporting and cover the full expenses and capital improvement costs of the tennis facility and programs.
- The tennis facility may be used for tennis instruction to non-residents, providing ATC members and other Atherton residents have first priority.
- All tennis related revenues and expenses shall be approved annually as part of a tennis program budget, which shall be under the direct supervision of the City Manager.

2. INDEPENDENT CONTRACTOR STATUS

The services to be provided, as set forth in the contract, shall be provided by the Tennis Pro as an independent contractor, as defined in Labor Code Section 3353 or as amended, under the control of the City Manager as to the results of the work, but not the means by which such results are accomplished, and nothing herein contained shall be construed to make the Tennis Pro an agent or employee of the Town while providing said services; and, Tennis Pro shall be entitled to no other benefits or compensation except as provided herein.

3. HOLD HARMLESS AND INDEMNITY PROVISIONS

Tennis Pro shall:

A. Hold harmless and indemnify the Town and its officers, employees and agents from and against any and all claims, loss, liability, damage and expense arising from performance of this contract, including claims, loss, liability, damage, and expense caused or claimed to be caused by passive negligence of the Town, its officers, employees, or agents.

B. Defend the Town, its officers, employees, or agents against all matters set forth in A above; provided, however, that this provision does not apply to claims, loss, liability, damage or expense arising from the active negligence or willful misconduct of the Town.

C. Provide general liability and automobile liability insurance in the following minimum limits:

1. \$2 million liability insurance, while on court, for bodily injury to others; and for damage to property not in the tennis professional's care, custody or control
2. Automobile liability in limits of \$500,000 bodily injury and property damage combined.
3. Workers' Compensation Insurance in at least the minimum statutory amounts shall be maintained if Tennis Pro hires any employees to work hereunder.

All liability insurance policies shall specify the Town, its officers, employees and agents as additional named insureds. A certificate of insurance shall be provided to the City Clerk prior to performance pursuant to this contract, which certificate shall provide that it may not be canceled except after 30 days written notice delivered to the City Clerk. Further, any changes in insurance required herein must be approved in writing by Town's City Attorney.

D. Tennis Pro warrants that as an equal opportunity employer Tennis Pro shall comply with applicable regulations governing equal employment opportunity. Neither Tennis Pro nor any of his subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

4. TERM OF CONTRACT

A. This contract shall commence effective March 1, 2005, and unless terminated sooner per 4.B. below, terminate on the last day of February, 2007.

B. The City Manager may terminate the contract without cause by giving at least sixty (60) days prior written notice to Tennis Pro. Tennis Pro may terminate the contract without cause by giving at least sixty (60) days prior written notice to the City Manager.

C. The City Manager may terminate this agreement if at any time Tennis Pro is in default in the payment of any fees, portion of net revenue or any other monies required to be paid to the Town, or in the performance of any duty, obligation, covenant or agreement contained herein (time expressly declare to be of the essence,) upon five (5) days written notice to Tennis Pro and Tennis Pro fails to correct such default within said five (5) day period.

D. This agreement shall automatically terminate on the last day of February, 2007, unless both parties agree in writing to extend the existing terms and conditions for another two year term. The Tennis Pro will be automatically terminated if convicted of a felony.

5. TENNIS PRO'S DUTIES AND RESPONSIBILITIES

Tennis Pro will be required to provide the following services:

A. Manage the Town's tennis instruction program, including employment and supervision of all necessary personnel as employees of the Tennis Pro, maintenance of proper records and payments of personnel, including any fringe benefits or other compensation required by law.

B. Conduct programs for all age groups, to include, but not be limited to:

- Large group lessons - 1 to 8 ratio maximum
- Small group lessons - 1 to 4 ratio maximum
- Semi-private lessons - 1 to 3 ratio maximum
- Private lessons - 1 to 1 ratio maximum
- Camps and Clinics - Ratio to be determined
- Adult Jr. leagues - Ratio to be determined

C. Tennis Pro will work closely with the on-site Park Program Manager and the Tennis Committee to create and coordinate a minimum of two (2) tournaments per year designed specifically for members, and two (2) open tournaments per year designed for either adults or juniors (ages 8 – 18). Tennis Pro shall also conduct a minimum of one (1) summer tennis clinic and at least one tennis camp in the spring or summer for adults and/or children (up to the age of 18).

D. Tennis Pro will, at his own expense, provide the necessary equipment to conduct a high-quality tennis instruction program. Tennis Pro may store this equipment in a storage facility at the Holbrook-Palmer Park tennis courts at no cost.

E. Tennis Pro is authorized to use space in the Main House at Holbrook-Palmer Park to conduct administrative duties including, but not limited to, registration, communications and educational purposes that relate to tennis instruction and recreation. Town will provide routine custodial services for the space. No modifications to the area used by Tennis Pro may be made without written approval of the City Manager.

F. Tennis Pro shall not charge personal toll telephone calls to the Town's telephone.

G. Tennis Pro shall work closely with the Park Program Manager to facilitate proper participant enrollment and manage participant's transfers and funds.

H. Tennis Pro will be responsible for conducting registration for Town-sponsored group lessons, tournaments, and mini-group participants through the normal Town registration procedures. Tennis Pro may cancel a class if minimum registration is not met. Tennis Pro shall be responsible for registration of all individuals, taking any kind of private, semi-private, group lessons and clinics.

Tennis Pro will not allow any person to participate in any tennis lessons unless that person has registered; each participant must sign a Town indemnification/hold harmless agreement in order to play or participate in any tennis event or activity. No person who does not have a tennis key may play on the Holbrook-Palmer Park tennis courts unless he is a guest of an ATC member, or he is engaging in activities and programs operated by the Tennis Pro.

Payments for all monthly-tennis revenue (10% of gross revenue) shall be paid by check made payable to the "TOWN OF ATHERTON."

I. The priorities for the Tennis Pro are, in order of importance, as follows:

- 1st priority Meet the goals and objectives of the Tennis Program.
- 2nd priority Develop rapport with members – provide user friendly service.
- 3rd priority Remain loyal to Town Parks and Recreation Commission Program, and Holbrook-Palmer Park Foundation.
- 4th priority Increase sale of keys and revenue to the Town.
- 5th priority Maintain rapport with staff – for harmonious coordination.
- 6th priority Develop rapport with students – to demonstrate personal interest.
- 7th priority Maintain teaching ability – provide top quality instruction.
- 8th priority Maintain playing ability - maintain perspective on match play and enthusiasm for teaching.

J. Tennis Pro is granted the use of the southeast tennis courts, i.e. Courts No. 5 and 6, at Holbrook-Palmer Park for the purpose of giving individual and mini-group tennis lessons and instruction during the hours of 7:30 a.m. through sundown, Monday through Friday, and Saturdays from 8:00 a.m. through 5:00 p.m. In the event Tennis Pro is not using those courts, they shall be made available for public play. Additional tennis courts may be made available for use by Tennis Pro for lessons and instruction upon prior approval of the City Manager. The City Manager may authorize use of said courts on occasion, for special Town events, giving no less than seven (7) days notice to Tennis Pro of this use. Tennis Pro will post a sign on the fence of the southeast court explaining its special use and indicating how registration can be accomplished.

K. Tennis Pro shall provide professionally competent and experienced instructors to meet instructional obligations. All employees of Tennis Pro shall be neatly dressed and courteous at all times. Tennis Pro shall cover each of said employees with Workers' Compensation insurance. Tennis Pro shall furnish the City Manager with a certificate of statutory coverage therefore. Instructors shall be employees of Tennis Pro, and not Town. The City Manager may observe Tennis Pro's personnel on a periodic basis to determine that such personnel are providing instruction in a professional, competent, and courteous manner. Pursuant to this periodic review, the City Manager may determine Tennis Pro's satisfactory performance of this contract.

L. All lessons taught for the ATC by Tennis Pro shall be given at Holbrook-Palmer Park, unless the City Manager gives prior approval.

M Tennis Pro shall follow the daily rules of work listed below:

1. Arrive at courts at least ten minutes before lesson time.
2. If courts are set, allow enough time to roll-dry all the puddles prior to lesson time.
3. Stay on schedule so all lessons and meeting start and finish on time.
4. When opening, get out all carts, ball machines, and ball pick-up devices to be used that day.
5. When closing, be sure all equipment is put away and storage facility door is

locked.

6. Insure that proper tennis attire is worn at all times. Proper tennis attire includes tennis shoes, tennis shorts, tennis skirts, tennis dresses, collared tennis shirts, classy T-shirts and tennis warm-ups. It does not include black-soled running shoes, running shorts and swim suits.
7. Pick up balls and retrieve any that went over the fence (but not on Felton Gables Property) after each lesson, or at least at the end of teaching for the day.

N. All tennis class lists and records originally acquired through association with the ATC shall remain the confidential property of the ATC for the term of this contract, regardless of location at which lesson is given, and shall not be used or taken by Tennis Pro for any other purpose other than for the sole use of the ATC.

ATC Members, followed by Town residents, shall have priority over non-members in registration for instruction.

Tennis Pro shall be responsible for the behavior of all participants in the Town's tennis instruction program while in the tennis area. Tennis Pro shall ensure that all participants in the Town's tennis instruction program comply with club rules regarding use of courts and other facilities, and control of noise.

6. RATE AND REE SCHEDULE:

Tennis Pro shall charge the following rates;

Rates (per hour): Private Lessons: \$85.00 Per Hour

Clinics, tournaments and lessons of less than one hour shall be less than the hourly rate (pro rata).

7. RESPONSIBILITIES OF TOWN

Town shall be responsible for:

- A. Publication of all Town-sponsored tennis programs, clinics and events in brochures, the ATC newsletter, or in local newspapers.
- B. Maintenance of tennis courts, fencing, nets, wind screens, water fountains, shelters, benches, pathway landscaping, trees, ball machine, and electrical service affecting the tennis courts.
- C. Providing office space, desk, miscellaneous furniture, electricity, ball machine, rollers and/or squeegees, and use of Town photocopier.
- D. Installation, maintenance and monthly fees associated with a telephone or pager, and for telephone answering machine or voice mail.

8. PAYMENT TO TOWN BY TENNIS PRO

Tennis Pro shall pay the Town ten percent (10%) of his gross revenues on the last day of each month.

Tennis Pro shall submit a record of all lessons, clinics, etc. taught or held, and include the names of each person, date of lesson, etc. and time expended for each lesson, amount charged/ collected, with a summary sheet showing total hours taught and total (100%) of the money collected.

Tennis Pro shall include, with the above records, a check representing payment for ten percent (10%) of the total income shown by such records made payable to "Town of Atherton" and submit all information to the Holbrook-Palmer Park Program Manger at 150 Watkins Avenue, Main House, Atherton. Said payments shall be made on the last day of each month.

9. AUDIT

Once during each year of the term of this contract, and at any one time in the year following the termination of this contract, the City Manager may cause an audit of Tennis Pro's business within the Town, by an independent accountant selected by the City Manager. If any monthly or annual statement of gross revenues submitted by Tennis Pro to the Park Program Manager is found to be more than ten percent (10%) less than the amount of Tennis Pro's actual gross revenue for the same period, Tennis Pro shall immediately pay to Town the cost of the audit plus ten percent (10%) of the difference together with interest thereon computed at the rate of ten percent (10%) per annum. Otherwise, the cost of the audit shall be paid by the Town.

10. FORCE MAJEURE

If the facilities at Holbrook-Palmer Park are damaged or made unusable due to a natural disaster or causes beyond the control of the Town, the parties will be relieved of their mutual obligations under this contract. When the affected facilities are again deemed to be useable by the City Manager, the contract will be considered to be resumed.

11. PERFORMANCE REVIEWS

Tennis Pro shall be given an annual evaluation by the City Manager to review the performance of this agreement. Other reviews may be scheduled as agreed upon or as necessary by either party. Any notice given pursuant to this contract shall be considered complete upon hand delivery or three days after mailing, postage pre-paid as follows:

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

TENNIS PRO

Alan Margot
325 M Sharon Park Dr.
Menlo Park, CA 94025

Dated: _____

By: _____

WILLIAM R. CONWELL, Mayor
Town of Atherton

Dated: _____

By: _____

ALAN MARGOT, Tennis Professional

APPROVED AS TO FORM:

MARC G. HYNES, City Attorney

FIRST AMENDMENT TO AGREEMENT FOR SERVICES OF
USPTA TEACHING TENNIS PROFESSIONAL
ALAN MARGOT

This is an amendment to the agreement ("contract") originally effective as of March 1, 2005. By this First Amendment the contract between the Town of Atherton, California ("Town"), a California municipal corporation and Alan Margot, USPTA "Tennis Professional," ("Tennis Pro") will have an effective date of March 1, 2007, on the following terms and conditions:

For consideration, receipt of which is hereby acknowledged, the parties agree to amend the contract described above as follows:

1. Paragraph 4 of the contract entitled TERM OF CONTRACT is hereby amended by revising subparagraphs A, C and D to read as follows:

A. This contract shall commence effective March 1, 2007, and unless terminated sooner per 4.b. below, terminate on the last day of June, 2009.

B. The City Manager may terminate the contract without cause by giving at least sixty (60) days prior written notice to Tennis Pro. Tennis Pro may terminate the contract without cause by giving at least sixty (60) days prior written notice to the City Manager.

C. The City Manager may terminate this agreement if at any time Tennis Pro is in default in the payment of any fees, portion of net revenue or any other monies required to be paid to the Town, or in the performance of any duty, obligation, covenant or agreement contained herein (time expressly declared to be of the essence,) upon five (5) days written notice to Tennis Pro and Tennis Pro fails to correct such default within said five (5) day period. The Tennis Pro will be automatically terminated if convicted of a felony.

D. This agreement shall automatically terminate on the last day of June, 2009, unless both parties agree in writing to extend the existing terms and conditions for another two year term.

2. Except as amended by this First Amendment, all other terms and conditions of the contract between the Town and Tennis Pro shall continue to remain in effect.

Dated: June _____, 2007.

ALAN B. CARLSON, Mayor
Town of Atherton

Dated: June ____, 2007.

ALAN MARGOT, Tennis Professional

APPROVED AS TO FORM:

/s/ Marc Hynes
MARC G. HYNES, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JUNE 20, 2007

**SUBJECT: APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT WITH CSG CONSULTANTS, INC. FOR MUNICIPAL
CIVIL ENGINEERING SERVICES FOR THE REVIEW OF
DEVELOPMENT PROJECTS**

RECOMMENDATION:

Approve an Amendment to the Professional Services Agreement with CSG Consultants, Inc. for Municipal Civil Engineering services for the review of development projects, in an amount not to exceed \$50,000 for Fiscal Year 2007-08.

BACKGROUND:

At the City Council meeting of April 18, 2007, the Council approved a Professional Services Agreement with CSG Consultants in the amount of \$30,000 for services for the remainder of the 2006-07 fiscal year. Those services include review of the Town's fee structure, work with BKF on development of grading and drainage criteria, set up procedures for review of development plans, and begin reviewing development plans. This work is currently underway and is being performed satisfactorily.

ANALYSIS:

The services for FY 2007-08 will consist of development grading and drainage reviews and inspections and working with Building Department staff in the implementation of the CRW permit tracking program.

FISCAL IMPACT:

The 2007-08 Budget request includes \$50,000 for contract services for grading and drainage reviews. As this is the first year of this contract and workload data is not yet available, this budget amount may need to be revisited at mid-year depending on the workload assigned to the consultants. The contract amount will be subject to annual review and renewal as a part of the annual budget preparation.

As a part of the 2006-07 work effort, CSG is reviewing the Town's fee structure and making recommendations for modifications to allow the Town to recapture all costs of the review and inspection of development grading and drainage plans.

Prepared by:

Approved by:

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

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF JUNE 20, 2007

SUBJECT: AMENDMENT TO AGREEMENT BETWEEN SAN MATEO COUNTY AND TOWN OF ATHERTON FOR ANIMAL CONTROL SERVICES

EXECUTIVE SUMMARY AND RECOMMENDATION:

Attached is a second amendment to the agreement whereby animal control services are provided to the Town. The amendment revises the payments provision to extend the agreement until 2011 and revises the indemnification provision of the agreement as further described below. Approval of the amendment is recommended. If approved, the animal control services will continue to be provided through June of 2011.

BACKGROUND:

San Mateo County contracts with the Peninsula Humane Society (PHS) and the Society for Prevention of Cruelty to Animals (SPCA) for animal control services and shelter services. The County has recently extended the agreement for a three year period ending June 30, 2011. The cities in San Mateo County including the Town of Atherton have been requested to enter into a second amendment to the agreement for animal control services.

1. Payments. The payments provision of Section B, subparagraph 4 sets out the manner in which each entity's costs for animal control services is determined. The share of obligation of the county and each city is based on service costs. Annually, the county calculates a percentage based upon service reports provided by the PHS/SPCA. The percentage distribution for any given year is based on an average of service costs over the three calendar years which preceded that year. This procedure was previously followed in determining each agency's share. It will continue during the extended term through 2011. The calculation showing costs owing by the Town will be provided by the county by March 1st of any given year. Base costs which the county and cities will pay in total to PHS/SPCA are set forth at the top of page 3 of the amendment for each fiscal year beginning 2007-2008 ending 2010-2011.

2. Hold Harmless. The hold harmless provision deletes existing Section D subparagraph 12 and replaces it with language appearing at pages 3 through 5 of the amendment. The reciprocal hold harmless provisions as set out in the first full paragraph of paragraph 12 on page 3 wherein the Town holds the county harmless and the language beginning on the last two lines of page 3 and extending through the first full paragraph on page 4 where the county holds the Town harmless essentially track the prior mutual indemnification provisions with one revision which clarifies that indemnification is only for the active negligence of the party. The pre-existing agreement did not contain the word “active.” In my opinion, this new language is an improvement over the prior clause.

The paragraph appearing in the middle of page 4 concerning apportionment of concurrent negligence is the same as the previous “concurrent indemnification language.” Apportionment according to the California Theory of Comparative Negligence means that in any lawsuit where both the County and Town were named parties, both the County and Town are fully liable to a third party for payment of a judgment; however, dependent upon the percentage of negligence of the county and the Town, each can look to the other for reimbursement of that percentage if they have paid the total claim.

Beginning in the final paragraph on page 4 and continuing onto page 5 is a provision that was not previously set out in the indemnification provisions. It provides that in the event the county or cities are both sued and the suit is related in any manner to actions taken by the Peninsula Humane Society solely in a particular city or cities that are a party to the agreement, then those entities will hold the county harmless and provide for its defense along with any other city signatory that is named as a defendant. For actions taken solely in the unincorporated area of the county, the county will hold harmless and indemnify and defend any cities named as defendants.

This provision is an appropriate clarification of responsibility, and is designed to protect an entity which is named solely because it is a signatory to the agreement, and otherwise is not involved in the dispute.

3. Other Issues. A group known as Citizens for Accountability has circulated a lengthy e-mail relative to the agreement for animal control services. The issues raised in the e-mail pertain to revisions which, if they were to be made, must be to the agreement between the county and PHS/SPCA. There is a claim that cities must put their contract for animal control services out to bid. This is not required by state law or the Town’s ordinances.

PROPOSED COUNCIL ACTION AND LANGUAGE:

By motion, and at least three affirmative votes, the City Council may approve the amendment. “I move that the second amendment to the agreement for animal control services between the Town of Atherton and the County of San Mateo be approved in accordance with the recommendation in the Staff Report.”

FISCAL IMPACT:

The Town will be obliged to pay its proportionate costs for animal control services during the course of the agreement through June 30, 2011.

Prepared By:

Approved By:

/s/Marc Hynes
Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachment.

SECOND AMENDMENT TO AGREEMENT FOR ANIMAL CONTROL SERVICES BETWEEN THE CITIES OF ATHERTON, BELMONT, BRISBANE, BURLINGAME, COLMA, DALY CITY, EAST PALO ALTO, FOSTER CITY, HALF MOON BAY, HILLSBOROUGH, MENLO PARK, MILLBRAE, PACIFICA, PORTOLA VALLEY, REDWOOD CITY, SAN BRUNO, SAN CARLOS, SAN MATEO, SOUTH SAN FRANCISCO, WOODSIDE AND THE COUNTY OF SAN MATEO

This second amendment to an agreement is made and entered into this ____ day of _____, 2007, by and between the County of San Mateo, a political subdivision of the State of California (hereinafter, "County"), and the cities of Atherton, Belmont, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, and Woodside a California municipal corporation (hereinafter "City");

WITNESSETH

WHEREAS, on June 17, 2003, County and Peninsula Humane Society & SPCA entered into an Agreement For Animal Control Services and Shelter Services (hereinafter referred to as the "Agreement"); and

WHEREAS, County and City entered into an Agreement on or about July 1, 2003 for Animal Control Services (hereinafter, "City Agreement"); and

WHEREAS, County and City entered into an Amendment on or about December 14, 2004, extending the City Agreement to correspond with an extension of the Agreement and PHS land lease through June 30, 2008 and amending the PHS payment schedule; and

WHEREAS, County and PHS have entered into a Second Amendment, extending the Agreement and PHS land lease through June 30, 2011 and amending the PHS payment schedule; and

WHEREAS, City and County wish to amend the City Agreement as set forth below to be consistent with the Second Amendment with PHS/SPCA attached hereto as Exhibit A;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. CITY'S RESPONSIBILITIES. Section B, Subparagraph 4. **Payments** previously deleted and replaced in its entirety in the First Amendment, is hereby further deleted and the following shall be substituted in lieu thereof:

"4. **Payments.** City shall pay to the County prior to January 1st of each fiscal year, and following the receipt of an invoice from County, the City's percentage share of the net program cost of the Animal Control Program. This net program cost shall be determined by the County and shall be equal to the cost of the contract between the County and County Contractor plus the cost of the County administering licensing collection and Animal Control Services Program, minus any program revenue received by County or County Contractor as described in Section D, Paragraph 5. County and City's percentage share shall be based on service costs. County will calculate a percentage breakdown annually, based on service reports provided by County Contractor. Percentage distribution for a given year will be based on an average of service costs over the three calendar years prior to the year in question. Exhibit "B", attached and incorporated by this reference herein, details percentage distribution for FY 2003-04. Percentage distributions for 2007, 2008, 2009, 2010 and 2011 will be distributed by County to Cities by March 1st of the given year.

Base costs to be paid to County Contractor by the County and Cities are as follows:

| <u>Fiscal Year</u> | <u>Amount</u> |
|--------------------|---------------|
| 2007-08 | \$5,076,951 |
| 2008-09 | \$4,750,000 |
| 2009-10 | \$4,987,500 |
| 2010-11 | \$5,236,875 |

2. **GENERAL PROVISIONS** Section D, Subparagraph 8. **Term and Effective Period** previously deleted and replaced in its entirety in the First Amendment, is hereby further deleted and the following shall be substituted in lieu thereof:

“8. **Term and Effective Period.** This amended Agreement shall be effective the period from July 1, 2006 through June 30, 2011. All services are subject to the terms and conditions of this Agreement.”

3. **GENERAL PROVISIONS** Section D, Subparagraph 12. **Hold Harmless** is hereby deleted and replaced in its entirety and the following shall be substituted in lieu thereof:

“12. **Hold Harmless.** City shall hold harmless, indemnify and defend County, its officers, employees and agents from and against any and all claims, suits or actions of every kind brought for or on account of injuries or death of any person or damage to any property of any kind whatsoever and whomsoever belonging which arise out of the performance or nonperformance of City’s covenants and obligations under this Agreement and which result from the actively negligent or wrongful acts of City or its officers, employees, or agents.

County shall hold harmless, indemnify and defend City, its officers, employees and agents from and against any and all claims, suits or actions

related in any manner to actions taken by PHS solely in a particular City or Cities that are party to this agreement, those particular City or those Cities will hold harmless, indemnify and defend the County, and any other City that is a party to this agreement, that is named as a defendant in that suit. In the event a City or Cities that are a party to this agreement are sued and the suit relates in any manner to actions taken by PHS solely in the unincorporated area the County, the County will hold harmless, indemnify and defend the City or Cities named as a defendant in that suit.

4. County Contractor Responsibilities. Exhibit C ("Contractor Responsibilities"), Section 11 ("Excluded Services") of the Services Agreement is amended to add the following exclusion to the Services Agreement to render it consistent with the parties' intent as of (and since) June 17, 2003:

- Enforcement of State law and regulations related to the prevention of cruelty to animals.

5. Effectiveness of Amendment. Except as set forth in this Second Amendment, all other provisions of the City Agreement and the First Amendment shall remain unchanged and in full force and effect.

6. Date of Adoption. This Second Amendment shall be deemed to have been adopted on the date this Second Amendment has been executed by the County and all of the Cities.

7. Condition Precedent. This amendment will become effective only after the County and PHS/SPCA negotiate and adopt an amendment to their June 17, 2003 Agreement that is consistent with this Second Amendment. In the event that the County (acting in good faith) and PHS/SPCA are unable to negotiate and adopt an amendment to

their June 17, 2003 Agreement that is consistent with this Second Amendment, this Second Amendment becomes void.

8. This Second Amendment may be executed in counterparts.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to the City/County Agreement for Animal Control Services to be executed by their duly authorized representatives on the day and year first written above.

Dated: _____

COUNTY OF SAN MATEO

ATTEST:

By: _____

Clerk of the Board

Dated: _____

TOWN OF ATHERTON

ATTEST:

By: _____

Town of Atherton, Clerk

Dated: _____

CITY OF BELMONT

ATTEST:

By: _____

City of Belmont, Clerk

Dated: _____

CITY OF BRISBANE

ATTEST:

By _____

City of Brisbane, Clerk

Dated: _____

CITY OF BURLINGAME

ATTEST:

By _____

City of Burlingame, Clerk

Dated: _____

TOWN OF COLMA

ATTEST:

By _____

Town of Colma, Clerk

Dated: _____

CITY OF DALY CITY

ATTEST:

By _____

City of Daly City, Clerk

Dated: _____

CITY OF EAST PALO ALTO

ATTEST:

By _____

City of East Palo Alto, Clerk

Dated: _____

CITY OF FOSTER CITY

ATTEST:

By _____

City of Foster City, Clerk

Dated: _____

CITY OF HALF MOON BAY

ATTEST:

By _____

City of Half Moon Bay, Clerk

Dated: _____

TOWN OF HILLSBOROUGH

ATTEST:

By _____

Town of Hillsborough, Clerk

Dated: _____

CITY OF MENLO PARK

ATTEST:

By _____

City of Menlo Park, Clerk

Dated: _____

CITY OF MILLBRAE

ATTEST:

By _____

City of Millbrae, Clerk

Dated: _____

CITY OF PACIFICA

ATTEST:

By _____

City of Pacifica, Clerk

Dated: _____

TOWN OF PORTOLA VALLEY

ATTEST:

By _____

Town of Portola Valley, Clerk

Dated: _____

CITY OF REDWOOD CITY

ATTEST:

By _____

City of Redwood City, Clerk

Dated: _____

CITY OF SAN BRUNO

ATTEST:

By _____

City of San Bruno, Clerk

Dated: _____

CITY OF SAN CARLOS

ATTEST:

By _____

City of San Carlos, Clerk

Dated: _____

CITY OF SAN MATEO

ATTEST:

By _____

City of San Mateo, Clerk

Dated: _____

CITY OF SOUTH SAN FRANCISCO

ATTEST:

By _____

City of South San Francisco, Clerk

Dated: _____

TOWN OF WOODSIDE

ATTEST:

By _____

Town of Woodside, Clerk



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF JUNE 20, 2007

SUBJECT: APPROVE THE RECOMMENDATION OF THE CITY COUNCIL SCREENING COMMITTEE TO INCREASE THE RESIDENT MEMBERS OF THE GENERAL PLAN COMMITTEE FROM FIVE MEMBERS TO SIX MEMBERS; ACCEPT THE RECOMMENDATION FOR APPOINTMENTS TO THE GENERAL PLAN COMMITTEE

RECOMMENDATION

Approve the recommendation of the City Council Screening Committee to increase the resident members of the General Plan Committee from five members to six members; accept the recommendation of the Steering Committee for appointments to the General Plan Committee

BACKGROUND

Each April, the City Council Screening Committee interviews applicants and makes recommendations to the City Council to fill the vacancies created when terms expire on Town Commissions and Committees. Two terms on the General Plan Committee expired on April 30, 2007. The appointment process was extended in order to solicit additional applications. The Screening Committee, consisting of Council Members Jerry Carlson and Kathy McKeithen, interviewed five potential applicants for the two vacancies on the General Plan Committee. If the City Council approves the Screening Committee's recommendation to increase membership from five to six resident advisors, the Screening Committee will make its recommendations for appointment at the meeting.

ITEM 21

THERE IS NO ITEM 21.

ITEM 22

APPEAL REGARDING 94 TALLWOOD

THE APPELLANT HAS REQUESTED THE ITEM BE
CONTINUED TO THE CITY COUNCIL MEETING OF JULY
18, 2007.

ITEM 23

APPEAL REGARDING 55 BELBROOK WAY

THE APPELLANT HAS REQUESTED THE ITEM BE CONTINUED TO THE CITY COUNCIL MEETING OF JULY 18, 2007.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: MIKE WASMANN, BUILDING OFFICIAL

DATE: FOR THE MEETING OF JUNE 20, 2007

**SUBJECT: APPEAL OF NOTICE AND ABATEMENT ORDER
70 BARRY LANE (Continued from the City Council meeting of May 16
2007.)**

**THIS IS A COVER MEMO, THE STAFF REPORT AND OTHER DOCUMENTS ARE
ATTACHED.**



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS

FROM: MICHAEL WASMANN, BUILDING OFFICIAL

DATE: CITY COUNCIL MEETING OF APRIL 18, 2007

**SUBJECT: APPEAL OF NOTICE AND ABATEMENT ORDER
70 BARRY LANE**

Recommendation. Conduct public hearing on appeal of a Notice of Nuisance and Abatement Order dated March 9, 2007, regarding 70 Barry Lane, Atherton, California. The Council has the authority to: uphold the appeal and reverse the notice and abatement order; modify the order; or deny the appeal thus upholding the Order. It is my recommendation that the Notice and Abatement Order be affirmed and, accordingly, that the appeal be denied. Any action taken by the Council should direct the preparation of written findings for consideration and adoption at a subsequent meeting.

Executive Summary. The Notice and Abatement Order dated March 9, 2007, informed the owners of property located at 70 Barry Lane, Atherton, California, that the property violated the maximum allowable building floor area provided by Section 17.20.040C of the Atherton Municipal Code. The maximum lot coverage for the property is 8,053.79 square feet. Lot coverage totals 13,720.40 square feet. Thus, the buildings occupy 5,666.61 square feet in excess of what is allowed for the property. The owners were ordered to abate the nuisance created by this zoning code violation and to bring the property into conformance with the municipal code.

A copy of the abatement order is attached. (Exhibit A).

The abatement order was appealed. A copy of the appeal, a letter dated March 19, 2007, from Attorneys Dan K. Siegel and E. David Marks is attached. (Exhibit B)

Background.

1. Section 17.68.010 of the Atherton Municipal Code requires that all officials invested with the duty or authority to issue permits or licenses conform to the provisions of the Zoning Title (Chapter 17) and

"shall issue no permit or license for uses, buildings, or purposes in conflict with the provisions of this title. Any such permits or licenses issued in conflict with the provisions of this title shall be null and void. It shall be the duty of the chief building official to enforce the provisions of the zoning ordinance pertaining to erection, construction, reconstruction, moving, conversion, alteration or addition to any building or structure."

A copy of section 17.68.010 is attached. (Exhibit C)

2. The Town has adopted the Uniform Administrative Code 1997 edition and the 2001 California Building Code. Section 101.2 of the Uniform Administrative Code states:

"The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within this jurisdiction ...".

A copy of Section 101.2 of the Uniform Administrative Code is attached. (Exhibit D)

3. Section 101.3 of the Uniform Administrative Code states in part :

"Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable."

A copy of Section 101.3 of the Uniform Administrative Code is attached. (Exhibit E)

4. Section 104.2.1 of the Uniform Administrative Code states in part :

"The building official shall have the power to render interpretations of this code and to adopt and enforce rules and supplemental regulations to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this code."

A copy of Section 104.2.1 is attached. (Exhibit F)

5. Section 104.2.7 of the Uniform Administrative Code states:

"Modifications. When there are practical difficulties involved in carrying out the provisions of this code, the building official may grant modifications for individual cases. The building official shall first find that a special individual reason makes the strict letter of this code impractical and that the modification is in conformance with the intent and purpose of this code and that such modification does not lessen any fire-protection requirements or any degree of structural integrity. The details of any action granting modifications shall be recorded and entered in the files of the code enforcement agency."

A copy of Section 104.2.7. of the Uniform Administrative Code is attached. (Exhibit G)

6. Section 104.2.8 of the Uniform Administrative Code relative to alternate materials, alternate design and methods of construction states:

"The provisions of this code are not intended to prevent the use of any material, alternate design or method of construction not specifically prescribed by this code, provided any alternate has been approved and its use authorized by the building official.

"The building official may approve any such alternate, provided the building official finds that the proposed design is satisfactory and complies with the provisions of this code and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.

The building official shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use. The details of any action granting approval of an alternate shall be recorded and entered in the files of the code enforcement agency."

A copy of Section 104.2.8 of the Uniform Administrative Code is attached. (Exhibit H)

7. Section 17.08.128 of the Atherton Municipal Code states:

"'Floor area' means the sum of the gross horizontal areas of the several planes of the building at each floor level measured from the outside perimeter of the exterior walls or roof in the case of open structures. Floor area shall also include those portions of overhangs exceeding four feet on the main building and those portions of overhangs exceeding one foot on accessory structures.

Floor area shall not include pools, tennis courts, drives and other paved surfaces, and basements."

A copy of Section 17.08.128 is attached. (Exhibit I)

8. Section 17.20.040(C) of the Atherton Municipal Code limits the floor area ratio for a property such as 70 Barry Lane to a maximum of 18% of the lot size. The floor above the first floor of the main building for all lots shall not exceed 7.5% of the lot size. The Barry lot is approximately 44,752.39 square feet in size. Total lot coverage allowed is, therefore, 8,053.79 square feet.

A copy of Section 17.20.040C is attached (Exhibit J)

9. Section 17.08.130 of the Atherton Municipal Code defines floor area ratio as:

"Floor area ratio" means the sum of the floor areas as defined in Section 17.08.128 of this code of all main and accessory structures on a lot, divided by the gross lot area."

A copy of Section 17.08.130 is attached. (Exhibit K)

10. As reported above, the Building Department has determined that based upon the allowable floor area ratio the maximum coverage for the property is 8,053.79 square feet. Lot coverage totals 13,720.40 square feet. Thus, the building at 70 Barry Lane, Atherton, California, occupies 5,666.61 square feet in excess of what is allowed for the parcel.

A copy of calculations showing this is attached. (Exhibit L).

11. On October 24, 2006, the owners of the property were advised that because of potential discrepancies with requirements of the Atherton Municipal Code, no final building permit would be issued for the property.

A copy of that letter is attached. (Exhibit M)

Legal Issues. Issues raised by the Appellant concerning the legal concept of vested rights and estoppel will be addressed by counsel from the Miller, Morgan, Blair law firm. Counsel will respond to issues raised in connection with a vested rights claim, and/or estoppel of the Town to proceed with a nuisance abatement. Cases discussed will include Pettitt v. Fresno (1973) 34 Cal.App.3rd 822; Anderson v. City of La Mesa (1981) 118 Cal.App.3d 657; and Ciraulo v. City of Newport Beach (2007) 147 Cal.App.4th 838.

Further Background Information related to this property and for reference by the City Council appears in Exhibit N as follows:

Exhibit N Copy of Phase III Audit Report and accompanying staff report prepared by Finance Director John Johns for the City Council meeting of October 18, 2006.

Fiscal Impact. Appellants have paid \$750.00 for the appeal. This fee was requested pursuant to Resolution No. 03-19. Appellants have paid the fee under protest arguing that these fees relate to building and zoning charges and not to the nuisance abatement ordinance, Chapter 8.20 of the Atherton Municipal Code under which notice and abatement order were sent. The City Attorney has determined that the appeal fees set out in Resolution No. 03-19 are appropriate here.

A copy of Resolution No. 03-19 is attached. (Exhibit O)

A copy of the letter from Attorney Dan Siegel confirming the protest payment is attached as Exhibit P).

Suggested Action. I move that the appeal of the abatement order for 70 Barry Lane be denied. Written findings shall be prepared for consideration and adoption at the next regular City Council meeting.

Exhibits: Exhibits "A" through "P" attached.

Respectfully,

MW:cwb

MICHAEL WASMANN

Prepared By:

Approved By:

Building Official

City Manager

TOWN OF ATHERTON, BUILDING DEPARTMENT

93 STATION LANE, ATHERTON, CA 94027

PHONE (650) 752-0518, HOURS 8 a.m. to noon & 1 p.m. to 5 p.m.

NOTICE OF NUISANCE AND ABATEMENT ORDER

Location: 70 Barry Lane, Atherton, CA 94027-2057 Assessor's Parcel Number 070-201-060

Landowner, per Assessor's record and address if different than location:

Robert Thomas and Linda Thomas, husband and wife, 162 James Avenue, Atherton, CA 94027

The City Official indicated at the bottom of this form, acting as designee of the City Manager, has determined that a nuisance is being maintained at the location shown above. The condition(s) constituting the nuisance, code section(s) being violated and corrective actions required are as follows:

This property violates the maximum allowable building floor area provided by the Atherton Municipal Code. Section 17.20.040(C) of the Atherton Municipal Code establishes a floor area of eighteen percent (18%) of the lot. Based upon the allowable floor area ratio, the maximum lot coverage for the property is 8053.79 square feet. Lot coverage totals 13,720.40 square feet. Thus, the building(s) at 70 Barry Lane, Atherton, California, occupy 5,666.61 square feet in excess of what is allowed for the parcel.

Because the building permit is in conflict with the provisions of the Atherton Municipal Code it is null and void in accordance with the provisions of Section 17.68.010.

You are hereby ordered to secure all appropriate permits and to physically commence within ten days from the date of service of this notice and to complete within thirty days from such date, abatement of the condition(s) described above. The disposal of materials involved in complying with this order shall be carried forth in a legal manner.

If the required work is not commenced and completed within the times specified, the Atherton Municipal Code provides that the City Manager will proceed to cause the work to be done and bill the persons named in this notice for the abatement costs and administrative expenses and/or levy the costs against the property. The code further provides that in case of non-compliance or non-payment the Town may record this notice and order in the office of the County Recorder and a lien may be placed on the property to cover abatement costs and administrative expenses.

Any person having an interest or record title in the property may appeal this notice and order or any action by the City Manager or his designee to the City Council, within ten days from the date of service of this notice and order. For additional information and to inform the Town of commencement and completion of abatement work, contact the Designated City Official listed below:

Designated City Official: Name: Mike Wasmann. Title: Building Official

Telephone Number: 650/752-0518

Date of Service: MARCH 9, 2007

Served by: Personal Service (affidavit attached) _____, or certified and regular mail X

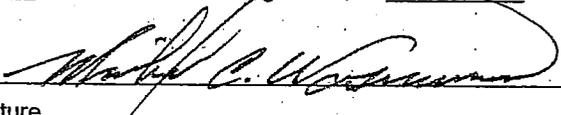

(Signature)

EXHIBIT A

TOWN OF ATHERTON
BUILDING DEPARTMENT
93 STATION LANE, ATHERTON, CA 94027

AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL

Kelli Robertson declares:
(Printed name)

I am and was on the date herein mentioned over the age of eighteen and an employee of the Town of Atherton in the county where the mailing took place.

On March 9, 2007, I mailed from Atherton, California, a copy of the attached NOTICE OF NUISANCE AND ABATEMENT ORDER at 70 BARRY LANE, ATHERTON.

I served the document by enclosing a copy of it in separate envelopes and placing them for collection and mailing following our ordinary business practices. I am readily familiar with the Town's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelopes were addressed and mailed as follows:

Via Certified First Class Mail, Return Receipt Requested
Robert Thomas and Linda Thomas
162 James Avenue
Atherton, CA 94027

Via First Class Mail
Robert Thomas and Linda Thomas
162 James Avenue
Atherton, CA 94027

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 9, 2007 at Atherton, California.

Kelli Robertson
(Signature of person completing this form)

EXHIBIT A

JORGENSEN, SIEGEL, MCCLURE & FLEGEL, LLP
ATTORNEYS AT LAW
1100 ALMA STREET, SUITE 210
MENLO PARK, CALIFORNIA 94025-3392
(650) 324-9300
FACSIMILE (650) 324-0227
www.jsmf.com

JOHN D. JORGENSEN
MARVIN S. SIEGEL
WILLIAM L. MCCLURE
JOHN L. FLEGEL
MARGARET A. SLOAN
DAN K. SIEGEL
DIANE S. GREENBERG
JENNIFER H. FRIEDMAN
MINDIE S. ROMANOWSKY

NICOLAS A. FLEGEL
LEIGH F. PRINCE
KEVIN M. RODRIGUEZ
JOHN R. COSGROVE
(RETIRED)

March 19, 2007

VIA HAND DELIVERY

Mayor Alan B. Carlson
Town of Atherton Council Members
91 Ashfield Road
Atherton, CA 94027

Re: Appeal of Nuisance and Abatement Order Re: 70 Barry Lane, Atherton

Dear Mayor Carlson and Council Members:

This letter shall serve as the Notice of Appeal regarding the Nuisance and Abatement Order concerning the above-mentioned property. This appeal letter is being submitted on behalf of the owners of 70 Barry Lane, Robert and Linda Thomas, who are represented by E. David Marks of Miller Starr Regalia as well as on behalf of the builder, Creative Habitat, Inc., who is represented by Dan K. Siegel of Jorgenson, Siegel, McClure & Flegel, LLP.

The Thomases and their three children have lived in Atherton for five years. When they began their search for a new house, they wanted to stay in Atherton and feel fortunate to have found 70 Barry Lane.

In October of 2006, the Thomases purchased 70 Barry Lane with the intention of making it their new home. They purchased the house from Creative Habitat, Inc., a well-known and respected builder and relied on the fact that the Town of Atherton ("Town") issued a permit to Creative Habitat to build the house. Prior to purchasing the home, the Thomases visited the Town of Atherton and were assured that there was a valid building permit for construction of the home and that there were no permit problems. We understand that the house that Creative Habitat built is in full compliance with the permit and has received approval on its inspections, including, but not limited to framing.

Since the Thomases' purchase, they have spent time and money making the house at 70 Barry Lane into their home. Needless to say, they were shocked when they received a Notice from their Town manager that if they did not remove the allegedly non-permitted square footage from their home that the Town would come onto the property and cause the allegedly non-permitted square footage to be removed. The Thomases were also surprised and dismayed that the Town would issue a Notice of Abatement without providing them,

EXHIBIT B

or the builder, the opportunity to be heard regarding why the original permit is valid and cannot be revoked.

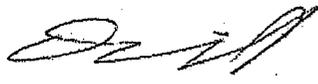
As both the Thomases and Creative Habitat strongly believe that there is a valid permit for the home, as built, at 70 Barry Lane, the Thomases have no choice but to appeal to the City Council to reverse the Notice of Abatement and Nuisance Order. The appeal is based on, but not limited to the following grounds:

1. There is a valid permit for the Thomases' home at 70 Barry Lane;
2. Neither the Thomases nor the builder was given the opportunity to be heard before the Notice of Nuisance and Abatement was issued;
3. The Notice does not include an explanation as to why the permit is invalid under 17.68.010 of the Town's Municipal Code;
4. The issuance of the permit was within the discretion of the Building Official;
5. The Thomases and Creative Habitat have detrimentally relied on the issuance of the original permit and the Town is estopped from revoking it; and
6. The Thomases and Creative Habitat have obtained vested rights to complete and maintain all improvements on the property since they made substantial expenditures in good faith reliance on a building permit issued by the Town.

Please confirm in writing that the appeal has been received and that no other information or action is necessary to entitle the Thomases to an appeal hearing. Also, please provide the Town's written procedures and policies regarding appeal hearings.

We look forward to notification of when the appeal hearing will be held. Moving forward, please direct all future contact and correspondence to Dan K. Siegel, of Jorgenson, Siegel, McClure & Flegel, LLP at the above address and to E. David Marks at Miller Starr Regalia, 300 Hamilton Avenue, Third Floor, Palo Alto, California 94301; telephone (650) 463-7800.

Sincerely,



Dan K. Siegel

Sincerely,



E. David Marks

DKS:rr

cc: Clients
Marc Hynes, City Attorney
Michael Wassman (via hand delivery)

Chapter 17.68**ENFORCEMENT****Sections:**

- 17.68.010** Enforcement authority.
17.68.020 Violation—Deemed
nuisance.

17.68.010 Enforcement authority.

All departments, officials, and public employees of the town vested with the duty or authority to issue permits or licenses shall conform to the provisions of this title and shall issue no permit or license for uses, buildings or purposes in conflict with the provisions of this title. Any such permits or licenses issued in conflict with the provisions of this title shall be null and void. It shall be the duty of the chief building official of the town to enforce the provisions of this title pertaining to erection, construction, reconstruction, moving, conversion, alteration or addition to any building or structure. (Ord. 407 § 15-1, 1985)

17.68.020 Violation—Deemed
nuisance.

Each violation of this title shall constitute a public nuisance and be subject to abatement proceedings and costs pursuant to Chapter 8.20. (Ord. 490 § 49, 1996; Ord. 407 § 15-2, 1985)

EXHIBIT C

Volume 1

Chapter 1
ADMINISTRATION

SECTION 101 — TITLE, PURPOSE AND SCOPE

101.1 Title. These regulations shall be known as the *Uniform Building Code*, may be cited as such and will be referred to herein as "this code."

For the State of California, these regulations shall be known as the California Building Code. The provisions contained in the California Building Code of the (compiled) California Building Standards Code as defined in Section 18910, Health and Safety Code, may be cited as such and are referred to hereafter as "these regulations" or "these building standards" or "this code."

101.2 Purpose. The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within this jurisdiction and certain equipment specifically regulated herein.

The purpose of this code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code. *[For DSA/AC] This language is not adopted by DSA/AC.*

[For DSA/AC] The purpose of this code is to ensure that barrier-free design is incorporated in all buildings, facilities, site work and other developments to which this code applies and to ensure that they are accessible to and usable by persons with disabilities.

[For HCD 1 & HCD 2 & HCD 1/AC] The purpose of this code is to establish the minimum requirements necessary to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, accessibility, use and occupancy, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment.

101.3 Scope. The provisions of this code shall apply to the construction, alteration, moving, demolition, repair, maintenance and use of any building or structure within this jurisdiction, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.

For additions, alterations, moving and maintenance of buildings and structures, see Chapter 34. For temporary buildings and structures see Section 3103 and Appendix Chapter 31.

Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

Whenever in this code reference is made to the appendix, the provisions in the appendix shall not apply unless specifically adopted. *[For DSA/AC] This language is not adopted by DSA/AC.*

101.3.1 *The provisions of the model codes which are adopted by these regulations are applicable to all occupancy groups and uses regulated by this code. The amendments to the model codes are applicable only to those occupancies or uses which the state*

agency adopting the amendments is authorized to regulate, as listed in Section 101.17.

NOTE: It is not the intent of this section that every existing occupancy within the scope of the state fire marshal's jurisdiction mandatorily conform or be made to conform to the new construction requirements relative to fire, panic and explosion safety. Reasonable judgment must be exercised by the enforcing agency in the application of these building standards to existing occupancies.

[For DSA/AC] EXCEPTION: Outdoor environments and uses shall be classified according to accessibility uses described in Chapters 11A, 11B and 11C, and life safety concerns.

101.4 Effective Date.

101.4.1 *One hundred and eighty days after the date of publication, or as otherwise noted herein.*

NOTE: For clarification purposes, the applicable sections of the Health and Safety Codes are repeated here for clarity and read as follows:

Section 18938. Application and Effective Date. The building standards contained in the Uniform Fire Code, of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc., the Uniform Building Code of the International Conference of Building Officials, Appendix Chapter 1 of the Uniform Code for Building Conservation of the International Conference of Building Officials, the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials, the National Electrical Code of the National Fire Protection Association, the Uniform Mechanical Code of the International Association of Plumbing and Mechanical Officials, as referenced in the California Building Standards Code, shall apply to all occupancies throughout the state and shall become effective 180 days after publication in the California Buildings Standards Code by the California Building Standards Commission, or at a later date after publication established by the commission.

[For HCD 1 & HCD 2] Section 17958. Except as provided in Sections 17958.8 and 17958.9, any city or county may make changes in the provisions adopted pursuant to Section 17922 and published in the California Building Standards Code or the other regulations thereafter adopted pursuant to Section 17922 to amend, add or repeal ordinances or regulations that impose the same requirements as are contained in the provisions adopted pursuant to Section 17922 and published in the California Building Standards Code or the other regulations adopted pursuant to Section 17922 or make changes or modifications in those requirements upon express findings pursuant to Sections 17958.5 and 17958.7. If any city or county does not amend, add or appeal ordinances or regulations to impose those requirements or make changes or modifications in those requirements upon express findings, the provisions published in the California Building Standards Code or the other regulations promulgated pursuant to Section 17922 shall be applicable to it and shall become effective 180 days after publication by the California Building Standards Commission. Amendments, additions and deletions to the California Building Standards Code adopted by a city or county pursuant to Section 17958.7, together with all applicable portions of the California Building Standards Code, shall become effective 180 days after publication of the California Building Standards Code by the California Building Standards Commission.

Volume 1

Chapter 1 ADMINISTRATION

SECTION 101 — TITLE, PURPOSE AND SCOPE

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For the State of California, these regulations shall be known as the California Building Code. The provisions contained in the California Building Code of the (compiled) California Building Standards Code as defined in Section 18910, Health and Safety Code, may be cited as such and are referred to hereafter as "these regulations" or "these building standards" or "this code."

101.2 Purpose. The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within this jurisdiction and certain equipment specifically regulated herein.

The purpose of this code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code. *[For DSA/AC] This language is not adopted by DSA/AC.*

[For DSA/AC] The purpose of this code is to ensure that barrier-free design is incorporated in all buildings, facilities, site work and other developments to which this code applies and to ensure that they are accessible to and usable by persons with disabilities.

[For HCD 1 & HCD 2 & HCD 1/AC] The purpose of this code is to establish the minimum requirements necessary to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, accessibility, use and occupancy, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment.

101.3 Scope. The provisions of this code shall apply to the construction, alteration, moving, demolition, repair, maintenance and use of any building or structure within this jurisdiction, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.

For additions, alterations, moving and maintenance of buildings and structures, see Chapter 34. For temporary buildings and structures see Section 3103 and Appendix Chapter 31.

Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

Wherever in this code reference is made to the appendix, the provisions in the appendix shall not apply unless specifically adopted. *[For DSA/AC] This language is not adopted by DSA/AC.*

101.3.1 *The provisions of the model codes which are adopted by these regulations are applicable to all occupancy groups and uses regulated by this code. The amendments to the model codes are applicable only to those occupancies or uses which the state*

agency adopting the amendments is authorized to regulate as listed in Section 101.17.

NOTE: It is not the intent of this section that every existing occupancy within the scope of the state fire marshal's jurisdiction mandatorily conform or be made to conform to the new construction requirements relative to fire, panic and explosion safety. Reasonable judgment must be exercised by the enforcing agency in the application of these building standards to existing occupancies.

[For DSA/AC] EXCEPTION: Outdoor environments and uses shall be classified according to accessibility uses described in Chapters 11A, 11B and 11C, and life safety concerns.

101.4 Effective Date.

101.4.1 *One hundred and eighty days after the date of publication, or as otherwise noted herein.*

NOTE: For clarification purposes, the applicable sections of the Health and Safety Codes are repeated here for clarity and read as follows:

Section 18938. Application and Effective Date. The building standards contained in the Uniform Fire Code, of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc., the Uniform Building Code of the International Conference of Building Officials, Appendix Chapter 1 of the Uniform Code for Building Conservation of the International Conference of Building Officials, the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials, the National Electrical Code of the National Fire Protection Association, the Uniform Mechanical Code of the International Association of Plumbing and Mechanical Officials, as referenced in the California Building Standards Code, shall apply to all occupancies throughout the state and shall become effective 180 days after publication in the California Buildings Standards Code by the California Building Standards Commission, or at a later date after publication established by the commission.

[For HCD 1 & HCD 2] Section 17958. Except as provided in Sections 17958.8 and 17958.9, any city or county may make changes in the provisions adopted pursuant to Section 17922 and published in the California Building Standards Code or the other regulations thereafter adopted pursuant to Section 17922 to amend, add or repeal ordinances or regulations that impose the same requirements as are contained in the provisions adopted pursuant to Section 17922 and published in the California Building Standards Code or the other regulations adopted pursuant to Section 17922 or make changes or modifications in those requirements upon express findings pursuant to Sections 17958.5 and 17958.7. If any city or county does not amend, add or appeal ordinances or regulations to impose those requirements or make changes or modifications in those requirements upon express findings, the provisions published in the California Building Standards Code or the other regulations promulgated pursuant to Section 17922 shall be applicable to it and shall become effective 180 days after publication by the California Building Standards Commission. Amendments, additions and deletions to the California Building Standards Code adopted by a city or county pursuant to Section 17958.7, together with all applicable portions of the California Building Standards Code, shall become effective 180 days after publication of the California Building Standards Code by the California Building Standards Commission.

EXHIBIT E

customarily recognized as normal by persons in the public service of preventing, suppressing or extinguishing fire; or which may obstruct, delay or hinder, or may become the cause of obstruction, delay or hindrance to the prevention, suppression or extinguishment of fire.

102.2 [For HCD 1] Authority to Enforce. Subject to other provisions of law, for administration, enforcement, actions, proceedings, abatement, violations and penalties in structures subject to State Housing Law, refer to Health and Safety Code Sections 17910 through 17995.5 and California Code of Regulations, Title 25, Division 1, Chapter 1 commencing with Section 1.

102.2.1 [For HCD 2] Mobilehome parks and special occupancy parks. Subject to other provisions of law, for administrative, enforcement, actions, proceedings, abatement, inspections and penalties applicable to the Mobilehome Parks Act, refer to California Health and Safety Code, Division 13, Part 2.1 commencing with Section 18200 and California Code of Regulations, Title 25, Division 1, Chapter 2 commencing with Section 1000.
NOTE: See Section 101.17.10.

102.2.2 [For HCD 1] Employee Housing. Subject to other provisions of law, for administration, enforcement, actions, proceedings, violations and penalties applicable to the Employee Housing Act, refer to Health and Safety Code, Part 1, Sections 17000 through 17062.5 and California Code of Regulations, Title 25, Division 1, Chapter 1 commencing with Section 6000.

SECTION 103 — VIOLATIONS

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code.

103.1 [For SFM] Pursuant to Health and Safety Code Section 13112, any person who violates any order, rule or regulation of the state fire marshal is guilty of a misdemeanor punishable by a fine of not less than \$100.00 or more than \$500.00, or by imprisonment for not less than six months, or by both. A person is guilty of a separate offense each day during which he or she commits, continues or permits a violation of any provision of, or any order, rule or regulation of, the state fire marshal as contained in this code.

Any inspection authority who, in the exercise of his or her authority as a deputy state fire marshal, causes any legal complaints to be filed or any arrest to be made shall notify the state fire marshal immediately following such action.

103.2 [For HCD 1] Actions and Proceedings. Subject to other provisions of law, California Code of Regulations, Title 25, Division 1, Chapter 1 commencing with Section 1 and Health and Safety Code, Sections 17980 through 17995.5 address punishments, penalties and fines for violations of building standards in structures subject to the State Housing Law.

103.2.1 [For HCD 2] Actions and proceedings. Subject to other provisions of law, California Code of Regulations, Title 25 Division 1, Chapter 2 commencing with Section 1000 and Health and Safety Code, Section 18700 addresses punishments, penalties and fines for violations of building standards subject to the Mobilehome Parks Act.

103.2.2 [For HCD 1] Actions and proceedings. Subject to other provisions of law, California Code of Regulations, Title 25, Division 1, Chapter 1 commencing with Section 600 and Health and Safety Code, Sections 17060 through 17062.5 address punishments, penalties and fines for violations of building standards subject to the Employee Housing Act.

SECTION 104 — ORGANIZATION AND ENFORCEMENT

104.1 Creation of Enforcement Agency. There is hereby established in this jurisdiction a code enforcement agency which shall be under the administrative and operational control of the building official.

104.2 Powers and Duties of Building Official.

104.2.1 General. The building official is hereby authorized and directed to enforce all the provisions of this code. For such purposes, the building official shall have the powers of a law enforcement officer.

NOTE [For SFM]: See Section 101.17.14.

NOTE [For HCD 1]: See Section 101.17.9.

[For SFM] Pursuant to Health and Safety Code Section 13108, upon the written request of the chief fire official of any city, county or fire-protection district, the State Fire Marshal may authorize such chief fire official and his or her authorized representatives, in their geographical area of responsibility, to make fire-prevention inspections of state-owned or state-occupied buildings, other than state institutions, for the purpose of enforcing the regulations relating to fire and panic safety adopted by the State Fire Marshal pursuant to this section and building standards relating to fire and panic safety published in the California Building Standards Code. Authorization from the State Fire Marshal shall be limited to those fire departments or fire districts which maintain a fire-prevention bureau staffed by paid personnel.

Pursuant to Health and Safety Code Section 13108, any requirement or order made by any chief fire official who is authorized by the State Fire Marshal to make fire-prevention inspections of state-owned or state-occupied buildings, other than state institutions, may be appealed to the State Fire Marshal. The State Fire Marshal shall, upon receiving an appeal and subject to the provisions of Chapter 5 (commencing with Section 18945) of Part 2, 5 of Division 13 of the Health and Safety Code, determine if the requirement or order made is reasonably consistent with the fire and panic safety regulations adopted by the Office of the State Fire Marshal and building standards relating to fire and panic safety published in the California Building Code.

The building official shall have the power to render interpretations of this code and to adopt and enforce rules and supplemental regulations to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this code.

[For SFM] Any person may request a code interpretation from the State Fire Marshal relative to the intent of any regulation or provision adopted by the State Fire Marshal. When the request relates to a specific project, occupancy or building, the State Fire Marshal shall review the issue with the appropriate local enforcing agency prior to rendering such code interpretation.

104.2.1.1 [For HCD 1] Authority of city or county building departments.

104.2.1.1.1 [For HCD 1] General—State housing law. Subject to other provisions of law, Health and Safety Code, Section 17960 is repeated here for clarity and reads as follows:

Section 17960. The building department of every city or county shall enforce within its jurisdiction all the provisions published in the State Building Standards Code, the provisions of this part, and the other rules and regulations promulgated pursuant to the provisions of this part pertaining to the erection, construction, reconstruction, movement, enlargement, conversion, alteration, repair, removal, demolition, or arrangement of apartment houses, hotels, or dwellings.

17.08.080 Building or dwelling area.

"Building or dwelling area" means the area within a lot in which the dwelling may be constructed. (Ord. 407 § 16-6, 1985)

17.08.090 Building line or building setback line.

"Building line" or "building setback line" means the front line of the building area. (Ord. 407 § 16-7, 1985)

17.08.100 District or zone.

"District" or "zone" means a portion of the city within which certain uses of land and buildings are permitted or prohibited, certain yards and other open spaces are required, and certain height limits are established for buildings. (Ord. 407 § 16-9, 1985)

17.08.110 Dwelling, single-family.

"Single-family dwelling" means a building designed for use and occupancy by no more than one individual, family or group of individuals and containing not more than one kitchen or kitchen facility. (Ord. 407 § 16-36, 1985)

17.08.115 End wall.

"End wall" means any wall or group of walls parallel to one another as so designated by this title or the town if no such designation exists. (Ord. 456 § 2, 1990)

17.08.120 Fence.

"Fence" means a structure having as its principal purpose the prevention of ingress or egress of persons or animals or the obstruction of vision or noise. Structures which are used to support a roof, awning, or other horizontal compositions, or structures which have a purpose other than those hereinabove specified, including, without limiting the generality of

the foregoing, tennis courts and other enclosures for athletic activities, compost bins, bath structure enclosures, and enclosures for the storage of tools, equipment and garden supplies, shall not be deemed to be fences. (Ord. 407 § 16-10, 1985)

17.08.128 Floor area.

"Floor area" means the sum of the gross horizontal areas of the several planes of the building at each floor level measured from the outside perimeter of the exterior walls or roof in the case of open structures. Floor area shall also include those portions of overhangs exceeding four feet on the main building and those portions of overhangs exceeding one foot on accessory structures. Floor area shall not include pools, tennis courts, drives and other paved surfaces, and basements. (Ord. 497 § 2, 1998; Ord. 478 § 1(B), 1994; Ord. 456 § 3, 1990)

17.08.130 Floor area ratio.

"Floor area ratio" means the sum of the floor areas as defined in Section 17.08.128 of this code of all main and accessory structures on a lot, divided by the gross lot area. (Ord. 497 § 3, 1998; Ord. 407 § 16-11, 1985)

17.08.133 Front line of main building.

"Front line of main building" means the

EXHIBIT I

2. Accessory structures: fifteen feet; provided compliance is maintained with other requirements as specified in Sections 17.36.050 and 17.36.055;

3. Stables: thirty-four feet;

4. Garages: fifteen feet; provided compliance is maintained with other requirements as specified in Section 17.36.060.

B. Site Area, Width and Depth. Minimum site requirements are:

1. Building site area: forty-three thousand five hundred sixty square feet;

2. Width: one hundred seventy-five feet;

3. Depth: two hundred feet;

4. Flag lots:

a. Width of access area, twenty feet,

b. Site area exclusive of access area, forty thousand square feet;

5. Existing legal structures, nonconforming due to height, may remain nonconforming as to height when they would be required to be made conforming only upon receipt of an excessive height permit as outlined in subsection A of this section.

C. ~~Maximum Floor Area Ratio~~. The maximum floor area ratio shall be eighteen percent of the lot size except for those lots smaller than forty-three thousand five hundred sixty square feet (one acre) which shall be determined by the following equation:

Floor area in square feet = (lot size in square feet \times 0.163) + 726 square feet, with a minimum allowable floor area of 2,250 square feet.

The floor area above the first floor of the main building for all lots shall not exceed 7.5 percent of the lot size.

The following conditions shall not be included in floor area calculations:

1. The first five hundred square feet of roofed area, completely open on two or more sides;

2. Structures, open on all sides, with substantially open roofs.

D. Front and Rear Yards. Minimum front and rear yard requirements are:

1. Main building, interior and corner lots: sixty feet minimum; provided, however, on lots of record prior to adoption of Ordinance No. 146 with a depth of less than two hundred feet, the front and rear yards shall each be thirty percent of the lot depth with a minimum of thirty feet; provided further, where main building heights are between thirty feet and thirty-four feet the front and rear yards shall be increased by a ratio of two feet for each one-foot increase in height;

2. Accessory structures: as provided in Chapter 17.36;

3. The property owned by the city and county of San Francisco, known as the Hetch Hetchy property, over which the owner of adjacent property with contiguous frontage has reserved surface rights, may be utilized by said owner for setback calculation purposes. The adjacent property owner may calculate setbacks to the original property line prior to the acquisition by the city and county of San Francisco, or in the case of properties subdivided after that date, to the centerline of the Hetch Hetchy property.

E. Side Yards. Minimum side yard requirements are as provided in Chapter 17.40; provided, however, where main building heights are between thirty feet and thirty-four feet, the side yards shall be increased by a ratio of one and a half feet for each one-foot increase in height.

1. The property owned by the city and county of San Francisco, known as the Hetch Hetchy property, over which the owner of

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"Front line of main building" means the

EXHIBIT K

INTEROFFICE MEMO

Date: March 2, 2007

To: Michael Wasmann, Building Official

From: Michael Cully, Acting Senior Inspector

RE: 70 Barry Lane.

As requested, I had examined the plans for the project located at 70 Barry Lane. I performed a cursory review of the plans and found discrepancies between my rapid assessment and those figures provided on the cover sheet by the architect. As directed I then engaged a detailed review of the square footages with Plans Examiner Kevin Cittadini. The results of that review are provided at the end of this report.

During our discussion we also reviewed the Town's Ordinances regarding Floor Areas, and how they are calculated. As you are aware this residence is a two-story building with a Mansard-Style Roof – that is one where the roof surface extends down the face of the building to terminate just below the 2nd story floor level.

Municipal Code Section 17.08 subsection 128 defines Floor Area "...means the sum of the gross horizontal areas of the several planes of the building at each floor level measured from the outside perimeter of the exterior walls..."

In regards to this specific definition, and in the case of a Mansard-Style roof (or Cape Cod, Barn Style roofs, etc.) there is no exterior "wall" for the majority of the second floor area, but rather a roof surface. This would allude to the impression that the second floor area would not be counted as there is no exterior wall to measure to, but a roof surface – if using the strict interpretation of that code section..

To further add to the discussion is the definition of a wall, found in the California Building Code, which indicates a wall is a vertical element that is greater than 60 degrees from horizontal. The Municipal Code does not reference, or include this definition. For the 70 Barry Lane project the roof surface, adjacent to the 2nd story level, is at approximately 68 degrees from horizontal. The definition provided within the Municipal Code does however allow one to not count the attic space, where the floor of an attic – on a horizontal plane does not intersect an exterior wall, but a roof surface. The practice of not including attic space into floor area calculations is a common practice among most all jurisdictions. It would appear that this same logic may have been used regarding the mansard roof, as evidenced by the floor area calculations and terminology used on the cover sheet for the 70 Barry plans.

There does occur some attic space at the 2nd floor level. This space, around the floor's perimeter, is created between the exterior roof surface and the interior vertical walls of the conditioned floor space. In performing our calculations we specifically deleted this area from our calculations. This allowance was given in consideration that for a traditional style roof the attic space, when non-conditioned, would

EXHIBIT L

not be included into any area calculations. And, 2nd Floors are restricted in size to equal not more than 7.5% of the lot area, or a maximum of only 3,355.74 square feet.

The area calculations performed by Town Staff were obtained by utilizing the architect's dimensions found on the plan set, wherever possible.

It would be worthwhile to have the architect demonstrate how he performed his calculations as there is a discrepancy of +/- 900 square feet when calculating the 1st floor. The basement was not calculated as it is exempted from Floor Area Ratios (less than 2 feet above Average Natural Grade.)

Information as provided on the Cover Sheet of the plans:

| | | | | |
|---|-----------------------------|-----------------|-------------|---|
| Lot Size | | 44,743.29 | sqft | — |
| Maximum Floor Area, based at 18% of Lot Area + | | 8,053.79 | sqft | — |
| 1 st Floor Area | | 5,499.18 | sqft | |
| 2 nd Floor | countable | 640.00 | sqft | |
| | Under-Mansard not countable | 3,626.00 | sqft | |
| Garage (detached) | | 573.80 | sqft | |
| Pool House (detached) | | 520.98 | sqft | |
| Combined Gar/Pool | | 1,093.00 | sqft | |
| Total Area Reported (without under-mansard area) | | 7,232.18 | sqft | |

Town Staff Findings

| | | | |
|---|-----------------|----------------|---|
| Lot Size/ maximum floor area: | | Information ok | |
| 1 st Floor Area | 6,325.40 | sqft | |
| 2 nd Floor Area | 5,946.00 | sqft | |
| Combined Garage/Pool House (detached) | 1,197.00 | sqft | |
| Covered Patio Area (not indicated on plans) | 252.00 | sqft | |
| Total Square Footage | 13,720.40 | sqft | — |
| Total Allowed Square Footage | 8,053.79 | sqft | |
| Amount in Excess of Allowed | 5,666.61 | sqft | |

EXHIBIT 1



Town of Atherton
Building Department

91 Ashfield Road
Atherton, California 94027
Phone: (650) 752-0523
Fax: (650) 614-1212

October 24, 2006

Creative Habitat
1757 East Bayshore Rd. # 25
Redwood City, Ca. 94063

RE: 70 Barry Lane

To Whom it Concern,

The Town has identified your project, among others, that warrants a closer review of the methods of calculating the total Floor Area as well as an issue with the inclusion of a basement under an accessory structure

In consideration of the complex issue involving Floor Area Ratios and their calculation, as well as the basement under the accessory structure, it has been determined that before the Town staff can proceed with any further inspections of the building there must be a determination made regarding possible violations of the Town's Zoning Regulations.

Therefore, please be advised that until further notice the Building Department will provide no further inspections of this site. In accordance with California Building Code, no further work shall be performed, wherein an inspection would be required prior to the work being concealed or otherwise covered.

If you have any further questions regarding this notice please feel free to contact me at 650-752-0560

Respectfully,

Michael Cully
Acting Building Official

EXHIBIT M

Cc: J. Robinson, City Manager
M. Hynes, City Attorney
I. Costa Sanders, Town Planner



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: JOHN P. JOHNS, FINANCE DIRECTOR
DATE: FOR THE MEETING OF OCTOBER 18TH, 2006
SUBJECT: PHASE III BUILDING DEPARTMENT AUDIT REPORT

RECOMMENDATION:

Accept the findings and recommendations contained within the Phase III of the Building Department permit and processes audit.

INTRODUCTION:

At the regularly scheduled meeting of August 16th, 2006 the City Council directed staff to proceed with Phase III of the Building Department Permit and Process Audit.

In accordance with the project plan approved by the City Council, the scope and objectives of this Phase III audit were as follows:

- To identify exceptions in building permit files for the purpose of identifying systematic deficiencies within the Building Department's plan check, permit issuance and building inspection processes; and,
- To identify and recommend improvements in the Building Department's business and recordkeeping practices to enhance organizational effectiveness.

EXHIBIT N

To accomplish these objectives, audit staff implemented a five-part audit program consisting of the following tasks and activities:

- Assessment of physical and electronic recordkeeping systems;
- Risk assessment and selection of building permit files for review;
- Substantive testing of building permit files;
- Additional inquiries and physical observation; and,
- Communicating the results of the review.

Transmitted herewith is a report that documents the findings and recommendations of audit staff.

Scope of reporting and additional considerations

In presenting the proposed audit program to the City Council, audit staff recommended performing an analytic review of the data contained within the Building Department's computerized permit tracking system. Based upon the results of this analytic review and based upon other information, staff had also proposed selecting between 40 and 60 building department files for substantive testing.

The purpose of the substantive testing was to:

- Identify exceptions within the Building Department files that suggested non-compliance with established policies and local building and zoning ordinances;
- Ascertain whether such exceptions (if any) occurred on a recurring basis and were indicative of deficiencies in the Department's operations that were systematic in nature; and,
- Formulate the basis for recommending improvements within the Building Department's recordkeeping systems and/or business practices to increase the level of assurance that the Building Department was effective in performing its designated function.

In performing the fieldwork on this audit, staff encountered certain circumstances which affected the manner in which the audit was conducted and the level of resources required to complete the audit. Most notably:

- Through an extraction of the data contained within the Department's computerized permit tracking system, audit staff was able to generate a substantial volume of information which was useful in assessing both the integrity and reliability of Department's business practices and recordkeeping systems. Such information was of much greater use in identifying opportunities for improvement and in formulating the basis for audit recommendations than had been anticipated.
- The Department's physical records, particularly those contained on microfiche format, had not been preserved in an orderly fashion. As a result, audit staff concluded that an

extensive examination of a large number of files would be highly labor intensive and would yield little if any additional insight than would performing less extensive substantive testing.

Accordingly, audit staff performed a limited review of 48 permit files, instead of the comprehensive review of between 40 to and 60 files that had been planned originally. Consequently, audit staff was able complete this audit in approximately 200 hours or 120 fewer hours than the 320 hours that had been budgeted.

In communicating the scope and objectives of the audit, the City Council was advised of the following scope limitations:

- Despite the limited size of our sample, audit staff would not be able to render a definitive judgment as to whether a particular project had in fact met all of the building and zoning requirements applicable; and,
- The audit was not connected with any personnel investigation.

Phases I and II of the Building Department permit and process audit identified a number of weaknesses in the Department's physical and electronic recordkeeping systems. Audit staff therefore recommended that planning for a new permit tracking system be initiated immediately.

At the regularly scheduled meeting of the City Council on August 16th, 2006, the Council expressed a strong desire to obtain information that would be useful to the Building Department in implementing a new permit tracking system. Pursuant to the City Council's instructions, we have included information within the body of this report that is intended to be useful in the Department's modernization efforts. However, the findings and recommendations within this report extend beyond needed improvements in the Building Department's physical and electronic recordkeeping systems, notably:

- Administrative controls over the permit intake and plan check process;
- Ensuring compliance with building codes and administrative requirements during the project construction and close-out phases; and,
- The level of discretion afforded to a local Building Official in interpreting the building code and zoning ordinances.

Accordingly, this internal audit report includes recommendations that, in addition to improving recordkeeping systems, are intended to provide greater assurance that the Town's building and zoning ordinances are enforced fully and equitably.

FISCAL IMPACT:

Acceptance of the attached report is not anticipated to affect appropriation requirements or estimated revenues.

Prepared by:

John P. Johns
Finance Director

Attachment III: Phase III Audit Report Findings and Recommendations

Finding 1: The lack of administrative controls over the plan check and permit issuance process has hampered the Building Department's ability to ensure that a construction project is in conformity with applicable building and zoning ordinances prior to the release of a building permit.

Prior to allowing construction to proceed on major remodeling, additions to residential structures and new residences, an applicant is required to submit a complete set of plans to the Building Department for review by a qualified plan checker.

Elements required of the applicant's plans include:

- A site plan identifying the location, size and purpose of all proposed structures and geographic location of the proposed project;
- A grading and drainage plan that identifies any and all movement of earth;
- A topographic survey;
- Electrical, mechanical and plumbing plans;
- A graphic depiction of the exterior of the building at certain compass points;
- Detailed structural plans and supporting calculations; and,
- A depiction of the interior of the building identifying the purpose and locations of rooms and fixtures within the structure.

In reviewing the proposed plans, the responsibility of the plan checker is to ensure that the proposed construction conforms to all applicable requirements within chapters 15 and 17 of the Atherton Municipal Code. Significant project elements subject to plan review include:

- Building height and setbacks;
- Floor area coverage; and,
- Compliance with state building code requirements adopted by the Town.

Upon completion of the initial plan review, it is a standard practice for the plan reviewer to provide a list of changes that are necessary in order for the proposed project to be in compliance with applicable building codes and zoning regulations. This is commonly communicated in the form of plan review notes as well as comments and suggestions noted in pencil on the plan itself.

In conducting our assessment of the plan review process, we performed the following activities

- Randomly selected several plans-on-active-construction projects along with the files associated therewith;
- Obtained and reviewed all documentation available from the Department which would indicate:

- The procedures used and evaluative criteria applied by plan review staff; and,
 - The manner in which the results of the plan review were communicated to the applicant.
- Performed follow-up inquiries of plan review and supervisory staff as necessary.

Based upon the activities described above, audit staff identified the following weaknesses in the plan review process.

- The Building Department does not have a current and complete set of instructions for plan reviewers to follow in conducting plan reviews. As a result uncertainty exists among plan reviewers as to the extent to which local building and zoning ordinances apply. As an example, the most recent document available for plan reviewers to use as a guide in evaluating conformity with the Town's zoning ordinances was created in 1995 and most recently updated in 2002.
- The Department has not established a standard template for plan reviewers to use as a guide in reporting upon the results of a plan review to the applicant. As a result, the Department is unable to ensure that plan check comments provided to applicants constitute a thorough and objective review of the plans and that reporting protocols are consistently followed by plan check staff. Additionally, the lack of a standard template makes it more difficult to verify that subsequent iterations of plans submitted by the applicant were fully responsive to the concerns of plan review staff.
- There is an absence of a commonly accepted process for documenting the approval of the plans upon completion of the plan review. As a result it is difficult, if not impossible to confirm that approval had been granted by a duly qualified and properly authorized Building Department employee. Based upon a physical examination of several approved plan sets, audit staff identified three different methods used to document plan check approval:
 - Use of a stamp alone;
 - Use of a stamp combined with the plan checker's initials; and,
 - Use of a stamp, combined with clerical staff's initials in the name of a plan reviewer.

The lack of sufficient competent evidence that plans have been subject to a thorough and complete review prior to release of such plans by the Building Department has been further compounded by what appears to have been an informal authority granted to Building Department clerical staff to sign building permits in the name of plan reviewers who had performed the plan review.

Recommendations

To improve the overall integrity of the permit intake and plan review process, the Building Department should:

- Update and disseminate to plan check staff standardized plan review instructions based upon the current building and zoning code;
- Prepare a plan review template for the purpose of documenting the results of plan reviews to building permit applicants and to ensure consistency amongst reviewers in communicating the results of said plan reviews; and,
- Instruct plan review staff to initial plans and to sign permits themselves rather than to rely upon clerical staff to perform such recordkeeping functions on behalf of plan review staff.

Finding 2: The Building Department does not have a complete or accurate accounting of events that have transpired subsequent to the issuance of a building permit. As a result, the Department is unable to demonstrate that it has been effective in ensuring compliance with chapters 15 and 17 of the Atherton Municipal Code during the project construction and close-out phases.

The Building Department's electronic and physical records contain in excess of 34,000 entries dating back to as early as 1941. This repository of information is essential in demonstrating that improvements to real property have been conducted in accordance with an approved set of plans and that a host of administrative requirements associated with the construction project have been adhered to.

In examining the Department's reliability and completeness of the Department's accounting of events during the project construction and close-out phases, we performed the following activities:

- Extracted and analyzed data pertaining to construction projects that had been in an active status during calendar years 2000 through 2006;
- Selected for follow-up review 48 building permit files which appeared to be problematic based upon the results of the analysis of the permit tracking system data; and,
- Performed inquiries of Building Department personnel for the purpose of obtaining explanations for the apparent exceptions found within the Department's physical and electronic records.

Based upon the activities described above, we identified a number of weaknesses in the Department's business and recordkeeping practices that have adversely affected the ability of the Department to effectively enforce Chapters 15 and 17 of the Atherton Municipal Code once construction has been allowed to proceed.

These problems are described as follows:

Contrary to established policy, the Department has routinely scheduled inspections on construction projects without having ensured that certain administrative requirements have been met. For example, a detailed review of six projects that were either in the advanced stages of construction or that had been completed found only one file containing evidence of having satisfied all of the following requirements:

- Certification of compliance height limitations and minimum setback requirements;
- Payment of school impact fees; and,
- Signed and notarized landscape screening agreements.

According to the Department's longstanding policy, an inspection by a building inspector is required within each 180-day period for the permit to remain active. Additionally Departmental policy indicates that permits for which there have been no inspections in 12 months may need to be resubmitted. However, an analytic review of permits issued since calendar year 2000 indicates that this policy is not being enforced. For example, the Department's permit tracking system lists a total of 537 permits are currently listed in an active status for which an inspection has not been performed for 12 months or more.

There is no ongoing analytic review of the information contained within the Department's permit tracking system to ensure that the information contained within the electronic database accurately reflects the status of the project. Based upon a sample of 46 permit files for which no inspections had been performed during the past 12 months, staff identified 33 permit files for which the Department no longer maintained a physical record. Of these 33 files, the senior building inspector was unable to determine the status of the project for 17 of these records. Additionally, nine of the 33 projects listed as active in the Department's permit tracking system had been issued a certificate of occupancy and therefore should have been identified as having been closed-out.

The Department does not perform a final review of its building permit files prior to project close-out. Additionally, the Department has not retained the field inspection reports within the permanent record. A result audit staff identified 36 projects that had been finalized despite the fact that the final entry in the record indicated that inspections were either incomplete or had resulted in an unsatisfactory condition.

Recommendations:

To ensure that construction projects conform to all applicable building and zoning codes during the construction and project close-out phases, the Building Department should:

- Adhere to its standard practice of requiring that certain administrative requirements be met prior to the scheduling of interim and final inspections;

- Through the use of a project close-out checklist provide an objective means of verifying that all project requirements have been met prior to the release of a certificate of occupancy; and,
- Ensure that both a project close-out-checklist and copies of field inspection reports are retained within the permanent record.

Finding 3 The Building Department's permit tracking system (Q&A) lacks the features and functions to adequately support the Building Department's business objectives. Additionally, since much of the data contained within Q&A is unreliable, validating and converting data contained within Q&A to a new permit tracking system will add significantly to system replacement costs.

In conducting this review, audit staff evaluated the features, functions and capabilities of the Department's permit tracking system. The evaluative criteria applied by audit staff were as follows:

Reliability – input controls, edit functions and other checks and balances should be in place to minimize the potential for errors.

Functionality– data collection activities and transactions processes should be automated to the maximum extent possible. In particular redundant or overly labor-intensive data collection activities should be avoided.

Accessibility – standard and ad-hoc reports should be either readily available or easy to produce in order to facilitate workload planning and to assist management in evaluating organizational effectiveness.

Verifiability – evidence within the physical or electronic record should document that a transaction has been executed according to established procedures and by a properly authorized individual.

In conducting this review, audit staff:

- Examined the format, content and structure of the database used by the Department to record and track building activity;
- Performed inquiries of Building Department staff as to the intended and actual application of the permit tracking system; and,
- Attempted to acquire any documentation which would describe the features, functions and capabilities of the permit tracking system.

Based upon these activities audit staff determined that Q&A lacks both the features and functions to adequately support the Building Department's core business processes.

Additionally Q&A lacks a reporting capability that can effectively support management's planning and analysis functions.

To assist the Building Department in planning for a new system, audit staff has prepared a table that identifies a number of features and functions that are currently unavailable within Q&A and that are warranted for consideration in the design of a new system. This list is not intended to be comprehensive or complete definition of system requirements, rather it is intended to support the preparation of a business case for a new system and to help define the scope and objectives of a permit tracking system replacement project.

| System element/attribute | Desired Capability |
|--------------------------|---|
| Database Design | <p>Ability to incorporate all pertinent information including project parameters and inspection results within a single record.</p> <p>Utilization of relational rather than a flat file database format, thereby enabling staff to access and update records properties based upon multiple parameters and at various stages in the permit life-cycle.</p> |
| Security | <p>Identity-based user access tree that limits access to features and functions consistent with the user's job classification.</p> <p>Implementation of an audit trail.</p> |
| Workflow Management | <p>Generation of sequentially numbered unique record locators for each permit.</p> <p>Ability to incorporate of results of plan review activities.</p> <p>Remote capture of field inspection results.</p> <p>Generation of certificates of occupancy upon project close-out.</p> |
| Decision Support | <p>Generation of standard and ad hoc reports that provide useful information on the productivity and organizational effectiveness including but not limited to:</p> <ul style="list-style-type: none"> • Plan check turnaround times; • Complaint tracking/incident reporting; and, • Number and duration of field inspections conducted by building inspectors. |

In addition, audit staff has prepared a brief description of the major tasks that the Building Department should consider including within the scope of its permit tracking system modernization efforts. These tasks are outlined as follows:

| Project Phase | Major Tasks |
|---|---|
| Requirements definition and evaluation of solution alternatives | Define features and functions needed in a new system. |
| Vendor selection | Preparation of a request for proposal (RFP) for software and system implementation support services (if off-the-shelf software is purchased) or software design services (if a custom solution is to be created). |
| Implementation and acceptance testing | Installing new software on the network |
| Data migration | Converting and hosting legacy data to the new application |

During the course of this Phase III audit, a number of problems were identified with the manner in which data within Q&A was being maintained, these include:

- An absence of data entry controls which are designed to reduce the likelihood of records being entered into the system with either invalid or incomplete data;
- A lack of access controls or physical security surrounding the system that would prevent individuals who are not properly authorized from altering the records;
- A limitation on the size of the fields designed to capture the results of field inspections, necessitating the creation of duplicate records containing a second inspection screen for the purpose of capturing inspection data on complex projects
- An absence of an audit trail which would enable a supervisor to verify entries to the system were properly authorized and duly recorded; and,
- A lack of an exception reporting capability to identify files that are indicative of non-compliance with established business rules.

The following table presents the results of our analysis of the data within Q&A indicating the exception noted, exception frequency and apparent underlying cause.

| Exception Identified | Exception Count | Underlying System Limitation or Process Weakness |
|---|-----------------|---|
| Invalid permit numbers | 25 | Lack of data entry controls within permit tracking system |
| Duplicate records | 314 | Inability of permit tracking system to accommodate number of inspections resulting in a need to create a second permit record for complex properties. |
| Unaccounted for gaps in permit sequence numbers | 684 | Insufficient controls over pre-printed permit card stock |
| Expired permits listed in active status | 537 | Absence of a systematic method to identify and follow-up on inactive projects |
| Total exceptions | 1,560 | |
| Total Records Analyzed | 6,647 | |
| Exceptions as a percent of Records Analyzed | 23% | |

Given the significant number of exceptions identified within Q&A, it will be necessary to perform an extensive effort to audit and correct the entries in the current system prior to migrating such data to a new system. Such an effort is likely to add substantially to the acquisition costs of a new system.

Recommendation

To ensure that a new permit tracking system effectively supports the Building Department's business process and management reporting capability, the Building Department should implement a phased approach to its system replacement effort that includes:

- A careful and deliberate assessment of the functional requirements for a new system; and,
- An intensive data effort to rectify errors within the current permit tracking system prior to migrating such data to a new permit tracking system.

Finding 4: By relying upon discretionary powers afforded to the Chief Building Official, the Building Department has allowed residential construction to proceed that does not conform to the intent, if not the letter, of chapter's 15 and 17 of the Atherton Municipal Code.

Introduction

Chapter 15 the Atherton Municipal Code contains the body of ordinances which regulate building activity within the Town of Atherton. Pursuant to Section 15.04 and 15.20 of the Atherton Municipal Code, the local building official is granted discretion in interpreting local ordinances concerning residential construction.

Chapter 17 of the Atherton Municipal Code contains the body of ordinances which is intended to ensure that construction within the geographic boundaries of the Town conforms to the General Plan. Although Chapter 17 constitutes a separate body of regulations, it has been generally accepted within the Town that the discretionary authority granted to the Chief Building Official pursuant to Sections 15.04 and 15.20 of the Atherton Municipal Code applies to zoning ordinances as well.

During the course of this Phase III audit, a number of construction projects came to the attention of audit staff which suggested that either the former Building Official or his designees had allowed construction to proceed that did not conform to the intent if not the letter of one or more key provisions within chapters 15 and 17 of the Atherton Municipal Code, notably:

- Height and setback limitations;
- Size, configuration and location on accessory structures; and,
- Permit expiration provisions.

As indicated in staff's August 16th memorandum to the City Council, this audit was not intended to render a definitive judgment as to whether specific properties were in compliance with the Atherton Municipal Code. However, based upon an examination of physical and electronic records and based upon a visual inspection of selected construction sites, audit staff did encounter four projects which were problematic in a number of respects. Of these four projects, three are in an active permit status and have been referred to the City Attorney and the Building Official for a determination as to the appropriate disposition.

This observation suggests that the Town's current organizational structure lacks sufficient checks and balances to ensure that the discretionary authority granted to a Building Official is not applied improperly.

For this reason audit staff believes that it would be prudent for the Town to consider revising the organizational structure of the Town to either:

- Elevate the status and extend the scope of responsibility of the Town Planner; or,

- Incorporate within the scope of responsibility of the Code Enforcement Officer to investigate and make recommendations to the City Manager on possible violations of the Town's building and zoning ordinances on permitted construction projects that are in progress.

The following is a description of the cases examined by audit staff.

Property A

Apparent violation: Allowance of an accessory structure with a basement outside of the buildable area.

At the regularly scheduled meeting of September 18th, 2002 the City Council approved Ordinance Number 536, amending Section 17.36.190 of the Atherton Municipal Code. This newly adopted ordinance had the effect of limiting the construction of basements to areas within the buildable area of a lot. The ordinance became effective on October 17th, 2002.

The apparent intent of the Ordinance 536 was to protect heritage trees on neighboring properties that could be damaged as a result of excavation activity close to the property line.

In November, 2002 a homeowner approached the Building Department with tentative plans for the construction of a guesthouse with a basement to be located approximately 12' from the owner's property line and therefore outside of the main buildable area.

In response to the applicant's initial request for a permit, the Building Department advised that, pursuant to the adoption of Ordinance Number 536, the proposed structure was no longer permissible. In response to the Building Department's instruction, the applicant's attorney submitted a letter to the Building Official requesting reconsideration of staff's denial for a permit for the following reasons:

- The applicant had been in consultation with the Building Department and had received assurances from staff that the passage of an ordinance prohibiting the type of structure contemplated was unlikely in the near future.
- Having been given assurances from Building Department staff as to the permissibility of the proposed structure, the property owner had invested a considerable sum of money in planning and design services.
- The wording of the ordinance adopted by Council was not entirely clear as to whether the structure being proposed was in fact prohibited.

Pursuant to the objections raised by the applicant's attorney, the Building Official reversed the decision of his staff to deny the issuance of a permit. According to the physical record, the plans were reviewed and approved by the former Building Official personally and a permit was issued to the applicant in December of 2002.

Based upon discussions with the City Attorney and the Town Planner, the action taken by the former Building Official was made without their consultation or consent.

Property B

Apparent violation(s): Building height and floor area in excess of maximum allowable

In early 2005, the Building Department received an application and plans to construct a three story residence with a detached garage on a heavily sloped lot in west Atherton.

Pursuant to a first review of the plans submitted for the subject property, the Building Department followed its standard practice in determining the average natural grade of the site for the purpose of calculating the maximum building height. The Building Department's standard practice for determining average natural grade represented a slight departure from that prescribed in the section 17.08.052 of the Atherton Municipal Code. However, the result of the Department's calculation was consistent with that of an independent engineer retained by the Town after the fact to independently calculate average natural grade in strict accordance with the provisions of the Code.

The Building Department's determination of the height of the proposed elevation resulted in a calculated building height, as measured by the elevation of the highest point of the roofline of the proposed structure minus the average natural grade, to be 31'. As such the Building Department determined that the height of the proposed structure was one foot in excess of the maximum allowable building height.

In rebuttal to the Building Department's plan review comments, the applicant's engineer proposed a determination of average natural grade at approximately one and one-half feet higher than that determined by the Building Department. Under the applicant's proposed average natural grade calculation, the distance between the uppermost point on the roof and the floor of the building (as determined by average natural grade) would be 29' 6" or one-half foot less than the 30' maximum. However, the approach used by the applicant's engineer to render its determination of average natural grade constituted a significant departure from both that prescribed in section 17.08.052 of Atherton Municipal Code and from the Building Department's established practice. (Rather than calculate average natural grade based upon an average of the high and low points within footprint of the Building, the applicant used no fewer than 30 data points located along the perimeter of the foundation).

Based upon discussions with the initial plan reviewer, it appears as though the former Building Official accepted the applicant's assertion of average natural grade even though the approach used by the applicant was inconsistent with both the letter of the Atherton Municipal Code and the Department's longstanding practice.

Audit staff also asked the Building Department to re-calculate the square footage of the main residence and detached garage and to compare the total square footage of the residence with the maximum floor area ratio as prescribed in the Atherton Municipal Code (18% of total floor area).

In re-calculating the floor area of the subject property, Building Department staff determined that the original calculation as approved by the former Building Official did not include significant elements of the proposed project, notably a 1,100 square foot detached garage and a 3,217 square foot basement.

Based upon a subsequent analysis of the plans and permit files, the exclusion of the detached garage appears to have been an oversight on the part of plan check review personnel due to the fact that it had been issued under a separate structure. However, the Building Department's exclusion of the basement for the purpose of floor area ratio calculations was improper due to the following circumstances:

- As indicated on the plans, the basement *was* included in the floor area calculations as provided by the project architects; and,
- The basement has been designed so that it stands in excess of 2' above the average natural grade of the building site. As a result, Section 17.08.054 of the Atherton Municipal requires the basement to be included as floor area for the purpose of calculating maximum floor area.

When including the basement, the detached garage and other project elements, the floor area of the property amounts to approximately 2,500 square feet in excess of the maximum floor area allowable for the size of the lot upon which it has been built.

Property C

Apparent Violation: Construction initiated on expired building permit.

In early 2002, the Building Department issued a permit for an accessory structure with a basement. The size of the structure, including the basement was approximately 1,100 square feet.

As indicated on the face of the building permit, the applicant was notified of provisions within the California Uniform Building Code which render the permit null and void if construction is not initiated within 180 days from the date the permit is issued or if construction is suspended for 180 days or more. (A permit may be granted a one-time extension of 180 days upon written approval from a building official however.) As such the maximum amount of time for which a permit may remain valid without the initiation of construction on the project is 360 days.

Despite the provisions in state law, the Building Department maintained the permit in an active status until the time the applicant initiated construction on the project in May, 2005. Hence the

Building Department allowed the permit to remain active for more than 24 months beyond the maximum time frame allowed by statute.

In the intervening two years the Council approved two changes to the Town's building and zoning ordinances which had the effect on rendering the structure approved by the Building Department to be non-conforming, including:

- A prohibition on basements under accessory structures outside the buildable area; and,
- A requirement that fire sprinkler systems be installed on new construction with basements in excess of 250 square feet.

In reviewing the subject property with the building inspector who performed inspections on the subject property, the employee acknowledged that the structure did not conform to the current building code but indicated that that he had relied upon the authority of the Chief Building Official to allow the construction.

Property D:

Apparent violation: Improper reinstatement of an expired permit

In February 1978 the Building Department issued a permit to construct a new single family residence. The permitted value of the structure amounted to approximately \$170,000 and was issued to an individual who was acting as his own contractor.

According to the Building Department's records, construction ensued on the project for 17 years, a rate of progress that was unsatisfactory to both the Building Department's field inspectors and to neighboring residents.

Citing the intermittent pace of construction as a concern, one entry to the Department's inspection logs indicated that the residence had been allowed to remain exposed to the elements for an extended period of time. As a result, the inspection log indicated that instead of having made any substantial progress on the project, the work being inspected appeared to be limited to repairing weather-related damage that had occurred since the previous inspection.

In 1995, the longstanding presence of a partially completed structure combined with an accumulation of unsightly construction related debris prompted neighboring residents to retain an attorney and to demand that the City Manager declare the construction project a nuisance pursuant to Chapter 8 of the Atherton Municipal Code.

The City Manager then consulted with the newly appointed Building Official at the time as to what if any action should be taken with respect to the subject property. In response, the Building Official advised the City Manager that, since the City was unable to demonstrate that the property owner had ceased construction for a period of 180 days or more, the Building Official was of the opinion that the builder still had an active permit. The Building Official also advised

the City Manager that, based upon discussions with the owner-builder of the property, he was confident that construction on property would be completed within a reasonable time frame.

Subsequent to the Building Official's preparation of his 1995 memorandum to the City Manager, the file for the subject residence was sent off to be reproduced on Microfiche and the original documentation destroyed. Additionally, based upon an examination of the Building Department's permit tracking system, the electronic record associated with the project was deleted at some point in time between calendar years 1995 and 2002, only to be recreated between calendar years 2002 and 2004. Additionally, there is no indication in either the physical or electronic records of any inspection activity having occurred at the job site until calendar year 2005.

These observations suggest that at some point in time between 1995 and 2002 the Building Department considered the project to have been abandoned, only to reactivate the file between 2002 and 2005.

A physical inspection of the property in September, 2006 combined with an examination of the San Mateo County Assessor's tax roll indicates that the property continues to remain in a work-in-progress stage 29 years after the time the permit was issued.

Recommendation:

To provide greater assurance that both the letter and intent of the Town's building and zoning ordinances are enforced, the City Manager, in consultation with the City Council, should consider:

- Granting the Town Planner a status equivalent to that of the Building Official and vest within the Town Planner the authority to interpret and enforce Chapter 17 of the Atherton Municipal Code; or,
- Empower the code enforcement officer to review of permitted projects currently under construction and to take actions as necessary to ensure that such projects comply with Chapters 15 and 17 of the Atherton Municipal Code.

RESOLUTION NO. 03-19

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING RESOLUTION NO. 00-13 BY MODIFYING FEES FOR SERVICES RELATED TO BUILDING AND PLANNING AND CONFIRMING EXISTING PRACTICE REGARDING BUILDING PERMIT VALUATIONS

WHEREAS, the City Council of the Town of Atherton finds it necessary to amend the current fee schedule for fees for certain planning and building related services last adjusted May 17, 2000; and

WHEREAS, the Town has analyzed the costs associated with providing fee-based activities related to certain building and planning activities;

WHEREAS, adjustments are warranted in the level and structure of certain fees to ensure that activities relating to building and planning continue to be self-supporting;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ATHERTON, CALIFORNIA, that fees relating to building and planning be established, adjusted, and confirmed as set forth below:

EXISTING FEES

| <i>Activity</i> | <i>Current Fee</i> | <i>Fee Adjusted to:</i> |
|--------------------------------|--------------------|---|
| Conditional use permits | \$750 | Actual Cost, \$750 initial non-refundable deposit |
| Variances | 750 | Actual Cost, \$750 initial non-refundable deposit |
| Front-Rear Yard Re-designation | 750 | Actual Cost, \$750 initial non-refundable deposit |
| Zoning Exception Reviews | 750 | Actual Cost, \$750 initial non-refundable deposit |
| Appeals | 500 | Actual Cost, \$750 initial non-refundable deposit |
| Zoning Ordinance Amendment | 900 | Actual Cost, \$750 initial non-refundable deposit |
| Environmental Assessment | 400 | Actual Cost, \$750 initial non-refundable deposit |
| School Master Plan | 400 | Actual Cost, \$750 initial non-refundable deposit |

BUILDING PERMIT FEES

In determining the permitted value of construction, the Building Department, uses either a standard factor of \$250 per square foot or the actual cost of the new construction based upon contract documents provided by a homeowner. The latter approach is justified in circumstances such as a gazebo, garage or similar type of structure that is not of the same complexity as a main building.

RESOLUTION NO. 03-19

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AMENDING RESOLUTION NO. 00-13 BY MODIFYING FEES FOR SERVICES
RELATED TO BUILDING AND PLANNING AND CONFIRMING EXISTING
PRACTICE REGARDING BUILDING PERMIT VALUATIONS**

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EXHIBIT ○

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NICOLAS A. FLEGEL
LEIGH F. PRINCE
KEVIN M. RODRIGUEZ
JOHN R. COSGROVE
(RETIRED)

March 28, 2007

VIA FEDEX Tracking No: 7923 1532 8300

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

Re: Appeal of Nuisance and Abatement Order Re: 70 Barry Lane, Atherton

Dear Mr. Robinson:

Per the demand made by Marc Hynes' letter of March 20, 2007, enclosed with this letter, please find check number 8916 in the amount of Seven Hundred Fifty Dollars (\$750) for the appeal of Nuisance and Abatement Order Re: 70 Barry Lane, Atherton. Please note that this payment is being made under protest and that the Thomases and Creative Habitat, Inc., reserve all of their rights to challenge this fee and the appeal process.

We are submitting this fee under protest as we are unable to find any language in the Town of Atherton's Municipal Code or any resolution that authorizes the Town to charge a fee for an appeal of a nuisance abatement order. While the Code authorizes an appeal in Section 8.20.090, the Code does not set forth that there is an appeal fee, let alone the fee amount. When the appeal was submitted on March 19, 2007, we were expressly told that there was no fee. However, on March 22, 2007, we received a letter from Mr. Hynes stating that a \$750 fee was required and he directed us to Resolution 03-19. Mr. Hynes graciously provided Resolution 03-19 and we have reviewed the Resolution. While the Resolution sets forth certain fees of the Town of Atherton, those fees all pertain to planning and building. The Resolution does not set forth or mention any fees related to Chapter 8, Health and Safety nor does it set forth an appeal fee for a nuisance abatement hearing.

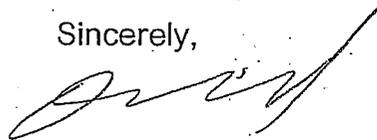
If we have missed a section in our review of the Code or there is other authorization for the \$750 fee, please provide it to us. Otherwise, please confirm that we are correct and that no fee should be charged for this Appeal and that you will be returning our check number 8916 uncashed.

EXHIBIT P

Lastly, in our March 19, 2007 appeal letter, we requested a copy of the Town's written procedures and policies regarding appeal hearings. As of today's date, we have not received any response to that request. It is essential that we are able to read and review those procedures well in advance of the Appeal Hearing so that we can advise our clients of their procedural rights and we can properly prepare for the hearing. If there are no procedures for the conduct of appeals in Atherton, we request that you confirm that there are no written procedures and that you immediately provide us with a written explanation as to how the appeal hearing will be conducted. ✓

We look forward to your prompt response regarding the appeal fee and appeal procedures. We remain available to discuss the underlying matter with you or Mr. Hynes should you believe that it would be worthwhile to meet or to have a telephone conference to discuss the matter.

Sincerely,



Dan K. Siegel

DKS:rr

Enclosure (check #8916)

cc: Clients

David Marks, Esq. (Via e-mail and U.S. Mail)

Marc Hynes, City Attorney

EXHIBIT P

RECEIVED
MAR 29 2007
ATKINSON • FARASYN LLP



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

DATE: CITY COUNCIL MEETING OF JUNE 20, 2007

**SUBJECT: INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 17 OF THE
ATHERTON MUNICIPAL CODE REGULATING BASEMENTS (*PUBLIC
HEARING CLOSED*)**

RECOMMENDATION

Staff recommends that the City Council introduce the attached Ordinance based on the following finding for the reasons outlined in this staff report:

1. The proposed amendment is required to achieve the objectives of the Zoning Plan and the General Plan.

BACKGROUND

At the request of the City Council, the General Plan Committee reviewed the current regulations limiting basements. Basements are currently limited to “under the footprint of buildings located within the main building area”. Prior to 2002, basements were permitted to be constructed anywhere on the lot with a minimum 5’ setback.

The General Plan Committee, at its January 10, 2007, meeting, voted to recommend the Planning Commission consider several changes to the current basement regulations. The Planning Commission, at its February 28, 2007 and March 28, 2007, meetings reviewed the recommendations of the General Plan Committee and recommended the City Council adopt revised basement regulations. The Ordinance, as recommended by the Planning Commission, was presented to the City Council at its May 16, 2007, meeting.

In summary, the Ordinance as reviewed by the City Council allowed the following:

- Allow basements to extend beyond the footprint of the main dwelling so long as at least 80% of the basement area is located under the main dwelling.
- Allow basement area up to 120% of the floor area of the first floor of the main dwelling with a conditional use permit from the Planning Commission.
- Allow basements under accessory structures outside the main building area with a conditional use permit from the Planning Commission.
- Add a requirement to screen driveway approach for basement garages.

ANALYSIS

At its May 16, 2007 meeting, the Council reviewed the draft Ordinance and requested the following:

- Information from the draft Drainage Study
- Consider requiring sprinklers in all basements and basement remodels.
- Add a requirement for landscape screening for light wells
- Add criteria for Planning Commission consideration of conditional use permits

There was some discussion at the Council meeting regarding the requirement for a Conditional Use Permit for basements under accessory structures and basements larger than the first floor of the main residence. Having these items reviewed at the Planning Commission level provides notice to neighboring property owners and provides some discretion for the Commission to further modify projects. Rather than require a Conditional Use Permit, the Council could establish objective criteria that, if met, would permit basements under accessory structures with staff level review as well as allowing basements up to 120% of the floor area of the first floor of the main residence. Objective criteria for staff level review would be similar to the findings that the Planning Commission would need to make to grant the use permit. Criteria or findings could include; no impact to heritage trees and sufficient room for landscape screening to screen the view of the basement or light well from adjacent properties. Staff has revised the draft ordinance to include findings for Planning Commission consideration. If the Council wished to have these items reviewed at a staff level, the findings would be changed to criteria.

After the Council meeting, Councilmember Marsala inquired on the exemption for hillside properties. This exemption allows a basement in excess of two feet in height to be exempt from floor area upon the issuance of a Conditional Use Permit from the Planning Commission. Staff does not recall receipt of an application for exemption under this provision within the last ten years. (The property owners of 94 Tallwood filed such an application last week for consideration by the Planning Commission at its June 27, 2007, meeting). The determination of hillside property at 20% average cross slope tracks the subdivision requirement for a hillside property with a larger lot size requirement. The Council could consider lowering the slope criteria recognizing the difficulty in constructing a basement on sloped properties and the desire to minimize on-site grading. The overall height of the home is still limited to 30' from average natural grade.

As requested at the May 16, 2007, Council meeting, staff has added findings for Planning Commission consideration and a requirement for landscape screening for light wells. Staff has also discussed the draft Drainage Study findings for basements with Ed Boscacci, BKF Engineers. Mr. Boscacci has

prepared a memo as attached to this report outlining recommendations for new drainage criteria relating to basements. The Council should provide direction to staff for preparation of new drainage requirements for consideration at a future meeting.

The Council should also provide direction to staff for any changes to the current sprinkler regulations.

Staff has reviewed the draft Ordinance with the Town's consultant, Pam Johns of PMC, working on the zoning code update. Ms. Johns indicated that the draft Ordinance appears to meet the stated objectives and recommendations contained in the May City Council staff report. Once adopted by the City Council, the Consultant will include the Ordinance with her comprehensive review of the zoning code for internal consistency.

CONCLUSION:

It is Planning Staff's professional opinion that the proposed Ordinance Amendment is consistent with the General Plan and will better define the area in which a basement is permitted to be located.

ALTERNATIVES:

The City Council could further modify the Ordinance or not adopt the changes.

FISCAL IMPACT:

Costs associated with the implementation of the ordinance will be borne by applicants.

ENVIRONMENTAL IMPACT:

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Sections 15305, Class 5 which permits minor alterations in land use limitations which do not result in any changes in land use or density.

FORMAL MOTION:

I move that the City Council introduce the Ordinance Amendment based on the finding listed in the staff report for the reasons listed in the staff report.

Prepared by:

Approved by:

/s/ Lisa Costa Sanders

Lisa Costa Sanders
Deputy Town Planner

James H. Robinson
City Manager

Attachments:

1. draft Ordinance
2. Atherton Municipal Code section 17.36.190

3. Drainage Criteria for Basements memo prepared by Ed Boscacci, BKF, dated June 15, 2007

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
ADDING SECTION 17.08.032 and AMENDING SECTIONS 17.08.0020, 17.08.54 and
17.36.190 OF THE ATHERTON MUNICIPAL CODE PLACING LIMITS ON
BASEMENTS WITHIN THE TOWN OF ATHERTON**

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

SECTION 1: Section 17.08.020 of the Atherton Municipal Code is hereby amended to read as follows:

“17.08.020 Accessory structure. “Accessory structure” means a subordinate building including pools and the housing for incidental equipment thereto, the use of which is incidental to that of the main residential dwelling **and includes accessory buildings.**”

SECTION 2: Section 17.08.180 of the Atherton Municipal Code is hereby amended to read as follows:

“17.08.032 Accessory building. “Accessory building” means a subordinate building including garage, pool house, cabana, the use of which is incidental to that of the main residential dwelling. An accessory building is a structure having a roof supported by columns or walls. Accessory buildings shall be subject to all the regulations for Accessory Structures.”

SECTION 3: Section 17.08.054 of the Atherton Municipal Code is hereby amended to read as follows:

“17.08.054 Basement. ~~For the purposes of this chapter, “Basement”, means that story below the finished floor of the first story of a building, that is at no point in excess of two feet in height above the surrounding average natural grade. Basements are subject to the requirements of Section 17.36.190. Any portion of the story below the finished floor of the first story of a building that is in excess of two feet in height above the surrounding average natural grade shall be included in the calculation of floor area under Sections 17.20.040 and 17.24.040 of this code.~~

SECTION 4: Section 17.36.190 of the Atherton Municipal Code is replaced in its entirety and reads as follows:

“17.36.190 Basements

A. Locations for basements;

1. Basements are permitted under buildings located within the main building area. A basement in the main building area shall not

exceed the floor area of the first floor of the main dwelling unless a Conditional Use Permit is obtained from the Planning Commission for a basement area of up to 120% of the floor area of the first floor of the main dwelling on the finding that the basement will not impact heritage trees and there is sufficient room for landscape screening. At least 80% of the basement area shall be located under the footprint of the main dwelling. Basements shall not extend beyond the main building area except as defined below.

2. Basements may be located under the footprint of accessory buildings outside of the main building area with a Conditional Use Permit from the Planning Commission on the finding that the basement will not impact heritage trees, there is sufficient room for landscape screening and with light wells located on the interior side of the yard. The Planning Commission may impose reasonable conditions including, but not limited to increased setbacks and limitation on size of light wells.
3. Garages in basements may be located under buildings located within the main building area.

B. Floor Area Calculations

1. Basements less than two feet in height above the surrounding average natural grade (measured to the elevation of the finished floor of the first story) are exempt from floor area.
2. Basements in excess of two feet in height above the surrounding average natural grade (measured to the elevation of the finished floor of the first story) shall be included in the calculation of floor area under sections 17.20.040 and 17.24.040.
3. Exceptions to the requirement of this section for hillside properties (where the average cross-slope is greater than twenty percent as determined under Section 16.24.050) may be permitted upon issuance of a conditional use permit from the Planning Commission on the finding that; there is sufficient landscape screening, and the basement will not impact heritage trees

C. Design Requirements

1. Areas for stairways and light wells for basements in the main building area may extend beyond the footprint of buildings, but shall be limited to the main building area and shall be screened with landscaping to minimize the view from adjacent properties.
2. Driveway approach for garages in basements shall be screened from the public right-of-way by design, landscaping or a solid wall and gate. The driveway approach shall not negatively impact heritage trees.

SECTION 5: CEQA Exemption. This ordinance is categorically exempt from the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public

Resources Code (California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines Section 15305, minor alterations and land use limitations of the CEQA Guidelines as an action that assures the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The City Council further finds that adoption of this ordinance does not require review under the California Environmental Quality Act (CEQA) because it is not a project (CEQA guidelines section 15378), and there is not possibility that the ordinance may have a significant effect on the environment (CEQA guidelines section 15.61.b).

SECTION 6: That the City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions on this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not effect the validity of the remaining parts of this Ordinance.

SECTION 7: This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced this __ day of _____, 2007

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the __ day of _____, 2007, by the following vote

AYES: COUNCIL MEMBERS
NOES: COUNCIL MEMBERS
ABSTAIN: COUNCIL MEMBERS
ABSENT: COUNCIL MEMBERS

Alan B. Carlson
MAYOR, Town of Atherton

ATTEST

Kathi Hamilton
Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc Hynes
Marc G. Hynes
City Attorney

Memo

To: Duncan Jones, Public Works Director
From: Ed Boscacci, BKF Engineers
Date: 6/15/2007
Re: Drainage Criteria for Basements

Basement Construction

Basement construction shall not impact groundwater within the Town. If any portion of a building is constructed below the existing ground surface, measures shall be taken to not impede seepage or groundwater flow. Construction shall not release contaminants into the groundwater. Measures to maintain seepage and groundwater flow around the basement include placement of a subdrain consisting of drain rock and perforated pipe that allows passage of flows around subsurface structures. Measures to prevent contamination of groundwater include placement of protective barriers to prevent the release of construction materials into the groundwater.

Pumping of groundwater during construction is accepted for a period not to exceed two weeks. No groundwater pumping is accepted after completion of construction. For purposes of this requirement, the groundwater level is established based on the water levels presented in Exhibit 13A and 13B and BAGG Plate 2 Exhibit. Seepage waters related to upper level seeps and direct rainfall that enters an excavation may be pumped.

Basement areas shall be hydraulically isolated from the 100-year overland flow rate with 1 foot of freeboard such that stormwater will not enter the basement. All basement access points including ventilation facilities, windows, doors, etc. must be at least one foot above the 100-year water level.

Calculations shall be provided that document that the building can withstand loadings, including buoyancy, based on a water level at the 100-year overland flow water level.

A pump shall be provided within basements to pump seepage water that enters through walls. As a minimum, the pump shall be sized to discharge water from the fire suppression sprinkler system.

ITEM 26

ADOPTION OF A RESOLUTION MODIFYING FEES FOR SERVICES RELATED TO PLANNING AND BUILDING *(If action is taken on June 18, 2007, this item will not be heard.)*

The materials for this item are included in the City Council Packet for the Special meeting of June 18, 2007.

ITEM 27

**ADOPTION OF A RESOLUTION ADOPTING THE FY 2007-08
OPERATING AND CAPITAL BUDGET** *(If action is taken on June 18,
2007, this item will not be heard.)*

The materials for this item are included in the City Council Packet for the Special meeting of June 18, 2007.

ITEM 27

**ADOPTION OF A RESOLUTION APPROVING THE FISCAL YEAR
2007-08 APPROPRIATIONS LIMIT AND CALCULATIONS** *(If
action is taken on June 18, 2007, this item will not be heard.)*

The materials for this item are included in the City Council Packet for the Special meeting of June 18, 2007.

ITEM 29

**ADOPTION OF A RESOLUTION ESTABLISHING A SPECIAL TAX
FOR MUNICIPAL SERVICES FOR THE FISCAL YEAR 2007-2008**

(If action is taken on June 18, 2007, this item will not be heard.)

The materials for this item are included in the City Council Packet for the Special meeting of June 18, 2007.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE CITY COUNCIL MEETING OF JUNE 20, 2007

SUBJECT: DISCUSSION AND POSSIBLE ACTION REGARDING THE FIRE SPRINKLER ORDINANCE AND A REQUEST FROM THE MENLO PARK FIRE PROTECTION DISTRICT THAT THE TOWN OF ATHERTON FORMALLY AUTHORIZE THE RESPONSIBILITY FOR "FIRE DEPARTMENT ACCESS AND WATER SUPPLY" PER ARTICLE 9 TO THE MPFPD

RECOMMENDATION:

The City Council consider the existing Atherton Sprinkler Ordinance and attached request from the MPFPD dealing with access and water supply and provide appropriate direction to staff.

BACKGROUND:

On November 17, 2004, the City Council adopted for a second reading Ordinance 551 pertaining to Fire Sprinkler System Requirements for residential structures. At the May 21, 2007, Joint Meeting of the Menlo Park Fire Protection District Board and City Council, the topic of Fire Sprinklers was discussed. The City Council did not take any action to modify the existing Sprinkler Ordinance at that meeting. The draft minutes for the May 21st Joint meeting state, "that a discussion ensued regarding the requirements for sprinklers, specifically in basements and 50% or more alterations/additions in remodels." The City Council was agreeable to discussing an amendment and asked the item be put on the City Council agenda for June 20, 2007.

Since the Joint meeting, the Menlo Park Fire Protection District delivered a letter dated June 12, 2007, (see attached) that requests that the Town of Atherton fully adopt District Ordinance 29 (also attached) and eliminate sections that relate to exemptions. The sections that the MPFPD are recommending to be adopted by the Town of Atherton include: alteration of additions to any

building with floor space greater than 2,500 square feet, or larger, when the alteration or addition exceeds (50%) of the existing floor space of the building and any existing occupancy intending to provide a basement greater than 250 square feet.

The MPFPD has also requested, in an additional letter dated June 12, 2007, (see attached), that the Town of Atherton formally authorize and assign to the Fire Chief and MPFPD the responsibility for "Fire Department access and water supply" per Article 9.

ORDINANCE NO. 551

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RATIFYING A PART OF ORDINANCE NO. 29 OF THE MENLO PARK FIRE PROTECTION DISTRICT AMENDING DISTRICT FIRE PREVENTION CODE PERTAINING TO AUTOMATIC FIRE SPRINKLER SYSTEM REQUIREMENTS RELATING TO NEW RESIDENTIAL CONSTRUCTION IN THE TOWN OF ATHERTON

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

SECTION 1: Ordinance No. 29 of the Menlo Park Fire Protection District entitled "An Ordinance Amending District Fire Prevention Code" passed and enacted by the District Board of the Menlo Park Fire Protection District on May 18, 2004, and incorporated by this reference is partially ratified insofar as it pertains to new construction in the Town of Atherton and as further described in Section 2, below. Pursuant to the provisions of Section 13869.7 of the California Health & Safety Code, the City Manager or designee is directed to file copies of all applicable findings and amendments to the Menlo Park Fire Protection District Fire Prevention Code with the appropriate State agency.

SECTION 2: Ordinance No. 29 Menlo Park Fire Protection District Section 1.1 is ratified. Section 1.2 is ratified with respect to subsections(a) and (b)(i) and subsection (c). Subsection 1.2 (b)(ii) shall not apply to existing residential buildings or structures in the Town of Atherton, and with that exception is otherwise ratified.

SECTION 3: That the City Council hereby declares that it would have passed this Ordinance word by word, sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that the provisions of this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 4: This ordinance is exempt from the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the public Resources Code (California Environmental Quality Act (CEQA)) pursuant to the State CEQA Guidelines Section 15308 as an action that assures the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

SECTION 5: Upon passage and adoption of this ordinance, Town of Atherton Ordinance No. 548, passed and adopted on February 18, 2003, is hereby repealed.

SECTION 6: This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced this 20th day of October, 2004.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the 17th day of November, 2004, by the following vote:

| | |
|------------|---|
| AYES: 5 | COUNCILMEMBERS: <i>Janz, Marsala, Carlson, McKeithen, Conwell</i> |
| NOES: 0 | COUNCILMEMBERS: <i>None</i> |
| ABSTAIN: 0 | COUNCILMEMBERS: <i>None</i> |
| ABSENT: 0 | COUNCILMEMBERS: <i>None</i> |

/s/ Kathy McKeithen

Kathy McKeithen, Mayor
Town of Atherton

ATTEST:

/s/ Linda Kelly

Linda Kelly, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc G. Hynes

Marc G. Hynes, City Attorney



Menlo Park Fire Protection District

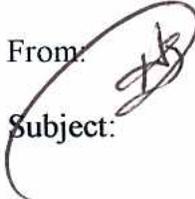
300 Middlefield Road • Menlo Park, CA 94025 • Tel: 650.688.8400 • Fax: 650.323.9129
Website: www.menlofire.org • Email: mpfd@menlofire.org

Fire Chief
Harold Schapelhouman

Board of Directors
Ollie Brown
Peter Carpenter
Rexford F. Ianson
John Osmer
Bart Spencer

Date: June 12, 2007

To: The Honorable Atherton Town Council

From:  Harold Schapelhouman, Fire Chief

Subject: Requested Town Council Agenda Item regarding the modification of Atherton Ordinance 551 (Automatic Sprinkler Systems) to fully adopt the Menlo Park Fire Protection District Ordinance 29 with amendments related to the Town.

The Fire District requests that the Town of Atherton modify their Ordinance 551 and fully adopt the Fire District's Ordinance 29 as related to Automatic Sprinkler Systems with no restrictions.

This would require that:

The Town fully adopt Ordinance 29 and the District eliminate section ii (1) E which specifically applies to exemptions as related to the Town of Atherton.

The Fire District recommends that sections ii (1) A and (3) should apply to the Town and be fully adopted by the Council.

Those sections to be included and adopted would be:

1A. Alterations or additions to any building with floor space greater than 2,500 square feet, or larger, when the alteration or addition exceeds (50%) of the existing floor space of the building.

3. Any existing occupancy intending to provide a basement greater than 250 square feet.

"Excellence In Service"

MENLO PARK FIRE PROTECTION DISTRICT

Ordinance No. 29

AN ORDINANCE AMENDING DISTRICT FIRE PREVENTION CODE

The Board of Directors of the Menlo Park Fire Protection District ordains as follows:

Section 1. The District Fire Prevention Code, as Amended and Restated as of May 18, 2004, is amended in the following respects:

1.1 Paragraph 5, "Definitions" is amended to add subparagraph (c) as follows:

(c) "Basement" means the part of a building that is wholly or partly below ground level.

1.2 Pursuant to California Health & Safety Code §13869.7 and the "Findings and Determinations Pursuant to California Health & Safety Code §§17958 and 17958.5" prepared and submitted by District staff in support of this Ordinance, which Findings and Determinations are approved by this Board, paragraph 8, "District Fire Prevention Standards Which are More Restrictive Than the UFC," is amended to amend subparagraphs (a), (b) and (c) in their entirety so as to read as follows:

- (a) To the extent fire prevention standards established by the District Fire Prevention Code, including the Standards pertaining to sprinkler systems and smoke alarms as set forth in this paragraph, are more restrictive than the Standards required by the UFC, the Standards of the District Fire Prevention Code shall take precedence and shall to that extent supersede the applicable UFC provision.
- (b) Automatic fire sprinkler systems shall be installed in accordance with the most recent requirements of the 2001 California Fire Code, State Fire Marshal Regulations, the National Fire Protection Association Codes and Standards, Factory Mutual Standards and requirements of the Town of Atherton, the City of East Palo Alto, the City of Menlo Park, and the County of San Mateo as covered under the Menlo Park Fire Protection District under the following conditions:
 - (i) New building and structures: An automatic fire sprinkler system shall be installed in all new buildings or structures over 1,000 square feet. Any new building or structure having a basement which exceeds 250 square feet shall be provided with an automatic fire sprinkler system throughout the building or structure, regardless of the building or structure's square footage.

- (iv) Automatic fire sprinklers shall be included in all bathrooms that contain combustible fixtures or in bathrooms exceeding 55 square feet.

Section 2. Repeal of Conflicting Ordinances.

This Ordinance supercedes and repeals all ordinances, resolutions and other regulations of the District that conflict or are inconsistent with the provisions of this Ordinance.

Section 3. Adoption and Effective Date.

3.1 Pursuant to California Health & Safety Code §13869.7, this Ordinance shall first be transmitted to the Cities of East Palo Alto and Menlo Park, the Town of Atherton and the County of San Mateo for ratification.

3.2 Upon ratification as provided in Section 3.1, this Ordinance shall be approved and adopted pursuant to California Health and Safety Code Section 13861(h) in conformance with the requirements of Article 7, (commencing with Section 25120) of Chapter 1 of Part 2 of Division 2 of Title 3 of the California Government Code and shall take effect from and after its approval and adoption in the manner specified.

Section 4. CEQA Compliance.

The District Board finds and determines that the enactment of the Ordinance is not a "project" as that term is used in the California Environmental Quality Act ("CEQA"; California Public Resources Code §§21,000 et seq.) or the State CEQA Guidelines (California Code of Regulations; Title 14, Sections 15,000 et seq.). Therefore no environmental assessment or other CEQA procedures or proceedings are required or necessary.

PASSED AND ENACTED at the meeting of the District Board of the Menlo Park Fire Protection District, duly held on the 19th day of October, 2004, by the following vote:

AYES and in favor thereof, Members: Brown, Spencer, Krause, Osmer, Carpenter

NOES, Directors:

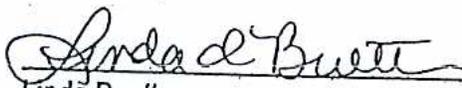
ABSTAIN, Directors:

ABSENT, Directors:



President

Attest:



Linda Buettner
Clerk



Menlo Park Fire Protection District

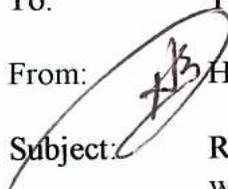
300 Middlefield Road • Menlo Park, CA 94025 • Tel: 650.688.8400 • Fax: 650.323.9129
Website: www.menlofire.org • Email: mpfd@menlofire.org

Fire Chief
Harold Schapelhouman

Board of Directors
Ollie Brown
Peter Carpenter
Rexford F. Ianson
John Osmer
Bart Spencer

Date: June 12, 2007

To: The Honorable Atherton Town Council

From:  Harold Schapelhouman, Fire Chief

Subject: Requested Town Council Agenda Item for Authority to Enforce Codes within the Town of Atherton by the Menlo Park Fire Protection District

The State of California is one of several states within the United States which adopts state minimum codes; this process is conducted on a three year cycle. The authority to do this is derived from the California Legislature through the California Health and Safety Code. The State of California selected the International Conference of Building Officials (ICBO) which publishes a "family" of codes each correlated with the Uniform Building Code to provide jurisdictions with a complete set of building-related regulations for adoption. Some of these codes are published in affiliation with the code organizations such as the International Fire Code Institute (IFCI) and the International Code Council (ICC). The California Building Standards Commission is empowered to adopt minimum codes which are formerly known as the California Building Standards Code as stated in Section 18910 of the California Health and Safety Code. There are 28 Titles within the California Health and Safety Code, California Code of Regulations. The California Building Code is found within Part 2 of Title 24 of the California Code of Regulations and the California Fire Code is contained within Part 9 of Title 24 and Title 19 of the California Code of Regulations.

Section 18938 of the California Health and Safety Code lists specifically the codes contained in the California Building Standards Code. The Uniform Fire Code with adopted California amendments is listed as the California Fire Code. This is also the case with the Plumbing, Mechanical, Historical, Electrical Codes, etc. The State also adopts reference documents, codes and publications such as National Fire Protection Association Standards, and the National Fire Protection Handbook per Section 101.7 of the California Building Code. The provisions of the model codes which are adopted are applicable to all occupancy groups and uses per Section 103.1 of Volume 1 of the California Building Code. Per Section 101.9.2 of the California Building Code, "Nothing in these building standards shall diminish the requirements of the state fire marshal". The State Fire Marshal is responsible for development and presentation of the Fire Code with directed amendments; specific to the State of California when accepted by the State Building Standards Commission. This document is known as the California Fire Code.

"Excellence In Service"

The responsibility for enforcement of building standards adopted by the State Fire Marshal and published in the California Building Standards Code relating to fire and panic safety is stated in Section 101.17.14 of the California Building Code, Volume 1, Chapter 1, and Article 1, Section 101.2.2.2 of the California Fire Code “ The responsibility for enforcement of building standards adopted by the State Fire Marshal and published in the California Building Standards Code relating to fire and panic safety and other regulations of the Office of the State Fire Marshal”, shall be per Sections 1-5 stated in both the Building and Fire Codes per the code citations stated above. (See also enclosed copy of code sections) These sections authorize the Fire Chief to administer and enforce these codes per Section 103.2.1. and 103.2.1.1

Ref: 103.2.1 Authority of the Chief and Fire Department

103.2.1.1 General: The Fire Chief is authorized to administer and enforce this code. Under the Chief’s direction, the fire department is authorized to enforce all ordinances of the jurisdiction.

Per the California Building Standards Codes the Fire District is authorized to administer the California Fire Code for all occupancies and as referenced in the California Building Code Section 101.3.1 for “Fire Department Access and Water Supply “per Article 9.

Based upon this assessment, the Menlo Park Fire Protection District requests that the Town of Atherton formally authorize and assign to the Fire Chief and Fire District responsibility for “Fire Department Access and Water Supply” per Article 9 and the following sections:

Section 901.2.2.1 Fire Apparatus access

Section 901.4.2 Fire Apparatus access roads

Section 901.2.2.2 Fire hydrant systems

Section 903.2 Required Water Supply for Fire Protection

Section 903.3 Appendixes III-Fire Flow Requirements for Buildings

Section 903.4.2 Appendix III-BB Fire hydrant location and distribution

I look forward to your reply.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: MIKE WASMANN, BUILDING OFFICIAL

DATE: FOR THE MEETING OF JUNE 20, 2007

**SUBJECT: DISCUSSION AND POSSIBLE ACTION REGARDING THE REVIEW
OF OPEN BUILDING PERMITS BY MENLO PARK FIRE
PROTECTION DISTRICT**

RECOMMENDATION:

The City Council consider the process for the review of open building permits by Menlo Fire Protection District.

BACKGROUND:

The Town of Atherton adopted Fire Sprinkler Ordinance No. 551 that became effective December 17, 2004. Prior to the adoption of that ordinance some projects were reviewed by Menlo Park Fire Protection District.

The Building Department has a total of 225 Active Project Sites. An "Active Project Site" file may include minor alterations, such as bathroom or kitchen remodel, additions, as well as new residences. Currently, the fire sprinkler ordinance requires that only new buildings or structures in excess of 1,000 square feet be reviewed by MPFD in accordance with the fire sprinkler ordinance. Since the adoption of the fire sprinkler ordinance, the Building Department has required all applicants for all new buildings or structures over 1,000 square feet to submit those projects to MPFPD for review. Active Project Sites status is listed below:

- 225 Active Project Sites
- 78 Active Permits for New Residences
- 46 Required Fire Sprinklers per Town of Atherton Ordinance No. 551
- 46 New Residences have been reviewed by MPFPD

The Grand Jury recommends that the City Manager be directed by the City Council to request the Menlo Park Fire Protection District to examine all substantial construction projects with open building permits for potential health and safety violations and to examine all projects constructed during the tenure of the previous Building Official that were not reviewed for fire safety.

ANALYSIS:

Building Department staff has reviewed all 46 projects which were required to be reviewed by MPFPD per Town of Atherton Ordinance No. 551. Of those 46, all have fire sprinklers. The remaining projects that did not require sprinklers have not been reviewed by MPFPD; however, they have been reviewed by Town of Atherton Building Department staff for compliance with the 2001 California Building Code (Title 24, California Code of Regulations, Part2).

FISCAL IMPACT:

There is no direct fiscal impact if Menlo Park Fire Protection District performs the review with MPFPD staff.

Prepared by:

Approved by:

Mike Wasmann
Building Official

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE CITY COUNCIL MEETING OF JUNE 20, 2007

SUBJECT: DISCUSSION AND REVIEW OF SPECIAL EVENTS ORDINANCE AND GUIDELINES FOR NON-SCHOOL SPONSORED EVENTS

RECOMMENDATION:

Staff recommends that the City Council review the current Ordinance 559, an Ordinance Regulating Special Events within the Town of Atherton, and provide appropriate direction to staff.

BACKGROUND:

On September 21, 2005, the Town of Atherton adopted Ordinance 559 Regulating Special Events and creating Guidelines for special events held at private and public schools within the Town of Atherton. The purpose of the Ordinance was to, “insure the comfort, safety and general welfare of Town citizens by controlling the number of special events and impacts of such events on the community and providing a simplified process.” The Ordinance also required a special event permit for any special event held on private property occurring on two or more consecutive days where members of the general public are invited.

School event guidelines for special non-school related events held at private and public schools were also adopted. In addition, field use for outdoor functions were limited to the hours of 8:00 a.m. until 7:00 p.m. Field use and outdoor functions were limited to the hours of 9:00 a.m. until 6:00 p.m. on Saturdays, and 10:00 a.m. until 5:00 p.m. on Sundays.

Any non-school related events planned to occur outside of the guidelines are required to obtain a special events permit.

During the discussions with the City of Menlo Park and the Sequoia Union High School District regarding use and hours of the planned Menlo-Atherton High School Performing Arts Theatre, it was suggested that the ordinance be brought back for discussion. Specifically, clarification was being requested regarding events that would be held at the M-A Theatre that were neither sponsored by the high school or the City of Menlo Park.

ORDINANCE NO. 559

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON REPEALING CHAPTER 8.52 AND ADDING CHAPTER 17.38 OF THE ATHERTON MUNICIPAL CODE REGULATING SPECIAL EVENTS WITHIN THE TOWN OF ATHERTON

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

SECTION 1: Chapter 8.52 is hereby entirely repealed.

SECTION 2: Chapter 17.38 is hereby added as follows:

17.38 SPECIAL EVENTS

17.38.010 Title.

This chapter shall be known as the "Special Event Ordinance" and may be so cited.

17.38.020 Purpose and intent.

- A. The purpose of this chapter is to insure the comfort, safety and general welfare of the Town citizens by controlling the number of special events and impacts of such events on the community and by providing a simplified permit process. It is also the purpose of this chapter to defray the costs of processing applications for these events.
- B. The intent of this chapter is to protect the residents from excessive noise, traffic and other intrusions upon their privacy.

17.38.030 Definitions.

A "special event" is an activity sponsored by one or more organizations, individuals, or other entities, held at one or more locations within the Town of Atherton to which the general public is invited.

17.38.040 Permit required.

- A. All special events held in the public right-of-way shall obtain a special event permit. Activities include, but are not limited to; processions such as: walks, road races, bicycle rides, skate-a-thons and similar activities.
- B. A special event permit is required for any special event held on private property, occurring on two or more consecutive days where members of the general public are invited. Activities requiring a permit include, but are not limited to the following;
 - 1. Motion picture filming;
 - 2. House and garden tours;
 - 3. Fundraisers

4. Auctions;
 5. Antique shows;
 6. Concerts;
 7. Other similar activities.
- C. The following provisions shall apply to special events held at private and public schools and country clubs:
1. A permit is not required for on-site school-related events. Responsible parties shall notify the Town of school events that may result in additional traffic or parking.
 2. A permit is not required for non-school-related events held at schools and country clubs that meet the School Event Guidelines as prepared by the City Manager and accepted by the City Council. Responsible parties shall notify the Town of events that may result in additional traffic or parking.
 3. A special event permit is required for non-school-related events that are planned to occur outside of the School Event guidelines.
- D. Open house tours for the purpose of selling property under the regular course of a real estate transaction shall be exempt.

17.38.050 Application submittal requirements.

The following items and information shall be submitted to the City Manager or designee:

- A. Completed application (application form supplied by the town) submitted to the Town at least two months prior to the event;
- B. Detailed description of the event;
- C. Contact person available prior to and during the event;
- D. Application fee, (as set by resolution of the city council);
- E. The anticipated number of attendees and number of vehicle trips per day;
- F. An on- and off-site parking plan including the placement of barricades, etc;
- G. A deposit as determined by the Police Chief for the funding of any additional security measures not provided by the applicant;
- H. A hold harmless agreement, naming the Town, its employees and agents; and certificate of insurance, naming the Town as additional insured. A form of hold harmless agreement, and insurance in the amount of \$2,000,000 and insurance provider shall be reviewed and approved by the City Attorney.

17.38.060 Permit issuance.

- A. The City Manager or designee may issue a special event permit when in the opinion of the City Manager or designee the event meets all of the requirements of this code and the Atherton General Plan. The City Manager or designee may refer items to the Planning Commission when, in his or her opinion, the public interest would be better served by the Planning Commission conducting a public hearing. The City Manager or designee shall issue, deny or refer a special event permit within thirty (30) days of receipt of a completed application. If the event will not be in conformance with either this code or the Atherton General Plan the application shall be denied.

- B. If a special event permit is issued by the City Manager or designee, such official may impose any reasonable conditions to insure the event will have a minimal impact on the community. Such conditions may include, but are not limited to, any of the following:
1. Adequate arrangements to prevent:
 - a. Violation of Chapter 8.16 Noise Control,
 - b. Violation of Chapter 8.20 Nuisance Abatement,
 - c. Amplified sound,
 - d. Violation of any traffic laws,
 - e. Violation of any other section of this code;
 2. Posting of docents at key/dangerous locations;
 3. Events, including setup and tear down, will be done during daylight hours if feasible;
 4. Signs on public property shall be kept to a minimum and shall not be displayed for longer than one hour prior to or after the end of the event;
 5. Other materials or mitigation measures deemed necessary by the City Manager or designee;
 6. Parking barricades shall be set back a minimum distance as required by the City Manager or his or her designee to insure site distance clearance from special event site driveways and neighboring driveways.

17.38.070 Permit requirements.

- A. All special events held on private property shall be limited to no more than two consecutive weeks, including no more than two consecutive weekends. Any event for a longer period of time requires a Conditional Use Permit from the Planning Commission.
- B. All special events shall be publicly noticed at least ten days prior to the issuance of a permit, pursuant to the process outlined in State Planning and Zoning Law section 65091, with a five hundred foot radius notification. However, if the event is not conducted on a single site, or is to be conducted within the public right-of-way, the applicant shall pay for the cost associated with the publication of the notice in a newspaper of general circulation at least ten days prior to issuance of a permit.
- C. The applicant shall execute an agreement acknowledging obligations to comply with all required conditions of the special event permit.
- D. No more than two special event permits shall be issued in a twelve-month period for special events on any private residential property.

17.38.080 Permit revocation.

A special event permit may be revoked by the City Manager or his or her designee in the event of any violation of the special events permit or this code.

17.38.090 Violation as a public nuisance.

Each violation of this chapter is a misdemeanor and shall constitute a public nuisance and be subject to abatement as such.

SECTION 3: That the City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions of this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not effect the validity of the remaining parts of this Ordinance.

SECTION 4: This Ordinance shall be posted in at least three public places according to law and shall take affect and be in force from and after 30 days after its passage and adoption.

* * * * *

Introduced this 20th day of July, 2005.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the 21st day of September, 2005, by the following vote

| | | | |
|----------|---|-----------------|--|
| AYES: | 5 | COUNCILMEMBERS: | Janz, Marsala, Carlson, Conwell, McKeithen |
| NOES: | 0 | COUNCILMEMBERS | None |
| ABSTAIN: | 0 | COUNCILMEMBERS | None |
| ABSENT: | 0 | COUNCILMEMBERS | None |

/s/ William R. Conwell

William R. Conwell, Mayor
Town of Atherton

ATTEST

/s/ Linda Kelly

Linda Kelly, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc G. Hynes

Marc G. Hynes, City Attorney

SCHOOL EVENT GUIDELINES

GUIDELINES FOR SPECIAL EVENTS HELD AT PRIVATE AND PUBLIC SCHOOLS WITHIN THE TOWN OF ATHERTON

The Town of Atherton requests public and private schools enforce the following special events guidelines with regards to non-school-related special events held on school property within the Town of Atherton;

1. Field use and outdoor functions shall be limited to the hours of 8:00 a.m. until 7:00 p.m. unless further limited by the school. Field use shall include setup, breakdown, warm-up, and practice sessions. Field use and outdoor functions shall be limited to the hours of 9:00 a.m. until 6:00 p.m. on Saturdays and 10:00 a.m. until 5:00 p.m. on Sundays, excluding non-coach/player interactions.
2. Indoor activities shall cease at 9:00 p.m.
3. No amplified noise equipment shall be used in conjunction with any outdoor activity.
4. Any lighting associated with field or outdoor functions use shall be shielded or downlit so the source of light shall not shine onto adjacent properties.

A responsible school contact person shall be made available to immediately enforce any violation of the above-listed guidelines.

Any non-school-related event that is planned to occur outside of the above-listed guidelines (i.e.; earlier/later than the specified hours, use of amplified noise, spill overlighting) would be required to obtain a special events permit pursuant to section 17.38 of the Atherton Municipal Code.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF JUNE 20, 2007

SUBJECT: CODE ENFORCEMENT PROGRAM STATUS REPORT

RECOMMENDATION:

The City Council accept the status report of the Code Enforcement Program, consider alternatives for continuation of code enforcement services, and provide appropriate direction to staff to continue these services for FY 2007/08.

BACKGROUND:

At the November 15, 2006, City Council meeting, CSG Consultant Inc. provided a status report to Council proposing an extension of contractual code enforcement services through December 31, 2006, and the establishment of a defined Code Enforcement Program which would run through the term of January 1, 2007 to June 30, 2007.

Council approved the continuation of code enforcement services on a complaint-basis only through December 31, 2006, and approved an allocation to fund the program as a defined Code Enforcement Program from January 1, 2007 through June 30, 2007.

Council also expressed interest in hearing from the Code Enforcement Officer the amount of potential proactive code enforcement cases that were observed while investigating complaint driven cases during this period. Previously, Council members stressed the importance of drawing a line between proactive code enforcement and a complaint-based system. Council's view was that the Town had not yet decided what it wanted as a community relative to code enforcement and felt that through implementation of a defined Code Enforcement Program, and a better sampling of the number of overall code enforcement cases generated, that more clarity would be achieved. Council also believed that a better understanding of the scope of proactive

cases that were observed by the code enforcement officer would assist the Town in determining the need for a more permanent Code Enforcement Program.

Three code enforcement policy issues were considered: 1) Should a primary individual be designated to provide code enforcement services? 2) What level of resources should be applied to the program? and 3) What were the priority issues that code enforcement should focus on?

Further discussion continued at the December 13, 2006, Council meeting regarding the Police Department's monitoring of construction site (parking), as well as discussion on the need for a definition of what code enforcement priorities were and what the policy should be.

Since the December meeting, approximately 165 code enforcement cases have been received by the code enforcement officer. (Please see Table 1a) Numerous additional potential proactive cases have been observed but were not addressed because of time constraints and administrative direction.

The types of cases that have been received since January 1, 2007, are primarily assigned the following categories to address priority.

- Health & Safety - neglected swimming pools, housing violations, hazardous structures,
- Police referrals - construction related including parking, barking dogs, noise.
- Zoning - fences, home businesses, misuse of zone, setbacks, and accessory buildings.
- Building - construction hours/days, building without permits, COP violations.
- Nuisances - inoperable vehicles, illegal storage, encroachments, trees & weeds.
- General - non-categorized requests from residents and staff for research or assistance

ANALYSIS:

The Acting Code Enforcement Officer has been responsible for code enforcement issues since the last proposal was brought to Council on December 13, 2006. This has provided consistency in the way cases are investigated, researched, and handled. Many code enforcement cases are resolved in one visit with the property owner, although some still take additional time to conduct background research. Town staff and residents have become accustomed to dealing with one individual as their point of contact for code enforcement matters. There is now an increased familiarity with the code enforcement process by residents and a resulting higher level of quality expected when a case is being handled.

As an example, construction parking violations previously were primarily handled by the Police Department. Continuing violations that occurred at the same location within a few days were not addressed unless a separate complaint was registered. No follow-up was provided on an old case because there was no ongoing investigation. Construction parking cases are still called in to the Police Department but on a lower frequency. All cases received by the Police Department are now referred to the Code Enforcement Officer who has the resources to follow a case from start

to finish. The amount of construction-parking-related complaints has been reduced due to a number of factors. Construction projects in higher density areas are being completed, contractors have been educated and now cooperate, and residents are now educated to call complaints in to the Code Enforcement Officer. Residents also understand that certain types and times for parking are allowed and therefore should not be called in as a complaint.

With the amount of code enforcement cases currently generated, assigning the work on a part-time basis remains more cost effective than assigning it to a full-time or part-time position. The Acting Code Enforcement Officer's current schedule of one day split between the office and the field each week with occasional telephone or inspection work conducted on an as-needed basis is generally adequate to manage the workload. Anticipated spikes in complaint level will be managed by an increase of two hours per week when necessary.

Priority issues for the Code Enforcement Program are, by necessity focused on health and safety. These are cases on properties that pose potential health and safety risks to the public; for example, an open and accessible swimming pool. The program is receiving three to five improperly attended or unprotected swimming pool complaints or inquiries each month.

The community continues to express a strong desire for continued code enforcement. Many more residents are now coming forward to identify potential problems and violations that affect them. The program improvements that produced this change are contained in the defined Code Enforcement Program described to Council on December 13, 2006, and are outlined below.

Various residents and neighborhood leaders have expressed their desire for a more proactive Code Enforcement Program to the City Manager. This program would require the following components if it is to be successful:

- 1. Accessibility:** The ability to file a complaint or request information regarding a code enforcement issue is one of the most important components of the program. It is important to assure anyone wishing to file a complaint that his/her name will be held in confidence and will not be shared with anyone, including other agencies. Nearly all complaining parties who have participated in this element provide their names to staff.
- 2. A procedure:** Designed for the receipt and handling of complaint forms that are received on designated forms. A timeline for handling this form and assigning this case was established. Complaints and requests that are received online can be automatically assigned to the Code Enforcement Officer. Cases are assigned a priority and a specific timeline for response has been established. Action taken: Complaints are now documented in writing and referred to the Code Enforcement Officer for investigation. Each case is assigned to the data base, an inspection is conducted, and a correction letter is mailed to the property owner. Proactive detection of violations is used on a limited basis and should be reserved for when time is available, for high visibility areas, and when a particular issue that requires attention has been identified.
- 3. A Code Enforcement Complaint Tracking System:** is being designed. The current system which was reported on and discussed at the December 13th meeting is limited and

could not be implemented. Action taken: The Acting Code Enforcement Officer developed an Excel based system to capture data until a new system is installed. The Town is currently negotiating with CRW for a new complaint tracking system. The temporary Excel based system was put in place shortly after the December 13, 2006, Council meeting.

4. **A Request for Services:** A form has been implemented and could be added to the Town website. This will provide an easy way for someone to register a complaint or simply ask for clarification on a specific issue. The form should be linked to the Municipal Code and to appropriate city offices when referral is necessary. Action taken: This form is now being used on a limited basis and will be upgraded in 2007.
5. **Atherton's Top Ten Code Enforcement Questions:** A series of links to the most common code enforcement questions was developed and should be printed and distributed especially through the Town website.
6. **Meetings with the Community:** The Code Enforcement Officer continues to meet with the community on a monthly basis to hear concerns. Action taken: The meetings so far have been limited to various neighborhood leaders and could easily be modified to be held in a central location that is convenient to groups and would include other departments when appropriate. Residents have become accustomed to the Code Enforcement Officer's schedule and routinely telephone or visit on the day that he is in the office. Meetings with various community and neighborhood leaders commenced in January 2007 and have been held twice monthly.
7. **Official Warning Notices & Administrative Citations:** The use of official warning notices and citations should be considered. Warning notices work well in a majority of cases, however a stronger incentive to correct a violation needs to be available. Often, until a stricter penalty is proposed, a responsible party can be slow to respond or may not respond at all. Experience in other cities has proven that just the threat that a citation may be used is enough of a deterrent. Council may want to consider further discussion on the use of administrative citations. If Council decides to consider this, the City Manager should be directed to return to Council with a proposal that coincides with the proposed continuation of part-time code enforcement services through fiscal year 2007/08.
8. **Office hours:** Should be established that are convenient for residents and these hours should be widely published to ensure effectiveness. When the Code Enforcement Officer is not available, a responsive messaging system should be employed. Action taken: This element has been implemented and residents and staff know that they can contact the Code Enforcement Officer by cell phone anytime and between 8:00 -10:00 a.m. and 4:00 – 5:00 p.m. on Wednesdays.
9. **Progress reports:** Should be made to the City Council on a quarterly basis during the upcoming year. This provides an opportunity for the Council to continue monitoring the

effectiveness of the program and to hear from the public. Action taken: Staff is reporting semi-annually at this time.

ALTERNATIVES:

1. Continue contracting out the code enforcement position through CSG Consultants.
2. Contract with another code enforcement service provider.
3. Contract services with an individual contract employee.
4. Develop a part-time, in-house position ,or alternatively, a full-time hybrid position (see attached)
5. Eliminate the program.

FISCAL IMPACT:

If the Town follows the recommendation to fund the continuation of the present eight-hour per week schedule for the Code Enforcement Officer, with additional half days twice per month to follow up on high priority cases as well as construction hour violations, costs expected from the various options are as follows:

CSG Consultants Inc.

A contract Code Enforcement Officer for one eight-hour day per week plus one additional eight-hour day each month would cost \$48,960, assuming an hourly rate of \$102 per hour. There would be no additional costs or overhead. This cost would be borne by the \$50,000 building inspection enforcement fee.

Other Service Provider

Rates for another code enforcement service provider are unavailable at this time but would most likely be comparative to CSG Consultants Inc.

Individual Contract Employee

An individual contract employee, depending on the level of experience, training, and willingness to work an abbreviated schedule would cost \$24,000 dollars annually assuming an hourly rate of \$50 to \$75 dollars per hour. This cost could also be borne by the building inspection enforcement fee.

City Employee Part-Time

A part-time city employee, depending on the ability of the Town to attract someone willing to work an abbreviated schedule at an hourly rate of \$35 per hour and an overhead rate of 20 %, would cost approximately \$18,000 based on eight hours each week per year.

Program Elimination

No fiscal impact.

CONCLUSION:

It is recommended that the Atherton City Council accept the updated Code Enforcement Report and to consider the City Manager's recommendation to fund the Code Enforcement Program at the eight-hour per week rate with additional funding for another eight hours each month to cover additional investigations when appropriate.

Prepared by:

Approved by:

Robert L. Cushing, REHS.
Acting Code Enforcement Officer

James H. Robinson
City Manager

TABLE 1a CODE ENFORCEMENT CASE SUMMARY (1-1-07 – 6-13-07)

| TYPE OF CASE | | NO. RECEIVED |
|------------------------------------|---------------|---------------------|
| CONSTRUCTION OPERATION PLAN | | 40 |
| HEALTH & SAFETY | | 10 |
| PUBLIC NUISANCE | | 15 |
| ANIMAL | | 16 |
| ENCROACHMENT | | 15 |
| INOPERATIVE VEHICLES | | 7 |
| FENCES | | 5 |
| ILLEGAL CONSTRUCTION | | 10 |
| ACCESSORY STRUCTURES | | 5 |
| UNPERMITTED CONSTRUCTION | | 5 |
| MISCELLANEOUS | | 37 |
| <u>ALL CASES</u> | | <u>165</u> |
| <u>TOTAL CASES</u> | <u>OPEN</u> | 51 |
| | <u>CLOSED</u> | 114 |



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: ROBERT BRENNAN, CHIEF OF POLICE

DATE: FOR THE MEETING OF JUNE 20, 2007

**SUBJECT: CREATION OF DISASTER/CODE ENFORCEMENT
POSITION FOR FY 2007/2008**

RECOMMENDATION:

The City Council consider the addition of one FTE to Town staff to the 2007/2008 budget in the amount of \$169,310 to develop/maintain the newly updated Disaster Preparedness Program and to enforce Town ordinances.

INTRODUCTION:

The Council and staff of the Town of Atherton have spent considerable time updating and putting in place a modernized Atherton Disaster Plan and addressing community issues as they relate to violations of Town ordinances. The Police Department temporarily assigned a Sergeant from Patrol to work fulltime on disaster preparedness. This assignment has ended and the Sergeant has been reassigned to nighttime patrol to fill a supervisory need. Additionally, the Town has hired on a temporary basis a code enforcement officer (assigned to the Building Department). One goal of this temporary position is for Council to evaluate whether or not the Town would benefit from a full- or part-time Code Enforcement Officer.

Council has shown a desire to continue coordinating a Disaster Preparedness program including the continuation of newly formed CERT and PEP Programs.

ANALYSIS:

1) Town of Atherton Disaster Preparedness

A Police Department employee is the Town's expert on disaster preparedness. He has received countless hours of training in the area of disaster preparedness, and he liaisons directly with the Menlo Park Fire District and the County Office of Emergency Services (OES). During the first half of this fiscal year, he worked on fulltime on disaster preparedness and essentially has rewritten our disaster program to bring it into compliance with state and federal directives and guidelines. His efforts have brought us to a point where we enjoy total compliance of all state and federal mandates. Additionally, the Town is now in a position to receive financial reimbursements after a declared disaster.

The person attends Town Emergency Preparedness Subcommittee meetings as well. He is our designee to community CERT and PERT Programs. Continued attention in this area will assure compliance with future federal and state mandates and requirements.

2) Code Enforcement

At the Nov 15, 2006, Council Meeting, Council approved the hiring of a consultant for a six-month period to evaluate whether or not enough code enforcement issues exist to justify the addition of a halftime or fulltime position. Many of the code violations are criminal in nature and some violations may require prosecution. Cost of this consultant is \$100 per hour. The total funding that has been authorized by Council for code enforcement for the 2006/07 FY was \$21,632.

ALTERNATIVES:

- 1) Allow the Disaster, CERT and PEP Programs to continue without staff involvement. Update as revisions are received from state and federal authorities. Allow the Building Department to investigate code enforcement violations as they arise on a contract basis.
- 2) Add one FTE to Town staff. This position's assignments include the regular maintenance of the Disaster Program (liaison with Menlo Fire, OES, etc); represents Town CERT and PERT Programs; attends Emergency Preparedness Subcommittee meetings; investigates code enforcement violations; provides code enforcement training; assigned to either the Police, City Manager's Office or Building Department; and develops policy and procedure for an Ordinance Compliance Program to include a resource guide, priority responses, etc.

The Police Department recommends the current Police employee who has expertise in the area of disaster preparedness be transferred to do both code enforcement and disaster preparedness. Police will backfill the vacancy created by this new position. This employee has expressed his desire to retire from the Town in two years. The Police

Department will not be able to continue at any level of disaster preparedness after he leaves our employ. No other personnel possess the desire or the aptitude to continue this program at its current level. Disaster preparedness is not a Police Department function; legally, it is the responsibility of the Fire Department, a specific class of Town employee who has significant professional training, or a private agency or professional corporation that can meet the needs of the Town of Atherton.

CONCLUSION:

The approval of this request will add one FTE to the Town staff to either the Police Department the City Manager's Office or the Building Department. This program can be reviewed for effectiveness for the 2008/2009 FY.

FISCAL IMPACT:

The Finance Department forecasts the cost of a fulltime police sergeant in FY 2007/2008 will be \$169,310.

Prepared by:

Approved:

Robert Brennan
Chief of Police

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF JUNE 20, 2007

**SUBJECT: DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING
THE SAN MATEO COUNTY GANG TASK FORCE**

EXECUTIVE SUMMARY AND RECOMMENDATION:

The Town of Atherton has been participating in the San Mateo County Gang Task Force. A description of the Task Force, including its mission, is set out on the first page of the operational order attached as Exhibit A. San Mateo County has circulated a draft agreement for participation in the Task Force. It is attached as Exhibit B. The principal concerns with this agreement are the indemnification provisions which are described in more detail below. It is recommended that the City Council review this report and provide direction to the Staff regarding the indemnification provisions.

BACKGROUND:

For the past two years, the Town has participated in the San Mateo County Gang Task Force. Various law enforcement agencies in San Mateo County and state and federal agents participate in the force. A principal feature of the task force is to proactively enforce laws in order to reduce chances of violent and life threatening gang activity. This includes conducting residential searches of every probationer and/or parolee who has been identified as a high risk gang member. Additionally, the force works with the immigrations and custom enforcements (ICE) regarding prosecuting and deporting gang members "where appropriate and based on criminal prosecution." This information is set out in bullet format on page 1 and 2 of Exhibit A attached as well as the first recital on page 1 of Exhibit B.

Paragraph 2 of the agreement Exhibit B envisions a commitment of resources and assignment of law enforcement officers to the Gang Task Enforcement Unit as described in the Exhibit A.

Paragraph 5 “Hold Harmless” is the principal reason for the agreement. It provides that no party can be responsible for acts or omissions of another’s party’s officers and employees nor shall a party incur liability arising out of activities of another party’s officers and employees. In the event parties to the agreement are held liable upon any judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of the agreement, then the pro-rata share of each party in the satisfaction of such judgment shall be based on the percentage for which they are liable.

If the hold harmless clause ended here, it is likely that it would have served its purpose. County Counsel has informed me that the reason for the provision is an attempt to avoid problems which occurred several years ago amongst the cities of Mountain View, Palo Alto and Los Altos involving a multi-million dollar judgment obtained by the family of a reserve Mountain View Policeman who was accidentally shot to death by a Palo Alto Police Officer during a training session in which the cities of Palo Alto, Mountain View and Los Altos were taking part.

The training exercise involved a scenario in which terrorists had taken over CalTrain. (this was in anticipation of the World Cup Soccer tournament in the Bay Area, and as events have subsequently shown, was perhaps not as far-fetched as one might think). The reserve Mountain View Officer was playing the role of a terrorist. Palo Alto Police Officers were attempting to “storm“ the train. To ensure realism of the training exercise, both the “terrorists” and the police were carrying their weapons. As a safety precaution, the Palo Alto Officers who were in charge of the exercise, conducted a weapons check in advance of the exercise in order to insure that no one had live ammunition in his weapon. Unfortunately, the weapons check failed to detect live rounds in the weapon of one of the officer. When this gun was discharged in the course of the exercise, the reserve Mountain View Police Officer was killed.

The City of Los Altos only had four officers on site that day. None of them were actual participants in the exercise at the time of the killing. None of them had any part in the weapons check procedures. The three city police departments were operating under a written agreement which had been signed only by the police chiefs. No city council had approved the agreement.

Early on, it was agreed that Los Altos would not be compelled to participate in the costs of defending the action. However, when the matter was finally concluded, the risk management pool for the cities of Mountain View and Palo Alto presented the City of Los Altos with a demand for a full one-third contribution to pay both the eventual settlement and litigation costs. The amount demanded was approximately three-quarters of a million dollars. Los Altos refused to pay on the grounds that it had no responsibility for the damages and, further, that because there was no formal agreement between the agencies, it could not be held under any theory of contractual liability as urged by the risk management pool. This issue was subsequently litigated and decided in favor of Los Altos.

It is the World Cup training exercise shooting which lies behind the language in paragraph 5 of the agreement. It is the reason that the county wants this agreement approved by the City Councils of the respective parties to the agreement.

Insofar as the language in paragraph 5 attempts to handle a situation where an agency should not be obliged to pay for something which it is not responsible for, I would recommend that the City Council approve and enter into the agreement. Although it is easy enough to state the concept that a mere signatory not otherwise involved should not be liable, the practical realities are that persons making a claim against a joint operation such as the Gang Task Force will, as a matter of their own lawyer's prudence, name all of the parties to the agreement. Once this occurs, it is my concern that the following language in paragraph 5 appears to require that everyone who has been named in the litigation pay for the legal defense. Although this may not have been the intention of paragraph 5, this is the way I read the last three clauses of paragraph 5. These state:

“In the event of a liability, claim, demand or proceeding of whatever kind or nature arising out of this agreement, the Parties who participate shall indemnify and hold harmless those Parties whose involvement in the transaction or occurrence that is the subject of said claim, action demand or other proceeding is limited to execution of this agreement.

This section shall include, without limitation, any actions, claims, suits, demands, and liability of every name, kind, and description brought for, or on account of injuries to or death of any person, including City or County, or damage to property of any kind whatsoever and to whomsoever belonging.

The duty to indemnify and hold harmless as set forth herein shall include the duty to defend as set forth in Civil Code Section 2778.”

I propose to contact the County Counsel and attempt to draw up what I believe is the County's intent to protect parties named in claims and/or litigation solely because they are signatories.

FISCAL IMPACT:

Uncertain, but potentially significant.

Prepared By:

Approved By:

/s/ Marc Hynes
Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachment



SAN MATEO COUNTY GANG TASK FORCE OPERATIONAL ORDERS 2007

The San Mateo County Police Chiefs and Sheriff Association Protocols shall be utilized as the minimum standard; however, officers assigned to the Task Force will be first governed by their own agencies policies.

SITUATION:

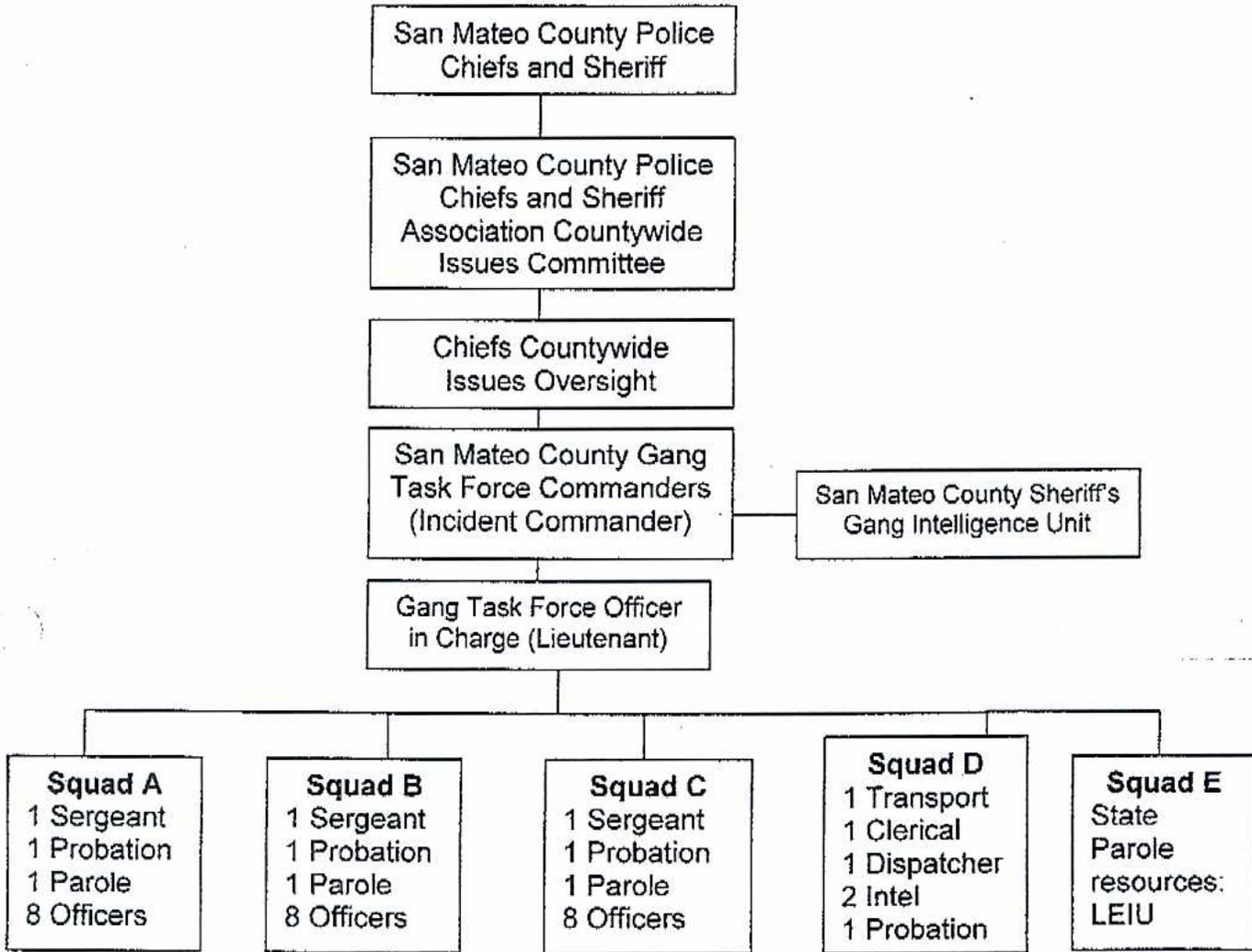
The County of San Mateo has seen a continual rise in gang related violent activity over the past few years. As a result the San Mateo County Police Chiefs and Sheriffs Association in the summer of 2005 authorized the formation of a proactive County-wide Gang Task Force. The Gang Task Force was developed and is comprised of personnel from each law enforcement agency in San Mateo County, including State and Federal assets.

MISSION:

- To maintain order to all neighborhoods.
- To proactively enforce all laws, codes, and ordinances to reduce the chances of violent and life threatening behavior.
- To treat each contact professionally and legally.
- To conduct residential searches of every probationer and/or parolee (who have been identified as a high risk gang member).
- To identify current gang members, substantiate gang membership of new members, and confirm gang affiliation of those that have not met establish gang identification standards.
- To enhance probation and parole conditions for probationers and parolees who are affiliated with gang membership.
- To have the Gang Intelligence Unit members debrief known gang members to gain intelligence and information on criminal activity.
- To validate new gang members and update information on established gang members for submission into CAL GANG.
- To work with the District Attorneys Office to vertically prosecute suspected gang members as appropriate.
- To work with the Immigrations and Custom Enforcement (I.C.E.) regarding prosecution and deportation of gang members where appropriate and based on criminal prosecution.
- To provide a monthly report to the San Mateo County Police Chiefs and Sheriff Countywide Issues Committee.
- To liaison with Adult and Juvenile Judiciary representatives and liaison with prison gang experts.
- To coordinate efforts utilizing Federal, State, and Local resources to identify, investigate through electronic and traditional techniques to dismantle specific gangs, similar to the Cease Fire initiative.

EXECUTION:

• Structure:



Responsibility:

- **Oversight:** The San Mateo County Police Chiefs and Sheriff Association
- **Direct Oversight:** The San Mateo County Police Chiefs and Sheriff Association Countywide Issues Committee Liaison Chiefs
- **Managerial Supervision:** (Incident Commanders) The Gang Task Force Commanders Committee: Captain Don O'Keefe (SMSO), Captain Cory Roay (DCPD), Captain Mike Brosnan (SSFPD), Captain Chris Cesena (RWCPD), Captain Ed Wood (BEL PD), Commander Greg Hart (CPD), and Captain Mike Callagy (SMPD)
- **Supervision:** (Officer in charge) Lieutenant.
- **Line supervisor:** (Squad leader) Sergeant.

Dissemination of Information:

- The Gang Task Force Commanders, Lieutenants, and representative of the Gang Intelligence Unit will report every two weeks to the SMCPSCA CWI Committee or their designees, during full time deployment periods.
- The Gang Task Force Commanders and Lieutenants will report monthly to the SMCPSCA CWI Committee, or their designees, during part time deployment periods.
- The Gang Task Force Commanders and Lieutenants will meet weekly during full time deployment to discuss missions and assignments.
- The Gang Task Force Commanders and Lieutenants will meet monthly during part time deployment periods.

Assignments:

Personnel: 20 - 30 Law enforcement officers.
Deployment days: Four days a week.
Deployment type: Combination: Probation/Parole Searches and Street Enforcement/gang abatement.
Primary Recommended Deployment: Wednesday & Thursday (1500 - 0100)
Friday & Saturday (1600-0200)
Command/Control: (1) Lieutenant
(3) Sergeants

- Squad assignment:
 - Personnel will be divided into 5 Squads A/B/C/D/E.
 - Squads A/B/C
 - Squads A/B/C should be comprised of: 1 Sergeant (Squad Leader)
1 Probation representative
1 Parole Representative
5(minimum) -12 Officers
 - Squad assignments should be maintained during a deployment period.
 - The Squad Leader will designate assignments for their personnel to establish officer safety procedures and accountability. (e.g. Search mission: identify searcher/finders and cover. Street Enforcement missions: contact and cover positions).
 - Squad D
 - Squad D will be designated as a Support Element.
 - Squad D will contain: Transportation/Booking Unit
Clerical Unit
Communications Unit
Intelligence Unit
Probation Liaison
 - The Operation Lieutenant or designee will oversee Squad D during deployment periods

- Squad E
 - Squad E will be designated as a Support Enforcement/Intelligence Unit.
 - Squad E will contain personnel from the California Office of State Parole Special Investigative/Enforcement personnel.
 - The unit may be deployed as a separate team or may be assigned to other squads, whichever achieves the overall mission goals.

Training:

- Prior to the first deployment period one 8-hour training day will occur for all personnel who will be assigned to GTF during the full time deployment period.
- On the first day of deployment periods 2, 3, and 4, the first two hours will be designed for training. Personnel deployed during the specific period should attend.
- The San Mateo County Sheriff Office Gang Intelligence Unit and HIDTA will be responsible for developing the training curriculum and scheduling trainers.

Missions:

San Mateo County Sheriff Office Gang Intelligence Unit (GIU) will:

- Liaison with all Gang/Street Crime Teams in San Mateo County and be the point of contact for Gang Units from neighboring Counties.
 - Update threat analysis to all County Gang/Street Crime Teams as well as to the Gang Task Force. Ensure that all County Gang/Street Crime Teams are aware of Gang Task Force deployments.
 - Gather Intel and determine "hot spots" in county for Gang Task Force enforcement deployments.
 - Liaison with Probation and Parole to determine search target locations.
 - Provide information to Support Squad "D" so target packages can be developed.
 - Notify all personnel prior to their assigned deployment period
 - Provide debriefings of arrested Gang members by the Gang Task Force in order to obtain additional Intel.
 - Provide assistance to the Operations Lieutenant in charge by confirming that personnel attached to the Gang Task Force are aware of deployments plans.
 - The Gang Intel Unit will debrief Gang Task Force Supervisors as to their activities during the shift and will provide weekly statistics to the Gang Task Force Lieutenant for his report to the CWI committee.
 - The Gang Intel Unit Supervisor will attend all Gang Task Force Command meetings with the Gang Task Force Lieutenant to coordinate and plan weekly operations.
- During full time Gang Task Force deployment, the Gang Intel Unit will provide two personnel full time to Support Squad "D", the Gang Intel Unit personnel will be under the collaborative supervision of the Gang Task Force Lieutenant and the Gang Intel Unit supervisor.
 - During part time deployments the Gang Intel Unit will continue to provide two personnel to Squad "D" for the deployment and will provide preparatory support for the deployments.

▪ **Searches: Probation/Parole**

- San Mateo County Probation and State Parole will submit a current list of probationers and parolees (specific to each jurisdiction).
- Each agency will identify and prioritize those individuals who are to be considered high risk and affiliate gang members in their jurisdiction.
- The lists will be forwarded to the San Mateo County Gang Intelligence Unit (GIU) who will coordinate with HIDTA to prepare packets and current intelligence for each search, intelligence gathering information should include but not limited to: target description, current address, other people associated with the residence (kids present), criminal record if any, a short CHI brief, summary of the underlining probation charge and probation terms, weapons registered, immigration status, and gang affiliation.
- The Operation Lieutenant will be provided the search lists prior to each weekly deployment.
- The Operation Lieutenant will brief all squad sergeants at the beginning of a deployment and provide each squad sergeant with their search targets packets.
- The Operation Lieutenant will hold a general briefing reviewing recent activities and give a general briefing or update on activities as well as communicate activities planned for the next operation.
- Each squad sergeant will brief their respective teams as to their target assignments.
- Each squad will follow search safety guidelines listed in Appendix B.

▪ **Street Enforcement:**

- GIU will obtain from each jurisdiction the high risk gang locations. These areas will be prioritized based on current gang Intel and trends. GIU will provide the information to the Operation Lieutenant for discussion in order to maximize gang abatement efforts through proactive enforcement.
- The Operation Lieutenant will brief all squad sergeants at the beginning of a deployment and provide each squad sergeant with relevant information regarding enforcement activity.
- Each squad sergeant will brief their respective squads as to their enforcement assignments.
- Enforcement Assignments will include:
 - High profile presence in and around schools where gang activity is occurring, in addition to truancy enforcement.
 - High profile marked and unmarked presence in high risk neighborhoods.
 - H&S enforcement will be prioritized; information will be shared with CNTF as it relates to gang activity.

- Deployment of personnel will be at the discretion of the Incident Commander and Operation Lieutenant based on adherence to the mission.
- Authorization to provide support and assistance in advance for a specific planned event at the request of an agency should be obtained through the Commanders group or Incident Commanders/ Operations Lieutenant.

▪ **Surveillance:**

- Probation/Parole/GIU will identify the highest risk individuals to determine where they reside. This will include utilizing surveillance of these individuals.
- The Operations Lieutenant and Squad Sergeants will evaluate the need to track these individuals to determine routine and associates.
- Based on the surveillance probation/parole searches will take place at the identified locations.
- Deployment of personnel will be at the discretion of the Incident Commander and Operation Lieutenant. Squad D was designed with these specific tasks in mind.

ADMINISTRATION

- Command Post/Briefing/Staging Area: GIU headquarters
- "War Room" with intelligence and crime mapping: GIU Headquarters
- Equipment:
 - Vehicles: Each participating agency should supply one vehicle for their personnel, marked or low profile police vehicles are acceptable.
 - Video Camera: One video camera for each search team is advisable, if available one digital camera from each agency is being requested.
 - Portable radios: Each officer is to have a department issued radio capable of receiving and transmitting on TAC I, II, III, and County Green.
- Uniform:
 - Search Teams: (POLICE)
 - Police personnel are to be in a recognizable police uniform, with appropriate law enforcement markings. Patrol uniforms or BDU type marked uniforms are recommended. Low profile uniforms such as those worn with non-regulation pants, etc. are discouraged.
 - Regulation duty belt and/or tactical duty belt is recommended, along with retention type holsters. Department authorized duty weapons are required.
 - Surveillance Group: (POLICE)
 - Police personnel may wear clothing that enables them to travel undetected. However, they must have clothing in their vehicle which would be readily recognizable and marked identifying them as law enforcement, if the need arises to take action.
 - Department authorized weapons for plain clothes operations may be utilized. Police personnel will have available additional safety equipment as mentioned in Search Team uniforms.
 - Street Enforcement Teams: (POLICE)
 - Police personnel are to be in a recognizable police uniform, with appropriate law enforcement markings. Patrol uniforms or BDU type marked uniforms are recommended. Low profile uniforms such as those worn with non-regulation pants, etc. are discouraged.
 - Regulation duty belt and/or tactical duty belt is recommended, along with retention type holsters. Department authorized duty weapons are requested.
 - Related Law Agencies:
 - Search Teams and Street Enforcement Teams: Agencies which normally do not wear a identifiable "Police type" uniform, are requested to wear: black pants (similar to black tactical BDU's) a shirt or t-shirt with agency identifying logo, a jacket with obvious markings depicting the wearer as being with their agency or law enforcement, a badge or identifying badge prominently displayed on the outer most garment worn, and an

agency authorized duty belt and/or tactical duty belt. It is recommended that a retention type holsters is utilized. Department authorized duty weapons are required.

- Surveillance Teams: Agencies that normally do not wear a identifiable "police type" uniform are requested to wear clothing that enables them to travel undetected. However, they must have clothing in their vehicle that would be readily recognizable and marked identifying them as law enforcement, if the need arises to take action. Department authorized weapons for plain clothes operations must be utilized. Personnel will have available additional safety equipment as mentioned in Search Team uniforms.

COMMAND:

Call signs and unit designators will be provided prior to deployment and all staff assigned shall be furnished a deployment briefing sheet with the appropriate information.

RULES OF ENGAGEMENT: Individual Department use of force policy will be in effect for this deployment, as well as all countywide protocols.

- Communications:
San Mateo County Communications will provide (1) full time dispatcher.
 - Primary Use Channel: TAC I
 - Secondary Use Channel: TAC II OR III (DISPATCH DISCRETION)
- Incident Commanders:
Captain Don O'Keefe (SMSO)
Captain Cory Roay (DCPD)
Captain Mike Brosnan (SSFPD)
Captain Chris Cesena (RWCPD)
Commander Greg Hart (CPD)
Captain Mike Callagy (SMPD)
Captain Ed Wood (BEL PD)
- Operations Officers in Charge: Lieutenant Jeff Azzopardi (SSFPD)
Lieutenant Julian Agugin (DCPD)

LOCATION OF NEAREST HOSPITALS

| | | |
|---|---|---|
| North: (Trauma Center) San Francisco General Hospital 1001 Potrero San Francisco (415) 206-8000 | South (Trauma Center) Stanford Hospital 300 Pasteur Drive Stanford (650) 723-5111 | |
| North: (ER) Kaiser-SSF 1200 El Camino Real South San Francisco (650) 742-2511 | Central: (ER) Peninsula Hospital 1720 El Camino Real Burlingame (650) 696-5400 | South (ER) Kaiser-Redwood City 1150 Veterans Blvd Redwood City 650-299-2200 |
| Mills Hospital 11 S. San Mateo Drive San Mateo 650-696-5400 | San Mateo County General Hospital 222 W. 39 th Avenue San Mateo 650-573-2222 | |

Special Instructions:

- Appendix A: Agency Participation
- Appendix B: Search Team Instructions
- Appendix C: Procedures
- Appendix D: SMPCSA Policies/Guidelines
- Appendix E: Performance Measurements

AGREEMENT FOR PARTICIPATION IN THE SAN MATEO COUNTY GANG TASK FORCE

THIS AGREEMENT, entered into this _____ day of _____, 2006, by and between the COUNTY OF SAN MATEO, hereafter called "County," and those GOVERNMENTAL ENTITIES/LAW ENFORCEMENT AGENCIES which become signatories to this agreement, hereafter called "Agency" or "Agencies," each if which is called "Party" or "Agency," and all of which are collectively called "the Parties" or "Agencies."

WITNESSETH:

WHEREAS, Government Code §§ 54981 and 55631 *et seq.* authorize governmental entities to contract with each other for police services; and

WHEREAS, Parties wish to enter into this agreement to collaborate in law enforcement functions relating to investigation and suppression of criminal activity involving gangs; and

WHEREAS, the San Mateo County Gang Task Force seeks to accomplish the following countywide objectives:

- To restore order to all neighborhoods.
- To proactively enforce all laws, codes, and ordinances.
- To reduce the chances of violent and life threatening behavior.
- To treat each contact professionally and legally.
- To search every probationer and/or parolee (who have been identified as a high risk gang members), and their property.
- To identify current gang members, substantiate gang membership of new members, and confirm gang affiliation to those that have not met establish gang identification standards.
- To enhance probation and parole conditions for probationers and parolees who are affiliated with gang membership.
- To debrief each arrestee by Gang Investigators to gain intelligence and information on criminal activity.
- To validate new gang members and forward information to CALGANG representatives.
- To update information on established gang members and forward to CALGANG representatives.
- To work with the District Attorney's Office to vertically prosecute suspected gang

members as appropriate; and

WHEREAS, the San Mateo County Gang Task Force will benefit the public safety of the entire county, and a network of agencies have agreed to participate in this important public safety initiative.

NOW, THEREFORE, in consideration of the above premises, the mutual promises herein contained, and the public safety benefit to be gained, the Parties do hereby agree as follows:

1. Purpose.

The Parties wish to collaborate to form and operate the San Mateo County Gang Task Force, and to allocate their rights and responsibilities relative to the Task Force operations.

2. Services to be performed.

Parties shall commit resources and assign law enforcement officers to the Sheriff's Gang Enforcement Unit according to the terms and conditions described in Exhibit A, a series of documents describing the programmatic details of the Gang Task Force, which is attached hereto and incorporated by this reference as part of the agreement. Parties will appoint a committee of representatives who will provide management oversight and set policies for the Task Force.

3. Term and Termination.

The term of this Agreement shall begin on _____, 2006 and shall terminate on _____, 20___. Any party may withdraw from the agreement without a requirement of good cause upon thirty (30) days' written notice to the other parties.

4. Relationship of Parties.

All parties agree and understand that the work/services performed under this Agreement are performed as an independent contractors, and that no party's employees acquire any of the rights, privileges, powers, or advantages of any other party's employees. No pension rights of any party's employees will be affected by this Agreement.

Each Party will be responsible for its own equipment and personnel, and for the full payment for and compensation of said equipment and personnel.

5. Hold Harmless.

No Party shall be responsible for the acts and omissions of another Party's officers or employees nor shall a Party incur any liabilities arising out of the activities of another Party's officers or employees. If the Parties are held liable upon any judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, then the pro rata share of each Party in the satisfaction of such judgment shall be based on the percentage for which they are liable.

Each Party agrees to hold harmless and indemnify the other Party(s) and their respective officers, employees, agents, and independent contractors from and against all claims, loss, liability, damage and expense arising from the alleged negligent performance or intentional acts related to the performance of this agreement by said Party(ies). Any Party(ies) subject to civil suit or any claim arising out of any action resulting from performance pursuant to this agreement agrees to defend the other Party(ies) and their respective officers, employees, agents, and independent contractors against any such claims. In the event of concurrent negligence of more than one Party, their respective officers and employees, then the liability for any and all claims for injuries or damages to persons and/or property or any other loss or costs which arise out of the terms, conditions, covenants, responsibilities or actions related to this Agreement shall be apportioned according to the California theory of comparative negligence.

In any action brought against the Party(s) or the Task Force for which indemnity may be sought by one or more Party(s), the Party(s) identified by the pleadings and/or claim as alleged to have given rise to the gravamen of the complaint or claim shall promptly assume the defense thereof and its related costs. Party(ies) who are not identified by the pleadings shall also cooperate with the defense of such action as fully as practicable.

Party(ies) who are not identified by the pleadings and/or claims as having acted in a manner giving rise to the gravamen of the complaint or claim and who are not, subsequent to litigation, settlement and/or judgment, determined to be liable for the negligent or intentional acts that are the subject of the civil action, but who are signatories to the agreement and parties to the litigation, shall not be liable for any settlement unless those Party(ies) each consent to the settlement and agree to a pro rata share of responsibility. Such consent must be in writing.

In the event of a liability, claim, demand or proceeding of whatever kind or nature arising out of this agreement, the Parties who participate shall indemnify and hold harmless those Parties whose involvement in the transaction or occurrence that is the subject of said claim, action demand or other proceeding is limited to execution of this agreement.

This section shall include, without limitation, any actions, claims, suits, demands, and liability of every name, kind, and description brought for, or on account of injuries to or death of any person, including City or County, or damage to property of any kind whatsoever and to whomsoever belonging.

The duty to indemnify and hold harmless as set forth herein shall include the duty to defend as set forth in Civil Code Section 2778.

6. Assignability and Subcontracting.

No party may assign the benefits nor delegate the duties set forth in this Agreement.

7. Insurance.

All parties shall maintain sufficient insurance, self-insurance or a combination thereof to comply with the following requirements, and, if requested, each party shall furnish the other party with certificates of insurance evidencing the required coverage.

A. **Worker's Compensation and Employer's Liability Insurance.** All parties shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance, or an acceptable program of self-insurance providing full statutory coverage. In signing this Agreement, parties certify, as required by Section 1861 of the California Labor Code, that they are aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and parties will comply with such provisions before commencing the performance of the work of this Agreement.

Each Agency will be responsible for workers' compensation for its Officers.

Liability Insurance. All parties shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified on the following page.

Such insurance shall include:

1. Comprehensive General Liability \$5,000,000
2. Motor Vehicle Liability Insurance \$5,000,000

8. Non-Discrimination.

No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

Parties shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement.

9. Retention of Records.

Each party agrees to provide to the other party, to any federal or state department having monitoring or reviewing authority, to any other Party's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules, and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

Parties shall maintain and preserve all financial records relating to this Agreement for a period of four (4) years from the termination date of this Agreement, or until audit findings are resolved, whichever is greater.

10. Merger Clause.

This Agreement, including the Exhibit hereto constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

11. Controlling Law.

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

12. Consideration.

The Agreement is made in consideration of the public safety benefits that will result, and with the sole exception of the indemnification requirements set forth in section 5, no party shall incur and fiscal obligation to any other party as the result of this agreement.

13. Execution in Counterparts.

This agreement may be executed in counterparts by the County of San Mateo and each GOVERNMENTAL ENTITY/LAW ENFORCEMENT AGENCY which becomes a signatory to this agreement.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

NEED SIGNATURE LINES FOR ALL ENTITIES

EXHIBIT A

Attach Operations Order

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Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE CITY COUNCIL MEETING OF JUNE 20, 2007

SUBJECT: CONSIDERATION AND POSSIBLE ACTION TO SELECT CONSULTING FIRM(S) TO BE INTERVIEWED BY THE CITY COUNCIL TO ASSIST IN THE RECRUITMENT OF THE CITY MANAGER

RECOMMENDATION:

Staff recommends that the City Council select a list of candidate firms for interviews from the proposals submitted for the recruitment of the City Manager.

BACKGROUND:

The City Council, at its meeting of May 16, 2007, directed the City Manager to solicit search firms for the recruitment of a new City Manager. The City Council was to review responding firms and indicate which firms will make a presentation before the full City Council. The City Manager solicited proposals from a number of firms. The Town received three proposals. Proposals were submitted from William Avery and Associates, Bob Murray and Associates, and CPS Executive Search, formerly Shannon Executive Search.

All three are capable of conducting the search for the Atherton City Manager position. Attached are proposals from each of the firms. In addition staff has provided a summary of each firm below, identifying experience, approach, schedule and cost.

1. **William Avery and Associates:** William Avery and Associates of Los Gatos, California, has successfully completed City Manager recruitments most recently for the cities of Redding, Hanford, Los Altos Hills, King City, Vallejo, Half Moon Bay, Belmont, Rancho Palos Verdes and Emeryville. They are currently

conducting City Manager searches for the cities of Los Altos, Los Gatos, and Greenfield. Their recruitment strategy includes: 1) Position Profile and Organizational Assessment; 2) Development of the Search Strategy; 3) Candidate Assessment; 4) Candidate Presentation; 5) Selection Process; and 6) Position Closure and Follow-up. The base fee is \$17,400 plus any normal and out-of-pocket expenses in an amount that would not exceed \$7,000. Their recruitment schedule anticipates a 16-week process .

2. **CPS Executive Search:** CPS (formally Shannon and Associates) has successfully completed City Manager recruitments in the cities of Auburn, Brentwood, Cupertino, Escalon, Lodi, Pleasant Hill, Portola Valley, Sacramento, Seaside, Sonoma and West Sacramento. CPS recently completed the recruitment for the position of City Manger in the City of Napa, California. Their strategy includes: Phase 1, Development of Profile and Recruitment Strategy which includes meeting with the City Council to develop a candidate profile and recruitment strategy; Phase 2, Recruitment/Screening; and Phase3, Selection, which includes a process by the Council is assessing final candidates . The recruitment schedule anticipates 16 weeks. Their fee is \$18,000 for Phases 1, 2, and 3. Out-of-pocket reimbursable expenses for advertising, brochure printing, telephone and postage is estimated at \$6,000 to \$8,000.

3. **Bob Murray and Associates:** Bob Murray and Associates have completed over 200 City Manager recruitments. They are currently conducting City Manager recruitments for the California cities of Irwindale, Menlo Park , Needles, Oceanside, Pacifica and Sonoma. In the last three years, they have also completed recruitments in Bay Area cities of Mill Valley, Orinda, Campbell and many other California cities. Bob Murray has also completed numerous management and department head recruitments in San Mateo County for the cities of San Mateo, Belmont, Half Moon Bay, and the South Bay Waste Management Authority . The recruitment process includes: Step 1, Developing the Candidate Profile; Step 2, Advertising Campaign and Recruitment Brochure; Step 3, Recruiting Candidates; Step 4, Screening Candidates; Step 5, Personal Interviews; Step 6, Public Record Search; Step 7, Recommendation; Step 8, Final interviews; Step 9, Background Checks; and Step 10, Negotiations. The consulting fee for conducting the City Manager recruitment is \$17,500, plus expenses. Expenses are estimated to \$7,500.

Staff recommends, if the Town of Atherton is to utilize consulting services to conduct and or assist in the recruitment, that interviews of firms be set up as soon as possible to begin the initial process.

Regardless of the successful firm identified, a consulting firm can help ensure a successful recruitment and can also assist in reaching out to candidates that may not currently be searching for a position. As one consulting firm stated, “the very best candidates are quite often not actively seeking a new position.” Those candidates may be satisfied with their current position and may only consider a change if “a more attractive career opportunity is presented to them.”



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE CITY COUNCIL MEETING OF JUNE 20, 2007

SUBJECT: CANCELLATION OF AUGUST CITY COUNCIL MEETING

RECOMMENDATION:

If the City Council desires to cancel its regularly scheduled meeting of August 18, 2007, staff recommends a motion be made to cancel the August meeting.

BACKGROUND:

In 2001, 2003, 2004, and 2005, the City Council has canceled its August meeting. If the August 18, 2007, meeting is canceled, the next regularly scheduled meeting of the City Council is scheduled for September 19, 2007. Formal City Council action for cancellation of the meeting should also provide for public comment.