



**AGENDA**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**August 16, 2006**  
**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, A. Carlson, Marsala, McKeithen**

**6:02 P.M.     PUBLIC COMMENTS**

**6:05 P.M.     CLOSED SESSION**

**A.     PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

**City Attorney**

**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**

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

**Two (2) potential cases**

**RECONVENE TO OPEN SESSION**

**Report of action taken.**

**ADJOURN**

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*☛ 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**  
**August 16, 2006**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

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

- 7:00 P.M.    1.    **PLEDGE OF ALLEGIANCE**
- 7:03 P.M.    2.    **ROLL CALL**            Janz, J. Carlson, A. Carlson, Marsala, McKeithen
- 7:05 P.M.    3.    **PRESENTATION**
- NONE
- 7:05 P.M.    4.    **COUNCIL REPORTS**
- 7:20 P.M.    5.    **PUBLIC COMMENTS** (only for items which are not on the agenda –  
limit of three minutes per person)
- 7:30 P.M.    6.    **STAFF REPORTS**
- 7:40 P.M.    7.    **COMMUNITY ORGANIZATION ROUNDTABLE REPORT**  
(Directed by Resolution Nos. 99-6 and 02-31)
- Carolyn Williams, Principal, Selby Lane School
- 7:40 P.M.    **CONSENT CALENDAR** (Items 8 –13)

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

8. APPROVAL OF MINUTES OF THE SPECIAL AND REGULAR MEETINGS OF JULY 19, 2006
9. APPROVAL OF BILLS AND CLAIMS FOR MAY 2006 IN THE AMOUNT OF \$975,498
10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR JULY 2006
11. ACCEPTANCE OF STAFF RESPONSE TO CIVIL GRAND JURY REQUEST (INTERNET CRIME REPORT)
12. APPROVAL OF AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF ATHERTON AND BKF ENGINEERS TO REVIEW THE TOWN'S DRAINAGE CRITERIA

**Recommendation: Approve the amendments in the attached Professional Services Agreement with BKF Engineers for the Review of the Town's Drainage Criteria.**

13. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF ATHERTON AND CSG CONSULTANTS, INC., FOR BUILDING OFFICIAL, BUILDING INSPECTION, PLAN REVIEW AND CODE ENFORCEMENT SERVICES

**Recommendation: Approve the attached Agreement for Professional Services with CSG (Consultants) to provide interim Building Official Services and Code Enforcement Services to the Town of Atherton**

**PUBLIC HEARINGS NONE**

**REGULAR AGENDA (Items 14 - 17)**

- 7:50 P.M. 14. PHASE III BUILDING DEPARTMENT PERMIT AND PROCESS AUDIT

**Recommendation: Approve the project plan to conduct Phase III of the Building Department permit and processes audit.**

- 8:30 P.M. 15. DISCUSSION AND CONSIDERATION OF APPOINTING ALTERNATES TO CITY COUNCIL STANDING COMMITTEES

**Recommendation: After discussion, consider appointing alternates to City Council Standing Committees.**

**8:45 P.M. 16. DISCUSSION AND POSSIBLE ACTION REGARDING CITY COUNCIL GOALS AND OBJECTIVES**

**Recommendation: Review the attached previously established list of Goals and Objectives, as well as those identified by the City Council and discussed at the meeting of June 14, 2006, to determine if there are any appropriate additions or changes so that the list can be prioritized.**

**9:10 P.M. 17. CONSIDER ADOPTION OF A RESOLUTION PROVIDING FOR THE APPOINTMENT TO THE OFFICE OF CITY COUNCIL THOSE PERSONS WHO HAVE BEEN NOMINATED, OR ADOPTION OF A RESOLUTION TO HOLD THE GENERAL MUNICIPAL ELECTION AS SCHEDULED ON NOVEMBER 7, 2006 (Place Holder)**

**Recommendation: After consideration, adopt a Resolution providing for the appointment to the office of City Council those persons who have been nominated, or adopt a Resolution to hold the General Municipal Election as scheduled for November 7, 2006**

**9:15 P.M. 18. PUBLIC COMMENTS**

**9:20 P.M. 19. ADJOURNMENT**

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

**JULY 19, 2006**

**6:00 P.M.**

**Meeting Room**  
**Town Administrative Offices**

91 Ashfield Road  
Atherton, California

**Special Meeting**

The meeting was called to order at 6:00 p.m.

**ROLL CALL**

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

**PUBLIC COMMENTS**

There were no public comments.

**CLOSED SESSION**

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

One (1) potential case

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

Two (2) potential cases

**C. LIABILITY CLAIM – pursuant to Government Code Section 54956.95**

**Claimant: Elaine Farnham**  
**Agency Claimed Against: Town of Atherton**

## **RECONVENE TO OPEN SESSION**

**Report of action taken.**

**City Attorney Marc Hynes reported during open session that no reportable action was taken by Council regarding Item A. Items B & C were continued to the end of the Regular City Council Meeting at which time the Closed Session was reconvened at 10:25 p.m. There was no reportable action taken on Item B. With regard to Item C, Liability Claims, by unanimous vote of the Council, the claim brought by Elaine Farnham was denied.**

## **ADJOURN**

**The Special Meeting adjourned at 10:45 p.m.**

**Respectfully submitted,**

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**Charles E. Marsala**  
**Mayor**

**Minutes Prepared by:**

**Kathi Hamilton**



**DRAFT MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON**  
**CHANNEL DRAINAGE DISTRICT**  
**July 19, 2006**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

Mayor Marsala called the meeting to order at 7:07 p.m.

1. **PLEDGE OF ALLEGIANCE**

2. **ROLL CALL**

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

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

3. **PRESENTATION**

NONE

4. **COUNCIL REPORTS**

- Vice Mayor Alan Carlson said he and Council Member McKeithen attended the Atherton Civic Interest League's (ACIL) Emergency Preparedness Committee meeting on Saturday, July 15th. The Town was divided into 14 divisions with captains for those areas. The committee was off to a good start.
- Council Member Jerry Carlson noted the Selby Lane School principal resigned to take a position with Partners in School Innovations. Carolyn Williams was named overall principal. The YES Reading Program would include reading comprehension next year. He would be meeting with the new Superintendent of the Redwood City School District and Atherton residents to talk about continuing to make Selby a good school. A meeting of the Finance Committee was held in June that included the Phase I report regarding the Building Department audit. Financial irregularities were found in the way revenues

were being collected. A Phase II report would provide more information. Approximately \$100,000 in additional fees might be invoiced in the near future. On June 14, 2006, the special investigator hired by the Town submitted a confidential personnel report to the City Manager. The City Council was denied access to any information from the report. The Town's Fraud Policy called for immediate notification of the Council if fraud occurred such as irregularities in collection of revenues. Council was informed that the Fraud Policy was enacted after any irregularities had occurred, thus did not apply. The Council had responsibility for sharing whatever and to what extent irregularities occurred with Town residents. He requested concurrence in directing staff to have a qualified third party conduct an audit of all Building Department files with the findings being presented to the Audit Committee and the City Council. The audit should go back at least three years, to be completed and presented to Council at its October 18th City Council Meeting. He requested that the Finance Committee be authorized to work out the scope of the audit with the auditor and that the auditor have full access to all Building Department records and files, as well as to personnel within the department. The City Manager should have no direct involvement in the audit other than to help facilitate in any way he was asked. Anything short of the requests would not restore credibility to the Town. The matter needed to be addressed at once and constituted an emergency situation.

- Mayor Marsala asked the City Attorney for clarification on what constituted an emergency for the purpose of adding an item to the evening's agenda
- City Attorney Marc Hynes explained a 4/5 majority vote of the Council was needed to add an emergency item to the evening's agenda. Ordinarily, a dramatic circumstance to justify the emergency, e.g., a labor dispute or natural disaster, was needed. The other manner by which an item could be added to an agenda was if the issue arose after the an agenda had been posted 72-hours before the meeting, also requiring a 4/5 majority. He had not heard anything to suggest the issue arose after the agenda was prepared. Absent an emergency finding, he suggested placing the item on a subsequent agenda.
- Council Member McKeithen believed there was no question that the matter constituted an emergency.

**MOTION – to add an emergency item to the evening's agenda to discuss acquiring the use of an independent auditor to perform a comprehensive review of the Building Department**

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

- Council Member Jim Janz said the Atherton Rail Committee continued to look at available options regarding Caltrain. The best course of action was to cooperate with other cities concerned with service. A July 6th press release announced that the Coalition to Expand Train Service (CETS) was formed, comprised of 14 past/present council members from San Mateo County. A meeting of CETS was scheduled for Thursday, July 27th.

- **Council Member McKeithen said the Transportation Committee met on July 11th. After discussion, a request for a pedestrian crosswalk at Hoover and Valparaiso Avenue resulted in a possible better solution: once the work on Valparaiso was completed and a berm-type curbing was installed, a pedestrian pathway could be created from Victoria Manor to El Camino Real creating a smooth walking surface. Additionally, the Police Department would monitor speed in the area. A request for installation of a “No Entry During Rush Hour” sign at the entry way at 17<sup>th</sup> Ave and Holbrook Lane was deferred. Calming devices would be tried first, along with monitoring traffic, in order to make a better judgment. Council Member McKeithen said the big issue that evening concerned the Finance Committee and Audit Committee. Six years ago when multiple problems existed in the Town, a forensic audit was performed which led to the formation of the Audit Committee and ultimately to the first unqualified audit that the Town had ever received in its history. Last November, she began hearing concerns from residents and employees regarding possible improprieties in the Building Department. Allegations encompassed fee collection irregularities including Road Impact Fees, incomplete files, valuation issues, enforcement lapses, favoritism, gifts, variance and permit questions, parcel tax concerns, and more. She was informed by the Town’s attorney that she could not look into the issues on her own. Lance Bayer was hired to do the factual, investigatory work, and she was to be his contact person and ultimately receive a copy of his report with any names deleted. Subsequently, Mr. Bayer was directed to reveal no investigatory results. In early June, she and Council Member Jerry Carlson, both members of the Finance Committee, asked to see a copy of the report, but were refused. The Town attorney said they would not be permitted to even question the attorneys involved as to the basis for their opinions in a Closed Session because it did not involve potential litigation. She filed a public records request on June 13, 2006, which was ultimately denied. The arguments for keeping the report secret were merely rote: 1) a personnel matter, 2) the information in the report was protected as attorney/client privilege, and 3) the right to privacy outweighed the right to know. Building was Atherton’s number one business, a \$100 million industry. Without oversight, internal controls, and accountability, the process was unfair to everyone involved: to the residents who might live next to an illegal structure, to those who paid full payment of applicable fees and might be subsidizing those who managed to avoid paying their fair share, and to the contractors and developers whose activities were subject to speculation regarding improper behavior and, therefore, lived under suspicion. She met last week with the City Manager to try to find a solution to the Building Department dilemma. As one of the two members of the Town’s Finance Committee, as well as a member of the Audit Committee, she needed to know what aspects, if any, of the Building Department’s operations might have affected past and future finances. She needed to know what structural guidelines needed to be put into place to protect against abuses. She needed to understand how Atherton’s Municipal Code provisions should be amended to strengthen professionalism, fairness, understanding, and respect for the laws. She needed to be able to respond to the many complaints she received and**

exercise with authority the job for which she was twice elected, including overseeing needed changes. If alleged problems were found to be as inconsequential as the Town's response indicated, the report should be made public. If the investigation failed to investigate Building Department activity, but looked only at Building Department personnel, a new investigation should be conducted as recommended by Council Member Carlson. Any problems should be looked at openly without fear to correct what might be wrong. The process would enhance the Town's efficiency, credibility, and image.

- Mayor Marsala announced the annual Town barbecue sponsored by the Atherton Dames was scheduled for October 1st. Music@Menlo would begin on Monday, July 24<sup>th</sup>, and continue for two weeks. He hosted a barbecue for the Peninsula Division of the League of California Cities. The reconstruction of Selby Lane was in progress. He informed the General Plan Committee that some residents contacted him regarding basements under accessory structures. He believed as the underground basement issue was evaluated, accessory structures needed to be included. Mayor Marsala met privately with the Finance Director, City Manager, and City Attorney regarding the Building Department. He did not want to diminish the efforts of the Audit Committee or any residents who worked to improve the Town; however, he was always concerned about protecting the morale of staff who worked incredibly hard for the Town.

**MOTION – to place the emergency item on the Regular Agenda to be heard before Item No. 17**

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

**5.    PUBLIC COMMENTS**

**Steve Dostart, Atherton, recently purchased his home on Stockbridge Drive. The main house was built in 1950, which he did not want to demolish. He wanted to add an accessory structure with an underground playroom. His interpretation of sections of the Municipal Code indicated that the buildable area applied to accessory structures.**

**Vice Mayor Alan Carlson said the intent of the Council at the time the ordinance was enacted was to prohibit basements outside of the main building footprint and within the setbacks in which the main building could be built, 50 to 60 feet. Knowing the legislative history, he disagreed with Mr. Dostart's interpretation and suggested he review the tapes of the meetings.**

**John Sisson, Atherton, spoke regarding truth in government. As a citizen, he wanted to know what went on in the Town in order to know a good job was being done by Town staff.**

**John Rugeiro, Atherton, commended Council Members Jerry Carlson and Kathy McKeithen for their statements and Vice Mayor Carlson for placing the item early on the agenda. He spoke regarding the upcoming election.**

## **6. STAFF REPORTS**

- **City Manager Jim Robinson welcomed back Police Chief Bob Brennan from vacation and commended Lieutenant Glenn Nielson for filling in for the Chief. He noted bids were opened the previous day for Item No. 14 on the Consent Calendar, the Valparaiso Avenue Reconstruction project, and suggested the item be removed for discussion. City Manager Robinson welcomed Gary Binger to the Town as the new Interim Planning/Building Administrator. Mr. Binger previously worked as the Community Development Director for the City of Walnut Creek and as the Deputy Executive Director of ABAG. City Manager Robinson noted 600 Police Department surveys had been received. Those who had not responded to the survey would receive a phone call. Interim Planning/Building Administrator Binger and he would be meeting with Gordon Siebert to implement the evaluation of code enforcement issues. Council's list of priorities would be completed by the end of July beginning of August.**
- **Finance Director John Johns said the Phase II report regarding the Building Department's permitting process review was completed and would be submitted to the Audit Committee on July 27th. During Phase I, permit files were reviewed to determine whether Road Impact Fees or any other fees should have been collected at the time of application. A number of exceptions were identified where property owners were allowed to circumvent the excavation surcharge. A number of process weaknesses were identified in the assessment of collection of fees. Based on the Phase I report, another review was conducted regarding damage assessment, i.e., to identify/quantify the amount of fees that should have been assessed and to verify that fees assessed and collected during the last 18 months had been done properly. The Phase II report contained a recommendation to develop procedures that would improve the level of integrity of the process. Revised procedures would be submitted to the Audit Committee, as well as a claim summary that identified the number of times in which fees were determined to be improperly assessed. Eight files had been identified where fees were not assessed properly, totaling approximately \$100,000. Instances were identified in which departmental personnel appeared to have acted improperly in not assessing fees specifically related to the excavation surcharge that became effective in May 2005. Property owners should have been assessed permit fees based upon a standard calculation; however, in some cases, the property owner was allowed to declare a value based on his/her word. The next step was to present a claim, along with a notice to the applicant, for the amounts due and payable and the circumstances surrounding the claims. All the documentation would be filed with the City Attorney in order to assess the collectibility of the claims and the sufficiency of the documentation. He believed during the course of the review, facts and circumstances were identified that might be useful to the ongoing personnel investigation.**
- **Vice Mayor Carlson said a copy of the Phase I and Phase II reports should be delivered to each City Council Member not on the Audit Committee on July**

27th. He suggested that the Council reinstate its meeting in August to discuss the reports.

- **Finance Director Johns said the Phase I audit was conducted to verify that excavation surcharges and other fees had been properly assessed and collected in accordance with the fee resolutions in place as recommended by the external auditors. As a result of Phase I, exceptions were identified which suggested a pattern of inappropriate conduct. He alerted management and recommended that the scope of the personnel investigation be extended, expanded, or reopened to address the concerns. Those in the Finance Department were unaware of the scope, nature, and objectives of the personnel investigation. During the course of the audit, he believed evidence was found that would be useful to support an investigation. The information could not be disclosed as it was considered privileged.**
- **Police Chief Bob Brennan said due to recent donations, the Police Activities League was able to present a check for \$5,000 to the Menlo-Atherton High School football team for new equipment.**
- **Public Works Director Duncan Jones reported the Selby Lane project was moving forward despite that a water main broke the previous evening. The main was repaired and paving would begin the next week. Regarding the claim presented to P.G.&E., no response had been received to date. Council Member McKeithen asked that within the next week, Public Works Director Jones set up a meeting to discuss the landscaping near the train depot. She had requested a report regarding a trench along Mandarin where illegal work occurred in the encroachment and what action would be taken. Public Works Director Jones said there was, in fact, no encroachment permit. He was looking at alternatives for the drain.**
- **City Attorney Marc Hynes reported out of Closed Session as follows:**
  - A. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
**Significant Exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:**  
  
**One (1) potential case**  
  
**No reportable action.**
  - B. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
**Initiation of litigation pursuant to subsection (c) of Government Code Section 54956.9:**  
  
**Two (2) potential cases**  
  
**Item continued to the end of the Regular City Council agenda.**

**C. LIABILITY CLAIM – pursuant to Government Code Section 54956.95**

**Claimant: Elaine Farnham**

**Agency Claimed Against: Town of Atherton**

**Item continued to the end of the Regular City Council agenda.**

**7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

**NONE**

**CONSENT CALENDAR (Items 8 - 16)**

**Item No. 14 was removed from the Consent Calendar and placed at the end of the Regular Agenda for discussion.**

**Regarding Item No. 10, Finance Director John Johns clarified the report was for the Fiscal Year ended June 30, 2006, with the exception of some adjusting entries and accruals. The final numbers for 2005/2006 would be presented as part of the Mid-Year Budget report. Council Member Jerry Carlson requested the information be provided earlier. Regarding Item No. 15, Public Works Director Duncan Jones explained the range in bids resulted from some contractors who wanted the work and others who bid high hoping they were the only bid. He was satisfied with the quality of work.**

**MOTION – to approve the Consent Calendar as presented with the exception of Item No. 14, which was removed and placed at the end of the Regular Agenda for discussion**

**M/S J. Carlson/McKeithen**

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

**8. APPROVED MINUTES OF THE SPECIAL MEETING OF JUNE 14, 2006, AND THE REGULAR MEETING OF JUNE 21, 2006**

**9. APPROVED BILLS AND CLAIMS FOR MAY 2006 IN THE AMOUNT OF \$758,976**

**10. ACCEPTED MONTHLY FINANCIAL REPORT FOR JUNE 2006**

**11. ACCEPTED THE ANNUAL INVESTMENT POLICY FOR FISCAL YEAR 2006/2007**

**12. APPROVED A RESOLUTION AUTHORIZING THE FINANCE DIRECTOR AND CITY MANAGER TO INITIATE TRANSACTIONS WITH THE STATE OF CALIFORNIA LOCAL AGENCY INVESTMENT FUND**

**Adopted Resolution No. 06-12 regarding investment transactions with the State of California Local Agency Investment Fund.**

**13. AWARD OF CONTRACT FOR THE 2006 PAVEMENT PATCHING PROJECT, PROJECT NO. 05-006**

**Awarded the contract for the 2006 Pavement Patching Project, Project No. 05-006, to G. Bortolotto & Co., Inc., the lowest responsible bidder on the July 13, 2006 bids, for \$58,012.50, and to authorize the Mayor to sign the contract on behalf of the Town.**

**~~14. AWARD OF CONTRACT VALPARAISO AVENUE RECONSTRUCTION PROJECT, PROJECT NO. 05-003~~ (Removed from the Consent Calendar and placed at the end of the Regular Agenda for Discussion.)**

**~~Recommendation: Award the contract for the Valparaiso Avenue reconstruction Project, Project No. 05-003, to the low bidder on the July 18, 2006 bids, and to authorize the Mayor to sign the contract on behalf of the Town. (Removed from the Consent Calendar and placed at the end of the Regular Agenda for discussion.)~~**

**15. AWARD OF CONTRACT FOR STREET RECONSTRUCTION PHASE III, PROJECT NO. 05-005**

**Awarded the contract for Street Reconstruction Phase 3, Project No. 05-005, to O'Grady Paving Inc., the low bidder on the June 29, 2006 bids, for \$883,930, with a 10% construction contingency of \$88,393, for a total authorization of \$972,323 and to authorize the Mayor to sign the contract on behalf of the Town.**

**16. APPROVED AMENDMENT NO. 3 TO THE AGREEMENT BETWEEN THE TOWN OF ATHERTON AND THE CITY OF REDWOOD CITY FOR VEHICLE MAINTENANCE SERVICES AND FUEL PURCHASING**

**Approved the amended agreement between the Town of Atherton and the City of Redwood City for vehicle maintenance services and fuel purchasing.**

**PUBLIC HEARINGS NONE**

**REGULAR AGENDA (Items 17 - 22)**

**17 A. DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING THE USE OF AN INDEPENDENT AUDITOR TO PERFORM A COMPREHENSIVE REVIEW OF THE BUILDING DEPARTMENT'S POLICIES AND PROCEDURES (Added to the agenda by a 4/5 vote of the Council)**

**Council Member Jerry Carlson recommended conducting an audit of the Building Department's files, records, and transactions to be performed by a qualified outside auditor going back three years and possibly more. The Finance Committee should be involved with the auditor to discuss the scope,**

**and the scope should be authorized by the full Council to ensure the scope of the audit encompassed concerns regarding processes/internal controls. The auditor should have complete access to the Building Department's records/files and personnel to determine whether or not problems existed. The auditor should report to the Council, and any findings would be a matter of public record. He was concerned with credibility. The Building Department needed to be reengineered. The Town was made up of professionals who expected a government organization that performed in a professional manner.**

**Council Member McKeithen added that the Finance Director should have sole oversight of the project on a day-to-day basis as he reported to the Audit Committee, the Finance Committee, and ultimately the Council.**

**Mayor Marsala asked whether there were restrictions on access to the Building Department's records.**

**City Manager Jim Robinson said the process would be the same as performed by the Town's outside auditor every year, which resulted in an unqualified Town audit for the past five years. The auditor would obtain information and file a report. The Building Department needed to perform its day-to-day work; however, he saw no impediments.**

**Mayor Marsala supported Council Member Carlson's proposal and said if a problem existed, the Council would address it.**

**Council Member Janz asked for clarification that an outside independent auditor would be hired by the Town.**

**Council Member Carlson believed the Town already had an outside qualified auditor handling the Phase I and Phase II studies who could also perform the new audit.**

**Finance Director John Johns said the Town had the resources to accomplish Council's request, which could become Phase III. A professional engineer might be needed to assist with technical issues. An independent auditor was onsite, working under his supervision, and was very well qualified.**

**Council Member McKeithen said whoever was performing the audit needed to understand Building Department rules; Atherton rules/regulations; and state rules regarding building, design processes, and management.**

**Finance Director Johns clarified an outside auditor was already onsite who could perform a quality assurance review and develop a simple list of objective criteria by which an assessment could be made whether Building Department files were processed properly. Every file that had been finalized and issued an occupancy permit should contain three documents: 1) a certification of height; 2) a certification of setback requirements performed by a licensed professional**

engineer; and 3) a calculation of required floor area ratio based upon data contained within the plans. Some criteria might need the judgment of an engineer. The Phase III audit would take 8 to 12 weeks to complete.

Council Member Janz suggested that the Council could receive the Phase II report at the August City Council Meeting and the Phase III report could be returned to the Council Meeting of October 18th.

Finance Director Johns said a statement of work for Phase III would be developed immediately and could be submitted to the Finance Committee, the Audit Committee, and then to the full Council.

Vice Mayor Alan Carlson had several issues, the most important of which was that the residents needed to have confidence in their Town government. Therefore, the Town needed to be as expeditious as possible in ascertaining the information, which should flow directly to the City Council. The first step was for Council to agree on the scope of the audit. He suggested the Council meet in a Special Meeting during the week of July 31<sup>st</sup> to discuss the scope of the audit. He queried that the previous study reviewed the last 18-months and was a verification of all fees.

Finance Director Johns said the focus of Phase I was on applications that were received shortly before the effective date of the excavation surcharge and resulted in identifying 6 files out of 30 with problems, representing \$70,000 worth of fees. The second task was to look at all files that had any evidence of remodeling activity where the Building Department had used the owner's declaration of value instead of the standard \$250 per square foot valuation. He identified about 4 files representing \$12,000 in fees. From the audit procedures he used, looking at 140 files, he was able to come within an acceptable degree of error that 115 files had been processed correctly; however, there were exceptions within that population that gave pause. The new audit would be an entirely separate review and entailed establishing a checklist and establishing a process of verifying consistency with the criteria.

Vice Mayor Carlson asked whether the review of the Building Department indicated that proper policies and procedures were in place but not followed, or whether appropriate policies and procedures did not exist.

Finance Director Johns had believed certain controls were in place based upon the representation of management. However, after reviewing the files, he found that either controls were not in place or staff was not adhering to them. Other procedures should be implemented immediately and had been documented.

Vice Mayor Carlson asked for documentation in the report to be presented next week on the policies and procedures that were in place but were enforced in a lax manner or not implemented, and to identify those additional policies and procedures which were recommended to be implemented.

**Finance Director Johns said the Phase I report identified those policies and procedures that were not in place or were not adhered to. The Phase II report indicated how it should be done in the future. Additionally, he would be better able to ascertain how long Phase III would take after the scope was developed.**

**Vice Mayor Carlson was interested in fixing whatever problems were identified as quickly as possible, which would be the first step in restoring confidence in the Building Department. He recognized that personnel matters were in the purview of the City Attorney and the City Manager, he recognized the legal significance of personnel matters as a labor and employment attorney, and he realized that public employees had greater protections than private sector employees. The City Council could be put in the position of ultimately deciding whether a personnel action should be upheld.**

**Council Member McKeithen asked how building heights, setbacks, size of the structure, etc., would be verified. A surveyor had verified the height of a structure using the term “finished” grade. She had yet been able to define the term.**

**Finance Director Johns said with respect to height verification and setback requirements, every file should have a certification from a licensed engineer. If any language in the certification was questioned, the surveyor should be required to clarify the original language.**

**Mayor Marsala asked what percentage of permits represented over \$100 thousand or under \$50 thousand and whether lower amounts should be reviewed as well. He questioned whether current fee collection practices and current staffing levels were adequate.**

**Finance Director Johns said the Phase I report contained a tabulation of permits issued by permitted value. He thought the current distributed cash receipting process was in the best interest of customer service and that adequate staff was available in both the Finance and Building Departments to facilitate the processes.**

**Council Member Carlson encouraged staff to review files with a value lower than \$100 thousand dollars because irregularities often happened in the case of lower value transactions. He was concerned adequate information systems were not in place to provide the proper controls.**

**Finance Director Johns said staff reviewed files with a low dollar value based upon their description to ascertain whether they should have a higher dollar value. Instances had been identified where the owner’s declaration was \$40 thousand, but the actual permitted value should have been \$120 thousand.**

Vice Mayor Carlson asked staff to prepare a flow chart showing the processes currently in place and a flow chart showing any changes that were implemented.

John Sisson, Atherton, requested that the report be made available to the public when it was completed.

John Ruggeiro, Atherton, spoke regarding the investigation done by Lance Bayer.

Jim Dobbie, Atherton, stated that the big business in Atherton was real estate. Rumors around the Town regarding favoritism toward developers pointed to a conflict of interest.

**MOTION – to initiate a Phase III audit under the supervision of the Finance Director, using outside qualified resources to audit the files/records of the Building Department, going back a sufficient amount of time to ascertain any weaknesses in internal controls/processes; to develop a scope of work to be presented to the City Council at a Special Meeting during the week of July 31, 2006, with a final report to be presented to the full Council at its Regular Meeting in October. Further, direction was given to the City Manager to pole the Council for availability for a Special Meeting during the week of July 31, 2006.**

M/S J.Carlson/McKeithen

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

**17.B. ADOPTION OF A RESOLUTION ENDORSING THE PARKS FOR THE FUTURE CONCEPT AND RECOMMENDING THAT THE SAN MATEO COUNTY BOARD OF SUPERVISORS PLACE THE MEASURE ON THE NOVEMBER BALLOT**

City Manager Jim Robinson presented the staff report. Parks for the Future was an effort to secure dedicated tax-based revenues to support the parks- and recreation-related activities of San Mateo County. Voter approval of a measure to increase sales tax by 1/8<sup>th</sup> of a cent for a period of 25 years was needed. The San Mateo County Board of Supervisors was expected to take final action at its August 1, 2006, meeting to place the item on the November 2006 ballot.

Vice Mayor Alan Carlson noted the Town would be required to maintain its current General Fund contribution to the Park & Recreation budget. He queried how the amount was determined and what the benchmark would be at the present time

City Manager Jim Robinson said if the 1/8-cent tax was approved, the revenue would be used to support ongoing or existing programs at the current level. The Town's ongoing programs were fairly minimal.

**Cecily Harris, San Carlos, Chair, Parks & Recreation Commission, said the City of San Carlos discussed the maintenance of effort issue and decided during a time of budget cutting, no more could be cut from the Parks & Recreation budget than any other department. Her understanding of the maintenance of effort was that it was based on the last several years' figures.**

**Finance Director Johns said the information he had on how the calculation for the maintenance of effort was determined provided three scenarios, and he was comfortable with all three. The amount of revenue coming from the tax measure was perhaps twice as much as the Town was currently providing.**

**Ms. Harris said seven of the nine Bay Area counties had some type of dedicated funding. San Mateo County did not. The revenue from the tax could be used for maintenance and operations, not just capital improvements. The Town determined how the money would be used. The Board of Supervisors unanimously endorsed the ballot measure on the first reading and would be meeting on August 1, 2006, for a final vote.**

**Linda Liebes, Atherton, said the Town had been among the leaders in supporting the effort from the beginning. Mayor Marsala and Council Member Janz attended the first meeting. The Park & Recreation Commission was involved, as well as the City Manager. She asked for continued support and encouragement to other jurisdictions to support the measure.**

**MOTION – to adopt Resolution No. 06-13 endorsing the Parks for the Future concept and recommending that the San Mateo County Board of Supervisors place the measure on the November ballot.**

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

**Mayor Marsala called for a recess at 9:40 p.m. The meeting was reconvened at 9:49 p.m.**

**18.    PARK LANE COMMUNITY POLICING REPORT – UPDATE**

**Police Chief Bob Brennan presented the staff report. During the months of May and June, seven calls were received regarding Park Lane. Some were procedural, and a few had merit where action was taken. The situation was better, projects were finishing up, and most vehicles could be parked onsite. An audit was performed for one week, four times a day, checking for before 8 a.m. and after 5 p.m. violations, parking violations, and trash accumulation, which resulted in one violation.**

**Council Member McKeithen believed the report was more favorable than the actuality. She received several complaints on July 5, 6, and 7 from residents. Standards had fallen off which was indicative of the problem that the remedy**

often did not last. A regular code enforcement system would eliminate the need for citizens to report neighbors.

A discussion ensued regarding a recent burglary and subsequent arrests. Arrests were also made at construction sites in the past few months. Many of these crimes were related to narcotics rather than gangs.

Direction was given to staff to present a follow-up report to the City Council in three months.

**19. REPORT ON TOWN PARTICIPATION IN REGIONAL AGENCIES**

At the Regular City Council Meeting of June 21, 2006, the City Council directed staff to provide a list of regional organizations of which the Town is a member as well as to provide a tabulation of membership fees paid to such entities in FY 2005-06

Finance Director John Johns said the report showed the fees paid to regional associations, the majority of which came out of the City Council's budget, based upon tabulation of data in the accounts payable database.

Council Member Janz queried whether information was received on the benefits of participating in the Abandon Vehicle Program.

City Manager Jim Robinson spoke to three people involved in the program from C/CAG and received three different answers. Those cities that had a large abandoned vehicle problem received a great benefit from participation in the program. His understanding was even if there was no activity in a quarter, the Town would receive approximately \$400; however, that fact had not been confirmed. Staff was continuing to look into the issue.

**20. REVIEW AND APPROVE A RESOLUTION AUTHORIZING THE TOWN OF ATHERTON TO BECOME A MEMBER OF A COUNTYWIDE SUB-REGION, AN ENTITY THAT WOULD LOCALLY ADMINISTER ABAG'S REGIONAL HOUSING NEEDS ALLOCATION PROCESS (RHNA)**

Council Member Janz said that state legislation existed that allowed communities within the state that were contiguous to work together on the housing allocation process. If the Town participated in the sub-region process, the sub-region could be assigned less of a housing quota than the same sub-region would have been assigned for its member entities. Additionally, by participating in the sub-region group, the information collected for the Housing Element, could be used by the participants regardless of whether they continued to participate.

Deputy Town Planner Lisa Costa Sanders clarified if all the communities in the County joined, the housing allocation would be distributed among all the

communities. For example, if Atherton chose to meet the requirement by making an in-lieu payment, the money could be distributed to any community within the County.

Vice Mayor Alan Carlson encouraged participation in the process on every level.

**MOTION – to adopt Resolution No. 06-14 authorizing the Town of Atherton to become a member of a Countywide Sub-Region, an entity that could locally administer ABAG’s Regional Housing Needs Allocation Process (RHNA).**

M/S Janz/McKeithen                      Ayes: 5   Noes: 0   Absent: 0   Abstain: 0

**21. CONSIDER CREATING A TWO-MEMBER SUBCOMMITTEE OF THE COUNCIL ON EMERGENCY PREPAREDNESS**

City Manager Jim Robinson said Council, at its last meeting, suggested a subcommittee be created on emergency preparedness. Council Member McKeithen volunteered to chair the committee. The item was placed on the evening’s agenda to create the committee and develop the scope.

Council Member McKeithen clarified that she and Vice Mayor Alan Carlson would discuss the scope of the subcommittee after its creation.

Mayor Marsala suggested rotating in the other members of the Council in subsequent years in order to gain expertise in emergency preparedness.

**MOTION – to create a two-member subcommittee for emergency preparedness composed of Council Member McKeithen and Vice Mayor. Further, Council Member McKeithen and Vice Mayor Carlson will meet to develop the scope of the subcommittee.**

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

**22. CONSIDERATION OF DESIGNATING A VOTING DELEGATE AND ALTERNATE FOR THE 2006 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE**

City Manager Jim Robinson said if Council intended to participate in the League of California Cities Annual Conference and participate as a voting delegate, Council needed to authorize one of its members to represent the Town at the Annual Business Meeting.

Council Member Jerry Carlson expressed interest in attending the League meeting.

**MOTION – to appoint Council Member Jerry Carlson as a voting delegate to the League of California Cities Annual Conference and the Annual Business Meeting to be held in San Diego from September 6 through September 9, 2006..**

**M/S Janz/McKeithen**

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

**14. AWARD OF CONTRACT VALPARAISO AVENUE RECONSTRUCTION PROJECT, PROJECT NO. 05-003**

**Public Works Director Duncan Jones presented the staff report. Bids were received the previous day and were considerably higher than the engineer's estimate. The difference between the low bidder and the engineer's estimate was almost exclusively due to asphalt prices. He interviewed the low bidder as to whether it would be beneficial to re-bid the project when more competition might exist and was told labor costs historically increased and there was no guarantee asphalt prices would go down. Public Works Director Jones recommended proceeding with the project so as to not risk price increases.**

**A discussion ensued regarding the merits of re-bidding the project, investigating alternatives to asphalt, constructing the project, moving funds from the current year's budget to complete the project and delay other projects into the next year.**

**MOTION – to award the contract to the low bidder on the July 18, 2006 bids, Interstate Paving and Grading, Inc., not to exceed \$1,840,766.95, and to authorize the Mayor to sign the contract on behalf of the Town**

**M/S McKeithen/Janz**

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

**23. PUBLIC COMMENTS**

**There were no public comments.**

**24. ADJOURNMENT**

**Mayor Marsala adjourned the meeting at 10:22 p.m. to a *Continued* Closed Session**

**B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

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

**Two (2) potential cases**

**C. LIABILITY CLAIM – pursuant to Government Code Section 54956.95**

**Claimant: Elaine Farnham**

**Agency Claimed Against: Town of Atherton**

**There was no reportable action taken on Item B. With regard to Item C, by a unanimous vote of the Council, the claim was denied.**

**Respectfully submitted,**

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**Kathi Hamilton**  
**Acting City Clerk**

**TOWN OF ATHERTON**  
**CLAIMS LIST**  
 July 2006

Payroll Checks	8079 - 8162	\$ 21,600
Electronic Transfers		351,583
A/P Checks	22277 - 22421	602,315
TOTAL		\$ 975,498

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 8079 - 8162 (payroll) and 22277 - 22421 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$975,498; are true and correct, and that there are sufficient funds for payment.

---

James H. Robinson  
City Manager

The above claims, check numbers 8079 - 8162 (payroll) and 22277 - 22421 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$975,498; are true and correct, and are authorized for payment.

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Charles Marsala  
Mayor, Town of Atherton

**SOURCE OF FUNDS**

<b>101</b>	General Fund	\$752,841
<b>105</b>	Tennis Fund	
<b>201</b>	Special Parcel Tax	
<b>202</b>	Transportation	
<b>203</b>	Gas Tax Fund	23,107
<b>210</b>	Road Construction Impact Fees	20,583
<b>211</b>	Park Grants Fund	36,032
<b>213</b>	Library Special Revenue Fund	1,019
<b>401</b>	General Capital Projects	
<b>402</b>	Storm Drainage	
<b>403</b>	Atherton Channel District	3,198
<b>406</b>	Facilities Construction	
<b>610</b>	Vehicle Replacement	
<b>611</b>	Computer Maint. & Replacement	19,464
<b>612</b>	Administrative Services	119,254
<b>715</b>	Evans Estate	
<b>740</b>	Tree Committee	
<b>TOTAL</b>		<b>\$975,498</b>



## 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 AUGUST 16, 2006**

**SUBJECT: MONTHLY FINANCIAL REPORT, JULY 2006**

#### **RECOMMENDATION:**

Receive the Monthly Financial Report for July 2006.

#### **INTRODUCTION:**

The attached schedules show revenues, expenditures and fund balance for all funds as of July 31, 2006.

#### **HIGHLIGHTS**

General Fund expenditures for the month ending July 31, 2006, have amounted to \$610,036, or 7% of the \$9,202,287 budgeted for the fiscal year. For the month ended July 31, 2006, General Fund revenues amounted to \$263,892, or 3% of the \$8,969,215 estimated for the year.

By comparison, General Fund expenditures amounted to 6% of appropriations for the month ended July 31, 2005. Additionally, General Fund revenues amounted to 6% of estimated revenues for the month ending July 31, 2005.

**FISCAL IMPACT:**

None

Prepared by:

Approved by:

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John P. Johns  
Finance Director

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James H. Robinson  
City Manager

**TOWN OF ATHERTON**  
**Revenue Summary**  
**For the Month ended July 31st, 2006**

<b>Fund</b>	<b>Revenue Source</b>	<b>2006-07 Estimate</b>	<b>Current Period Revenues</b>	<b>Year to Date Revenues</b>	<b>% Received</b>
	Property Tax	\$ 4,135,402	-	-	0%
	Sales and Use Tax	157,500	-	-	0%
	Other Taxes	1,111,546	-	-	0%
	Licenses & Permits	1,466,200	202,188	202,188	14%
	Fines & Forfeitures	35,000	4,234	4,234	12%
	Revenue from Other Agencies	395,215	-	-	0%
	Charges for Services	176,500	37,305	37,305	21%
	Investment & Rental Income	307,852	14,623	14,623	5%
	Other Revenues	229,000	5,542	5,542	2%
	<b>Total General Fund Revenues</b>	<b>8,014,215</b>	<b>263,892</b>	<b>263,892</b>	<b>3%</b>
	Interfund (Operating) Transfers In	955,000	-	-	0%
<b>101</b>	<b>General Fund Total</b>	<b>8,969,215</b>	<b>263,892</b>	<b>263,892</b>	<b>3%</b>
	<b>Special Revenue Funds:</b>				
105	Tennis	8,000	200	200	3%
201	Special Parcel Tax	1,858,000	-	-	0%
202	Transportation	265,000	-	-	0%
203	Street Improvement (Gas Tax)	150,000	-	-	0%
209	Law Enforcement	100,000	-	-	0%
210	Road Construction Impact Fees	1,100,000	73,779	73,779	7%
211	State Park Grants Fund	313,910	-	-	0%
213	Library	200,000	-	-	0%
	<b>Total</b>	<b>3,994,910</b>	<b>73,979</b>	<b>73,979</b>	<b>2%</b>
	<b>Capital Project Funds:</b>				
401	Capital Improvement	-	-	-	
402	Storm Drainage	20,000	-	-	
403	Channel Drainage District	50,000	-	-	0%
406	Facilities Construction	-	-	-	
	<b>Total</b>	<b>70,000</b>	<b>-</b>	<b>-</b>	<b>0%</b>
	<b>Internal Service Funds:</b>				
610	Vehicle Replacement	120,919	-	-	
611	Information Technology	104,670	-	-	0%
612	Administrative Services	303,221	-	-	0%
614	Workers Compensation Insurance	-	-	-	
	<b>Total</b>	<b>528,810</b>	<b>-</b>	<b>-</b>	<b>0%</b>
	<b>Trust and Agency Funds:</b>				
715	Evans Creative Design	14,500	-	-	0%
740	Tree Committee	1,400	-	-	
	<b>Total</b>	<b>15,900</b>	<b>-</b>	<b>-</b>	<b>0%</b>
	<b>Total Revenues</b>	<b>13,578,835</b>	<b>337,871</b>	<b>337,871</b>	<b>2%</b>

**TOWN OF ATHERTON**  
**Expenditure Summary**  
**For the Month Ended July 31st, 2006**

<b>Fund</b>	<b>Description Department</b>	<b>2006-07 Budget</b>	<b>Current Period Expenditures</b>	<b>Year to Date Expenditures</b>	<b>% Spent</b>
101	General Fund				
	11 City Council	\$ 21,749	\$ 68	\$ 68	0%
	12 City Manager	504,360	42,523	42,523	8%
	16 City Attorney	183,559	8,000	8,000	4%
	18 Finance	448,576	28,739	28,739	6%
	25 Building	1,189,503	102,173	102,173	9%
	40 Police	4,696,248	319,112	319,112	7%
	50 Public Works	2,058,292	109,421	109,421	5%
	Contingency	100,000	-	-	0%
	Total General Fund Expenditures	<u>9,202,287</u>	<u>610,036</u>	<u>610,036</u>	<u>7%</u>
	Interfund (Operating) Transfers Out	-	-	-	0%
101	<b>General Fund Total</b>	<b><u>\$ 9,202,287</u></b>	<b><u>\$ 610,036</u></b>	<b><u>\$ 610,036</u></b>	<b><u>7%</u></b>
<b>Special Revenue Funds:</b>					
105	Tennis	5,522	567	567	
201	Special Parcel Tax	1,910,535	-	-	0%
202	Transportation	444,500	-	-	0%
203	Street Improvement (Gas Tax)	150,000	23,107	23,107	15%
209	Law Enforcement	100,000	11,760	11,760	12%
210	Road Impact Fees	1,470,000	-	-	0%
211	State Park Grants	277,040	-	-	0%
213	Library Fund	78,326	274	274	0%
	Total	<u>4,435,923</u>	<u>35,708</u>	<u>35,708</u>	<u>1%</u>
<b>Capital Project Funds:</b>					
401	Capital Improvement	-	-	-	#DIV/0!
402	Storm Drainage	21,394	-	-	0%
403	Channel Drainage District	60,000	-	-	0%
	Total	<u>81,394</u>	<u>-</u>	<u>-</u>	<u>0%</u>
<b>Internal Service Funds:</b>					
610	Vehicle Replacement	76,000	-	-	0%
611	Information Technology	116,120	7,463	7,463	6%
612	Administrative Services	288,342	126,252	126,252	44%
614	Workers Compensation Insurance	-	-	-	
	Total	<u>480,462</u>	<u>133,715</u>	<u>133,715</u>	<u>28%</u>
<b>Trust and Agency Funds:</b>					
715	Evans Creative Design	11,500	-	-	0%
740	Tree Committee	-	-	-	
	Total	<u>11,500</u>	<u>-</u>	<u>-</u>	<u>0%</u>
	<b>Total Expenditures</b>	<b><u>14,211,566</u></b>	<b><u>779,459</u></b>	<b><u>779,459</u></b>	<b><u>5%</u></b>

**TOWN OF ATHERTON**  
**Budget Summary**  
**Fiscal Year 2006-07**  
**As of July 31st, 2006**

<b>Fund</b>	<b>Description</b>	<b>Beginning Fund Balance July 1, 2006</b>	<b>Revenues to Date</b>	<b>Transfers to Date</b>	<b>Expenditures To Date</b>	<b>Ending Fund Balance to Date</b>
101	<b>General Fund</b>	9,344,474	263,892	-	610,036	8,998,330
	<b>Special Revenue Funds:</b>					
105	Tennis	23,692	200		567	23,325
201	Special Municipal Tax	1,005,832	-		-	1,005,832
202	Transportation	527,577	-		-	527,577
203	Street Improvement (Gas Tax)	102,874	-		23,107	79,767
209	Law Enforcement	10,437	-		11,760	(1,323)
210	Road Construction Impact Fees	1,373,559	73,779		-	1,447,338
211	State Park Grants	-	-		-	-
213	Library Special Revenue Fund	1,947,286	-		274	1,947,012
	Sub Total	<u>4,991,256</u>	<u>73,979</u>	<u>-</u>	<u>35,708</u>	<u>5,029,527</u>
	<b>Capital Projects Funds:</b>					
401	Capital Improvement	258,424	-		-	258,424
402	Storm Drainage	43,455	-		-	43,455
403	Channel Drainage District	36,039	-		-	36,039
406	Facilities Construction	-	-		-	-
	Sub Total	<u>337,919</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>337,919</u>
	<b>Internal Service Fund</b>					
610	Vehicle Replacement	440,370	-		-	440,370
611	Information Technology	89,739	-		7,463	82,276
612	Administrative Services	198,175	-		126,252	71,923
614	Workers Compensation Insurance	10,871	-		-	10,871
	Sub Total	<u>739,155</u>	<u>-</u>	<u>-</u>	<u>133,715</u>	<u>605,440</u>
	<b>Trust and Agency Funds</b>					
715	Evans Creative Design	117,345	-		-	117,345
740	Tree Committee	24,558	-		-	24,558
	Sub Total	<u>141,903</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>141,903</u>
	<b>Grand Total</b>	<u>\$ 15,554,708</u>	<u>\$ 337,871</u>	<u>\$ -</u>	<u>\$ 779,459</u>	<u>\$ 15,113,120</u>



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

**FROM: POLICE CHIEF ROBERT J. BRENNAN**

**DATE: FOR THE MEETING OF AUGUST 16, 2006**

**SUBJECT: RESPONSE TO THE CIVIL GRAND JURY REGARDING INTERNET  
CRIMES**

#### **RECOMMENDATION:**

This is an informational staff report that does not require action by the City Council.

#### **INTRODUCTION:**

On July 29, 2006, City Manager Jim Robinson received a letter from the San Mateo County Civil Grand Jury requesting a response to an inquiry regarding the Town of Atherton's participation and experience with internet crimes over the last two years. The Grand Jury requested that the Town of Atherton respond to the inquiry in writing by August 11, 2006. Under the direction of the City Manager, the Police Chief has responded to the request and has mailed the response by the due date of August 11, 2006.

#### **ANALYSIS:**

See the letter of response to the Grand Jury request.

#### **FISCAL IMPACT:**

At this time, the Grand Jury is gathering information that will be analyzed and then recommendations will be made. There is no fiscal impact at this time, but standards and requirements may change that could affect Atherton fiscally.

Prepared by:

Approved by:

---

Robert J. Brennan  
Chief of Police

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James H. Robinson  
City Manager

Attachments

- \* Letter of request from the San Mateo County Grand Jury
- \* Letter responding to the request by the Grand Jury



83 Ashfield Road  
Atherton, CA 94027

*Town of Atherton*  
DEPARTMENT OF  
POLICE



BUS (650) 688-6500  
FAX (650) 323-1804

**Robert J. Brennan**  
*Chief of Police*

[www.ci.atherton.ca.us](http://www.ci.atherton.ca.us)

August 4, 2006

Ms. Mas Chikasuye  
San Mateo County Superior Court  
400 County Center  
Redwood City, CA 94063

Dear Ms. Chikasuye:

The following is a response to the inquiry from the San Mateo County Civil Grand Jury, regarding the Town of Atherton's resources dedicated to the internet crimes and internet crime trends within the Town of Atherton.

The Town of Atherton has one law enforcement officer assigned full time to investigate internet and related crimes. Atherton has participated in the San Mateo County R.E.A.C.T Task Force over the last five years. All of our sworn staff has had training in recognition and investigations of identity theft and the resulting theft and fraud that usually occurs following these crimes.

Internet crimes are forever expanding as technology increases and criminals gain more experience in computers. Computer crimes are more than identity theft. On-line predators, bank fraud, confidence scams, robberies and burglaries can all be associated with computer crimes. Many of these crimes have an indirect effect on consumers. Losses through piracy, trademark and patent infringement, create higher prices for services, fees and products for consumers that live in all of our jurisdictions. The reporting of these types of crimes has been made easier as law enforcement has come together and has softened the boundaries of who may be responsible for the intake of the crime report. Investigation and prosecution of crimes still remains difficult because there is always the question of where was the crime committed, on which end of the computer, the victim's side or the suspect's side? The distance can be several to thousands of miles and in a different country. Many times jurisdictions have thresholds of monetary losses before they will assign it to an investigator or in the case of federal investigation, accepting referrals from local agencies. Due to the sheer volume of these crimes, limits must be set or agencies will become overburdened because they are so labor intensive and the level of expertise continues to increase on both sides of the law. In many incidents, smaller jurisdictions will have a lower threshold than larger agencies because of lower

overall crime statistics and residential populations, but also lack the technology and expertise to investigate at the lower level.

To answer the question: "What types of internet crime do you encounter?" I would say all of the crimes listed in the previous paragraph. Atherton is not immune to crime and in many case the victims are unaware that they may be a victim of these crimes for years to come.

At this point in time, separate categories have yet to be established for "Internet Crimes." The traditional crimes and classifications are still being used. The Uniform Crime Report that all in law enforcement are required to contribute and is reported by the Federal Government each year, does not have a separate category for Tech Crimes. The part one crimes consist of Rape, Robbery, Petty and Grand Theft, Aggravated Assault, Vehicle Theft, Burglary, Kidnapping, and Arson. All of these crimes are slowly moving away from the traditional way they are committed and toward the technological. The shop lifter, check forger, and auto burglar have moved into the backroom where technology makes the constructive entry and the suspects able to remain anonymous and hard to identify through traditional means.

This response may have been more than you were looking for and may possibly posed more questions regarding the concerns of crime perpetrated using technology as the instrument of the crime.

If you have any further questions, please feel free to contact me at (650) 752-0506.

Sincerely,

A handwritten signature in black ink, appearing to read "R. J. Brennan", with a long horizontal flourish extending to the right.

Chief Robert J. Brennan  
Town of Atherton

Cc: CM Jim Robinson



## 2006-2007 Grand Jury

COUNTY OF SAN MATEO

Hall of Justice

400 County Center

Redwood City, CA 94063-1655

(650) 599-1711; Fax (650) 363-4698

RECEIVED  
TOWN OF ATHERTON

2006 JUL 31 A 11: 28

Mr. James Robinson, City Manager  
Town of Atherton  
91 Ashfield Road  
Atherton CA 94027

July 28, 2006

Dear Mr. Robinson:

The San Mateo County Civil Grand Jury is concerned about the rise in internet crimes over the last two years. We are writing to the Town of Atherton and other cities in the county to understand the extent of resources dedicated to this area of criminal activity.

The Grand Jury requests that the Town of Atherton respond in writing to the following questions by August 11, 2006:

1. How many law enforcement personnel in your department or agency are exclusively assigned to investigate internet crimes? Are these assignments full or part time? If there are no exclusively assigned personnel, are there specialists to whom you usually assign these investigations?
2. What types of internet crime do you encounter?
3. What percentage of your city's/department's total criminal activities is related to internet crime? What would you estimate is the actual percentage of internet crime versus the amount reported?

Responses should be sent to:

Ms. Mas Chikasuye  
San Mateo County Superior Court  
400 County Center  
Redwood City, CA 94063

Thank you for your cooperation.

A handwritten signature in cursive script that reads "Stephan T. Freer".

Stephan T. Freer  
Foreman  
San Mateo County Civil Grand Jury



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: JAMES H. ROBINSON, CITY MANAGER**

**DATE: FOR THE MEETING OF AUGUST 16, 2006**

**SUBJECT: AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE TOWN OF ATHERTON AND BKF ENGINEERS TO  
REVIEW THE TOWN'S DRAINAGE CRITERIA**

### **RECOMMENDATION**

Staff recommends that the City Council approve the amendments in the attached Professional Services Agreement with BKF Engineers for the Review of the Town's Drainage Criteria. The amendments have been requested by BKF and are highlighted in the attached agreement. An email is also attached providing some explanation for the requested amendments. The proposed amendments have been reviewed and approved by the City Attorney.

### **BACKGROUND:**

The City Council approved a Scope of Work and Professional Services Agreement for Review of the Town's Drainage Criteria at its meeting of May 17, 2006. The attached exhibit "A" provides the Project Approach, the Scope of Work, and Exhibit "B," which provides the Payment Schedule. Following approval of the agreement, BKF requested amendments to the agreement. There are no proposed changes to the attached Scope of Work or Payment Schedule.

PROFESSIONAL SERVICES AGREEMENT FOR  
Review of Town's Drainage Criteria

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and BKF Engineering, 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 engineering services in connection with the project designated as Review of Town's Drainage Criteria.

2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit "A" titled "Project Approach" 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 180 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 \$ 132,900 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. **City agrees that Consultant shall bear no responsibility for any modifications by others made to the documents prepared by the Consultant. City agrees that Consultant shall bear no responsibility for any re-use by third parties to the documents prepared by the Consultant except for the specified use.** 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 **reasonable** 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 occasioned 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 \$1,000,000 per occurrence and \$2,000,000 aggregate for personal injury, and \$1,000,000 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~~ **shall** not employ~~ed~~ or retain~~ed~~ 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:

Building Official  
91 Ashfield Road  
Atherton, CA 94027

Notices to Consultant shall be sent to the following address:

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 \_\_\_\_\_, 2006.

Town of Atherton

Consultant

By \_\_\_\_\_  
Charles E. Marsala  
Mayor

By \_\_\_\_\_

EXHIBIT "B"  
PAYMENT

1. Consultant shall be paid up to \$132,900 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.



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: JAMES H. ROBINSON, CITY MANAGER**

**DATE: FOR THE MEETING OF AUGUST 16, 2006**

**SUBJECT: APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE TOWN OF ATHERTON AND CSG CONSULTANTS,  
INC., FOR BUILDING OFFICIAL, BUILDING INSPECTION, PLAN  
REVIEW AND CODE ENFORCEMENT SERVICES**

#### **RECOMMENDATION**

Staff recommends that City Council approve the attached Agreement for Professional Services with CSG Consultants, Inc., to provide interim Building Official Services and Code Enforcement Services to the Town of Atherton

#### **BACKGROUND:**

The Town of Atherton currently is functioning without a full-time Building Official and had previously approved a proposal from CSG Consultants to conduct a review of Atherton's Code Enforcement Services. Since the vacancy of the Building Official position, staff has engaged, on an interim basis, (three days a week) a Building and Planning Administrator to evaluate the needs of Atherton's Building and Planning Department and to assist in development and implementation of new procedures, audit recommendations, etc., for Building Inspection, Plan Checking, and Code Enforcement activities. Given the current work load in the Building Department, it is recommended that the Town of Atherton also utilize on an hourly basis a contract Building Official from CSG Consultants to assist and provide direction for the day-to-day inspection and plan check activities. The Building Official supplied by CSG will cover the days Gary Binger is not available and also provide some continuity as we continue to evaluate the organizational needs of the department .

#### **FISCAL IMPACT:**

The agreement provides a cap of \$5,000 for Code Enforcement assessment as previously approved by the City Council. If Code Enforcement is provided by CSG beyond the assessment, a cap of \$20,000 is provided. Building Services are capped at \$40,000 which could include services by the Interim Building Official or Building Inspection or Plan Check services as required. Sufficient funds to provide these services are incorporated within the existing adopted budget.

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

**PREAMBLE**

This agreement for the performance of professional services ("Agreement") is made and entered into on this 17th day of August, 2006 ("Effective Date"), by and between CSG CONSULTANTS, INC., a California corporation, with its principal place of business located at 1700 S. Amphlett Blvd., 3<sup>rd</sup> Floor, San Mateo, CA 94402 ("Consultant") and the TOWN OF ATHERTON, California, a chartered California municipal corporation, with its principal place of business located at 91 Ashfield Road, Atherton, CA 94027 ("City"). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. City desires to secure professional services as described in Exhibit A "Scope of Services" for Building Official, Building Inspection and Plan Review, and;
- B. City desires to secure professional services as described in Exhibit B "Scope of Services" for Code Enforcement, dated April 13, 2006, and;
- C. Consultant represents that it possess the professional qualifications and expertise to provide such services, and;
- D. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. SCOPE OF SERVICES**

Except as specified in this Agreement, Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at its own risk and expense. Services to be provided include Building Official services, Building Inspection and Plan Review, Code Enforcement assessment and Code Enforcement. All of the exhibits referenced in this Agreement are attached and incorporated by this reference.

**2. TERM OF AGREEMENT**

- A. Consultant shall continue providing the Services under the requirements of this Agreement upon receipt of written "Contract" from City. Consultant shall complete Services within the time limits set forth as mutually determined in writing by Parties.
- B. Unless extended by mutual written agreement of Parties, or terminated earlier in accordance with this Agreement, Consultant's obligation to perform Services to be provided under the terms of this Agreement shall commence as described above in paragraph 2A and shall continue in full force and effect until satisfactory completion of Services.

3. **RESPONSIBILITY OF CONSULTANT**

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

4. **RESPONSIBILITY OF CITY**

- A. On behalf of City, and through the authority of City Manager, Director of Building and Planning shall be City's authorized representative and will ensure all required budget, purchase orders, service orders and any other internal documentation necessary to comply with the terms of this agreement are properly and timely prepared in order to enable Consultant to continue services according to terms of agreement.
- B. On behalf of City, and through the authority of City Manager, Director of Building and Planning shall be City's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The Director of Building and Planning representative shall render decisions in a timely manner pertaining to documents submitted by Consultant in order to avoid unreasonable delay in the orderly and sequential progress of Consultant's services. The Director of Building and Planning may delegate authority in connection with the Contract designees. Consultant shall promptly comply with instructions from Director of Building and Planning or his/her designees.

5. **PAYMENT OF COMPENSATION**

- A. In consideration for Consultant's performance of Services, City shall pay Consultant for all Services rendered by Consultant pursuant to Consultant's Standard Rate Schedule, the current version of which is outlined in Exhibit C "Services Fee Schedule." Payments made by City under this Agreement shall be the amounts charged for Services provided and billed by Consultant, subject to verification by City, pursuant to the standard rates set forth in the

"Services Fee Schedule" supplied in writing by Consultant and maintained on file with City annually. Consultant may begin services prior to the effective date of this contract at its own risk, with the understanding that, upon City approval, City may choose to compensate Consultant for services performed prior to Council authorization, within the limits of the City Manager's authority.

- B. Consultant shall bill City on a monthly basis for Services provided by Consultant during the preceding month, subject to verification by City. Payment to Consultant for Services will be made within thirty (30) days of date of Consultant invoice. Amounts unpaid 60 days after invoice date shall bear interest at the rate of 1% per month.
- C. Compensation for the Code Enforcement Assessment shall be capped at \$5,000. Compensation for Code Enforcement shall be capped at \$20,000 and for Building services shall be capped at \$40,000 unless changed in writing by City.

6. **RIGHT TO TERMINATION**

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

7. **NO ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST**

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

8. **NO AGENCY**

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

9. **NO THIRD PARTY BENEFICIARY**

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

10. **CONSULTANT IS AN INDEPENDENT CONSULTANT**

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

**11. CONFIDENTIALITY OF MATERIAL**

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

**12. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT**

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

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

**13. CORRECTION OF SERVICES**

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

**14. FORCE MAJEURE**

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

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

**15. FAIR EMPLOYMENT**

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

**16. HOLD HARMLESS/INDEMNIFICATION**

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

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

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

**17. INSURANCE REQUIREMENTS**

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

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

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

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

**B. EVIDENCE OF COVERAGE**

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

**18. AMENDMENTS**

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

**19. WAIVER**

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

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

**20. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT**

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

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

**21. SEVERABILITY CLAUSE**

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

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

**22 NOTICES**

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

James Robinson  
City Manager  
Town of Atherton  
93 Station Lane  
Atherton, CA 94027

And to Consultant addressed as follows:

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

**23 STATUTES AND LAW GOVERNING CONTRACT**

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

**24. WAIVER OF CONSEQUENTIAL DAMAGES**

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

**25. DISPUTE RESOLUTION**

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

**26. VENUE**

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

**27. SIGNATURES**

The individuals executing this Contract represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Contract on behalf of the respective legal entities of Consultant and City.

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

**TOWN OF ATHERTON, CALIFORNIA,**  
a Chartered California Municipal Corporation

Approved as to form:

---

Marc G. Hynes  
City Attorney

---

James Robinson  
City Manager

Attest:

---

Kathi Hamilton  
Acting City Clerk

"Town of Atherton"

**CSG CONSULTANTS, INC.**  
a California Corporation



---

Richard Mao, P.E.  
President  
1700 S. Amphlett Blvd., 3<sup>rd</sup> floor,  
San Mateo, CA 94402  
Telephone: (650) 522-2500  
Fax: (650) 522-2599

"Consultant"

## **EXHIBIT A**

### **Scope of Work**

CSG Consultants to provide as needed professional Building Official, Building Inspection, Plan Review and Code Enforcement Services.

#### Building Official

CSG Consultants to provide professional Building Official services by a fully licensed and Certified Building Official (C.B.O.) with the experience and technical expertise required for this position.

#### Building Inspection

CSG Consultants to provide professional Building Inspection services by a fully licensed and certified Building Inspector to the Town of Atherton. Inspections will conform to all current City and State building codes in addition to City ordinances. CSG will maintain daily inspection records and all necessary documents on file. CSG staff will be available to answer counter and telephone inquiries as needed. CSG inspector(s) will consult with the City's Building and Planning Director or designee on all discretionary decisions and/or materials or types of construction as well as ensuring that all relevant City regulatory agencies have approved the project.

#### Building Plan Review

- A. CSG Consultants to provide professional Building Plan Review services for compliance with all policies and current codes adopted by the CITY, including, but not limited to:
1. Current adopted edition of the California Building Code;
  2. Current adopted edition of the California Fire Code;
  3. Current adopted edition of the California Plumbing Code;
  4. Current adopted edition of the Mechanical Code;
  5. Current adopted edition of the National Fire Codes;
  6. Current adopted edition of the California Electrical Code;
  7. Current adopted State Historical Code;
  8. Internationally recognized structural design standards;
  9. Current adopted edition of the Disabled Access Regulations in the Building Code;
  10. Current adopted edition of the California Energy Standards;
  11. FEMA flood zone regulations;
  12. CITY adopted ordinances relative to building, including project Conditions of Approval from other CITY departments, divisions, regulating agencies and jurisdictions;
  13. Coordination of certifications from special inspectors by obtaining information and signatures of approval on special inspection forms where applicable;
  14. Grading and drainage requirements, including NPDES permit requirements as needed.

- B. CONSULTANT shall, upon completion of initial plan review, prepare where applicable, a correction list to be addressed to the applicant submitting plans, or shall affix a stamp to each plan sheet identifying that they substantially comply with adopted codes and municipal regulations with the date of acceptance and the signature of the individual responsible for the plan check.
- C. CONSULTANT acknowledges that the maximum turnaround time for plan review projects shall be performed in a timely manner as follows:
1. Ten (10) working days for residential addition or small improvement projects.
  2. Ten (10) working days for other residential, tenant improvement and light commercial projects.
  3. Twenty (20) working days for complex projects.
  4. Five (5) working days for residential and light commercial resubmittals.
  5. Ten (10) working days for complex project resubmittals.
  6. This schedule may be modified by written agreement between the CONTRACTOR and CITY, for specific projects requiring additional time based upon size, scope, or complexity.

## EXHIBIT B

April 13, 2006

Mr. Jim Robinson  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027

Dear Mr. Robinson,

CSG Consultants, Inc. is pleased to provide this proposal for Code Enforcement services to the Town of Atherton. We welcome the opportunity to expand our current services.

CSG Consultants, Inc. was founded in 1991 with a mission to provide excellent professional community development services to its public clients and thereby develop and maintain client satisfaction. We now provide code enforcement, building and fire plan review and inspection, engineering design, surveying, construction management, staff augmentation, and professional planning services to over 50 California jurisdictions.

Code enforcement is essential to public health and safety. We anticipate services in Atherton to include enforcement of construction work hours, fence heights, encroachments and other zoning matters. Our code enforcement experience has primarily focused on construction activities to successfully address these issues. CSG will assign a code enforcement inspector to focus on resolving matters quickly; to the satisfaction of all.

Initially, CSG's supervisor will analyze the Atherton's code enforcement needs by reviewing Town laws, documents and procedures. CSG will also conduct an assessment of policies, procedures, forms and tracking methods, in order to propose improvements in the Code Enforcement program. Thereafter, we will recommend additional or revised policies and procedures. These may include administrative citations and the use of a hearing officer. CSG will review past code enforcement cases and make recommendations.

Our efforts will include inspections (independently or with Town staff) to determine issues of an urgent nature. CSG will schedule and conduct subsequent inspections until violations are in compliance with Town requirements. If the services of a hearing officer become necessary during the investigation and resolution phase, CSG staff is able to provide that service as well.

After a mutually agreed upon schedule has been reached, CSG will provide a code enforcement officer and supervisory staff as necessary to manage exceptionally difficult or complex cases.

Fees for the above services be billed as follows:

Code Enforcement Supervisor	\$99.00 per hour
Senior Code Enforcement Inspector	\$85.00 per hour
Code Enforcement Inspector	\$75.00 per hour

CSG will provide a vehicle and cellular telephone. In order to make services cost-effective,

Inspectors are offered for a minimum of four hours per day. Code enforcement services are occasionally required after normal business hours. CSG can provide this service (between 6 pm and 7 am and on weekends) at time and a half.

Enclosed are resumes of our proposed staff for your consideration. Currently, CSG can offer the services of a properly trained and experienced Code Enforcement Supervisor or Senior Code Enforcement Inspector for up to twenty-four (24) hours per week. Based on our understanding of your needs, we are prepared to begin services immediately upon authorization. We are also prepared to offer long-term services as needed.

Thank you again for the opportunity to further serve the Town of Atherton. Should you have any questions, please contact me at (650) 522-2504.

Respectfully,

Gordon Siebert, P.E.  
Vice president, Operations

# EXHIBIT C

## Services Fee Schedule

### Building Official Services

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Building Official  
Regular, 8-hour work day      \$100.00 per hour

### Building Inspection Services

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Building Inspector  
Four (4) hour minimum per request \$85.00 per hour

### Building Plan Review Services

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Building Plan Review Fee 75% of Town 's Plan Review Fee

Hourly (Revisions, Deferred Submittals, etc.)      \$90.00 per hour

### Building Inspection Services

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Code Enforcement Supervisor      \$99.00 per hour

Senior Code Enforcement Inspector      \$85.00 per hour

Code Enforcement Inspector      \$75.00 per hour

Annual adjustments to hourly rates will be made by mutual agreement based upon current CPI.



## 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 AUGUST 16, 2006**

**SUBJECT: PHASE III BUILDING DEPARTMENT PERMIT AND PROCESS AUDIT**

#### **RECOMMENDATION:**

Approve the project plan to conduct Phase III of the Building Department permit and processes audit.

#### **INTRODUCTION:**

At the regularly scheduled meeting of July 19, 2006, the City Council directed staff to develop and present a project plan to expand the scope of the Finance Department's assessment of the Building Department permit fee assessment and collection practices. Specifically, the Council directed staff to extend the scope of the internal audit to include a quality assurance review of the systems and procedures used to perform plan checks, building inspection services and activities related thereto.

Presented as attachments I and II to this report are copies of the Finance Department's Phase I and Phase II reports on the Building Department permit and process audit. Since the review directed by Council will be conducted subsequent to Phases I and II of the Finance Department's audit of the Building Department's fee assessment and collection activities, and since the knowledge derived from such activities will be used in conducting this quality assurance review, the project is described herein as Phase III of the Building Department Permit and Process Audit.

#### **Phase III Audit scope, objectives, and procedures to be employed**

Staff proposes that the Phase III scope of review include an evaluation of both the Department's business processes and supporting systems as well as an examination of selected building permit files for which construction was in progress during calendar years 2001 through 2006.

The objectives of this quality assurance review will be:

- To identify exceptions in building permits 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.

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

### **Part 1 – Conduct an Assessment of Physical and Electronic Recordkeeping Systems**

This task will consist of reviewing the systems and procedures used to process applications for building permits, to perform plan reviews and building inspections, and to provide accountability over the results of such activities.

This task will be conducted for the purpose of determining whether:

- Sufficient documentation exists (such as employee desk manuals and/or a Department-wide policies and procedures manual) that provides Building Department employees with the knowledge base necessary to effectively carry out their respective duties and responsibilities and to provide accountability over departmental and individual performance;
- Electronic and paper-based recordkeeping systems employed by the Department to process transactions efficiently, to enable management to deploy resources economically and to gauge the overall effectiveness of the organization; and,
- Administrative controls are in place to adequately safeguard the information assets of the Department and to provide for a high degree of integrity of the data contained within the electronic and physical record-keeping systems that the Department maintains.

### **Part 2 – Risk Assessment and Selection of Building Permit File for Review**

Through an extraction and analytic review of data contained the Building Department's permit tracking system, we will identify building permit files with characteristics indicative of either incomplete or improper handling by the Building Department, such as instances of:

- Incomplete or contradictory inspection results;
- Projects for which only one Building Inspector performed all inspections on a project;
- Projects for which construction was not initiated within 180 days of permit issuance;
- Projects that have remained in an active status for more than two years after the stated expiration date of the permit
- Projects for which the number or frequency of inspections which would appear to be insufficient in light of the size and or complexity of the project;
- Projects that have been finalized without appearing to have satisfied all of the requirements;

- Instances of apparent non-conformity with applicable building codes and/or Town zoning ordinances that have been brought to the attention of management or the City Council.

Additionally we will randomly select projects which may have a high degree of inherent risk associated therewith, such as projects of an unusually high dollar value.

As a part of this risk assessment staff anticipates identifying 40 to 60 building permit files that will be subject to an examination of all the records contained therein.

To ensure that audit staff is productively engaged during this review, we will provide the Building Department with a list of building permit files selected for review and require that such files be produced within five business days of the date of the request of audit staff.

It should also be noted that some of the files audit staff will select for review may have already been closed out and the original records converted to Microfiche. For any and all instances in which the physical record is no longer available, we will request that the Building Department produce a complete set of documents in hard copy form from such Microfiche records.

**Part 3 – Perform substantive testing of building permit files**

Upon completion of our risk assessment and initial sampling of files we will establish a statement of evaluative criteria to ascertain whether the Building Department obtained sufficient competent evidence that buildings constructed or modified within the Town limits were done so in accordance with all applicable ordinances and statues.

The following table provides a preliminary statement of the evaluation criteria we will apply in conducting our review of selected building permit files.

Evaluative Criteria	Result (Yes or No)
The number and frequency of inspections appears reasonable in light of the size and complexity of the project	
FAR calculations have been calculated correctly and demonstrate conformity with said limitations. Additionally, FAR calculations were included all structures to be built at the site.	
Geologic and Soils investigative reports were performed as required	
An assessment of Title 24 energy compliance was conducted as required	
Structural calculations were performed by an independent engineer as required	
The building permit was issued within 30 days of plan approval	
Construction was initiated no later than 360 days after permit issuance.	
A licensed civil engineer certified compliance with building height and setback requirements.	
Where applicable, landscape screening agreements have been executed and recorded with the County.	

**Part 4 - Perform additional inquiries and physical observation**

During Part 4, we will make inquiries of the Department regarding exceptions noted as a result of our substantive testing. Additionally, we will accompany building inspectors in the field to ascertain the methods and procedures used to verify that structures being built are being done so in

a manner that is both consistent with the approved set of plans and in accordance with all applicable regulations and ordinances.

**Part 5 - Communicate the Results of the Review**

During Part 5, we will compile and analyze the results the activities conducted during parts one through 4 and we will communicate the results in the form of a statement of findings and recommendations.

As is consistent with the format of reporting during Phases I and II, our findings will identify any systematic deficiencies in the Deapartment’s business practices and supporting systems that in the judgment of audit staff precipitated any exceptions that are identified. Additionally, it is the intention of audit staff to present workable solutions to any problems identified in the form of recommendations to management.

**Project Timing and Resources**

This Phase III audit will be conducted under the supervision of the Finance Director with the assistance of Mr. Eric Spivak and an as-yet-to-be identified subject matter expert in building and planning.

The following table provides an estimate of hours and fees required to perform this study:

<b>Staff</b>	<b>Role</b>	<b>Hourly Rate</b>	<b>Estimated Hours</b>	<b>Extended Cost</b>
John P. Johns, Finance Director	Project planning, report writing, supervision of audit staff	To be incorporated with ongoing duties	80	\$0
Eric Spivak	Assessment of administrative controls and recordkeeping systems, substantive testing	\$100	240	\$24,000
To be determined	Subject Matter expert plan check and building inspection	\$100	80	\$8,000
<b>Total</b>				<b>\$32,000</b>

Field-work will commence on this audit Monday, August 21, and will conclude Friday, September 29. Allowing for one week to prepare the audit report and for consultation with the Building Department, we expect to produce a report for the review of the full City Council on or about October 9, 2006

**Limitations of the Study**

Given the compressed timetable for this study, and in light of the substantial number of building permits the Department issues each year, audit staff will be able to examine a small fraction of

total number of permits available. Accordingly, as indicated in Part II of this audit program, staff will concentrate its efforts upon those permits that appear to be problematic.

Despite the limited size of our sample, audit staff will not be able to render a definitive judgment as to whether a particular project has in fact met all of the building and zoning requirements applicable. Nonetheless, should we identify instances of apparent non-compliance, we will flag such files for a subsequent and more thorough review by a qualified individual.

This study is not connected with any personnel investigation. However, should information come to the attention of audit staff which appears to indicate that staff may have acted in a manner contrary to the Town's Code of Conduct and Procedures, such information will be communicated to management in accordance with the reporting requirements of the Town's fraud policy.

In preparing for this Phase III review, audit staff has identified a material weakness in the Department's record-keeping systems, notably the failure to retain in the permanent record copies of field inspection reports prepared by building inspectors. This administrative control weakness is compounded by the fact that data entry and data management controls over the Building Department's Permit Tracking system are either ineffective or non-existent. As a result, audit staff is unable to verify the results of building inspections as represented within the Department's permit tracking system for any project that has been completed prior to July 2006.

To rectify this deficiency, audit staff has recommended that the Building Department immediately:

- Proceed with efforts to acquire a new permit tracking system; and,
- Retain within the permanent record, physical copies of all field inspection reports recorded by Building Department personnel.

**FISCAL IMPACT:**

Approving this Phase III scope of review will cost an estimated \$32,000, which will be recovered from future building permit fees.

Prepared by:

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John P. Johns  
Finance Director

Attachment I: Phase I Building Department Permit and Process Audit Report  
Attachment II: Phase II Building Department Permit and Process Audit Report



## **Town of Atherton**

### **Finance Department**

91 Ashfield Road  
Atherton, California 94027  
650-752-0531  
Fax 650-688-6528

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**DATE:** June 26, 2006

**TO:** Jim Robinson

**FROM:** John P. Johns

**SUBJECT:** Building Permit and Process Audit – Phase I report

Pursuant to the direction of the Finance Department, the Town's independent auditors, Caporicci & Larson examined the fee collection practices of the Building Department within the scope of their FY 2005-06 interim review. This assessment consisted of inquiries of Departmental personnel and a review of the documentation available within the Building Department that served as a guide to departmental personnel in assessing and collecting fees related to residential construction activity within the Town.

Based upon their fieldwork, the independent auditors determined that insufficient documentation existed over the fee collection process. As a result, the auditors concluded that the Building Department was unable to provide a satisfactory level of assurance that the amount of fees assessed and collected by the Building Department was consistent with the various ordinances and resolutions adopted by Council establishing such building-related fees. Accordingly, the auditors recommended that the Building Department improve the level of documentation associated with fee assessment and collection activities, including, but not limited to the preparation of a desk manual for the individual(s) within building responsible for such fees.

From January, 2000 through December 2005 the Building Department issued a total of 3,392 building permits. The value for permitting purposes of these projects amounted to approximately \$686 million or an average of about \$137 million annually.

The following table provides an analysis of building permits according to type of permitted activity and permitted value.

Permit Category	Count for Category	Permitted Value	As a pct of Value	As a pct of Count
<b>Additions and Accessory Structures</b>	1,416	245,644,019	36%	42%
<b>Excavation/Demolition/Drainage/Grading</b>	33	10,586,600	2%	1%
<b>Hardscape</b>	856	32,294,910	5%	25%
<b>New Residence</b>	201	382,691,188	56%	6%
<b>Pumbing/Mechanical/Electric</b>	159	3,531,438	1%	5%
<b>Repairs, Renovations and Remodeling</b>	714	12,042,145	2%	21%
<b><u>Unclassified</u></b>	<u>13</u>	<u>127,600</u>	<u>0%</u>	<u>0%</u>
<b>Grand Total</b>	3,392	686,917,900	100%	100%

Under the current fee structure, the Town collects approximately two dollars for every \$100 of permitted value in construction projects, one half of which is used to finance the operations of the Building Department and the remainder of which is for road construction and for discretionary purposes.

Given the significant volume and value of building permits processed and substantive nature of the auditor's findings, the Finance Department has initiated an internal audit of the Building Department's fee collection practices.

The objectives of the audit of the Building Department included:

- To verify whether the Building Department had assessed and collected building permit and permit-related fees in a manner consistent with applicable fee ordinances resolutions established by the City Council; and,
- To identify improvements in the level of documentation and in the procedures used by the Building Department to provide greater assurance that applicable fees are calculated properly and that fees borne by applicants are distributed equitably amongst the various categories of applicants.

This internal audit is being conducted in two phases, Phase I being a preliminary assessment of selected permit processes to be followed by a more detailed examination of specific issues within Phase II.

In conducting this internal audit the Finance Department, with the assistance of an independent contractor, and with the knowledge and approval of the City Manager, performed the following audit procedures:

- Conducted interviews with representatives of the Building Department;
- Sampled and inspected of various building permit files with permit application dates ranging from May 2005 to June 2006; and,
- Extracted and analyzed data within the Town's general ledger system (Wintegrate) and the computerized permit file tracking system used by the Building Department (QA).

Based upon the field-work conducted to date we have identified three findings as follows

**Finding 1: The Building Department processed a number of applications for excavation permits during the week prior to May 16<sup>th</sup>, 2005 (the effective date of the Council approved adjustments to the Road Impact Fee Ordinance) in manner which allowed applicants to effectively circumvent the newly established excavation surcharge. The amount of excavation surcharges avoided by such applicants remains to be quantified.**

On March 16<sup>th</sup>, 2005 the City Council amended its road impact fee ordinance to establish an excavation surcharge. This ordinance revision became effective on May 16<sup>th</sup>, 2006 and included the following provisions:

- Excavation surcharges will be assessed in the amount of \$22 per cubic yard of earth excavated and off-hauled; and,
- Excavation surcharges shall be collected at the time of building permit issuance.

According to the Building Department's permit tracking system, a total 25 of permit applications were received during the week of May 9<sup>th</sup>, 2005 (the week before the effective date of the building permit ordinance.) The Building Department's permit tracking system also indicated that these permit applications were related to construction activity at 21 separate locations.

Given the high number of applications for excavation permits that were processed shortly before the effective date of the excavation surcharge, audit staff examined such files for the purposes of verifying that:

- The applications for excavation permits represented bona-fide applications (rather than as placeholders in advance effective date of the excavation surcharge ordinance); and,
- The Building Department performed a careful and deliberate review of such applications prior to issuing a permit for excavation work.

Based upon the documentation available, audit staff identified seven instances in which the applications for construction activity requiring excavation accepted by the Building Department prior to May 16<sup>th</sup>, 2005 failed to meet one or more of the criteria stated above. As a result, the Building Department appears to have enabled property owners to file applications for excavation permits and to process such applications in a manner that allowed the excavation surcharge to be circumvented. These exceptions are noted below.

- Two files contained evidence that the Building Department was aware that the applications it was accepting were incomplete at the time of submission as evidenced by notations on and within the files of "needs everything" and "deferred status".
- Two projects were identified for which the Building Department had yet to issue an excavation permit as of June 28<sup>th</sup>, 2006 (more than 12 months after date the original application submittal) additionally in both instances there was no information within the files to indicate when the documentation necessary to complete the applications would be forthcoming.
- Two instances were identified in which the Department accepted as documentation sufficient to issue an excavation permit a plot plan, rather than a grading plan. Since, the plot plans accepted by the Building Department did not adequately describe nature and scope of the excavation to be conducted. As a result, in both cases the applicants were able to use the excavation permits issued by the Building Department for purposes other than their original intent.

- One instance was identified in which the Building Department issued an excavation permit in support of a project for which the original permit had expired.

The amount of permit fees that were avoided by the applicants in these instances remains to be quantified. However a preliminary review of the plans associated with such applications indicates the amount of excavation surcharges which property owners were allowed to avoid through a premature submittal and expedited processing of such applications was in excess of \$50,000.

Recommendations:

- That additional research be conducted to ascertain whether the Department personnel acted with intent in processing selected excavation permits improperly.
- That legal counsel be consulted to determine whether and how fees uncollected through the improper handling of excavation permit applications can be recovered from either the property owner or the contractor submitting such plans.

**Finding 2: The Building Department personnel are either not aware of, or have been ineffective in, fulfilling their assigned duties of verifying the accuracy of fees calculated and collected at the time of a receipt of a building application.**

Audit staff interviewed Building Department personnel regarding the methods used by the Building Department to ensure that permit and permit-related fees being collected accurately reflected both the nature and the scope of the project under construction as well as the fees ordinances and resolutions in effect.

In response to this inquiry, the audit staff was told that whoever was assigned to the front counter would calculate building fees that are due and payable at the time of permit submittal. Additionally, Building Department staff indicated that a second individual as part of the plan check process would normally verify the fee calculations of the individual processing the original application.

However, based upon follow-up interviews, audit staff determined that instructions to verify fee calculations as part of the plan check process were either not clearly communicated throughout the Department or that procedures used to verify such fee calculations had been ineffective.

Based upon an extraction and analysis of Building Department permit database files, audit staff identified 22 instances in which road impact fees assessed were not consistent with the ordinance in effect at the time the permit applications were submitted. As a result, the amount of road impact fees collected for these 22 projects was \$16,000 while the amount that should have been collected should have been \$22,000. The total permitted value of the 22 projects analyzed amounted to \$3.2 million and were received between May 17<sup>th</sup> 2005 and December 30<sup>th</sup>, 2005. In each of these instances the Building Department assessed a road impact fee of .5% of the permitted value of the project rather than the .71% of the projects permitted value as directed by the change in the Road Impact Fee ordinance, which became effective on May 16<sup>th</sup>, 2005.

Additionally audit staff identified three permit files that were received on May 16<sup>th</sup>, 2005 (the first day upon which the excavation surcharge became effective) for which excavation surcharges were not collected. The amount of road excavation surcharges that should have been collected for these three

projects is estimated to be between \$9,000 and \$12,000. Furthermore on one of these three files examined, a calculation of road impact fees due and payable was noted on the original application.

## **Recommendations**

That the Building Department:

- Advise plan review staff of their responsibility in verifying fee calculations of the office specialist;
- Require plan check personnel to document the results of their fee verification activities in the files; and,
- Attempt to recover all fees that should have been assessed at the time of application that have not heretofore been assessed and collected.

**Finding 3: Approximately 46 percent of the permits issued by the Building Department are related to projects in which the Building Department relies upon the owner's declaration of value as the basis for establishing permit fees. By relying upon authoritative sources of information to establish permit values or by requiring copies of executed contracts for construction work in support of their declarations of a project's value, the Building Department can assure that permit and permit related fees are consistently applied and fairly represent the value of the project undertaken.**

In establishing building permit fees the Building Department applies three primary vehicles for establishing fees. These are as follows:

- For new residences, additions to existing residences and for accessory structures, the Department uses a standard value of \$250 per square foot.
- For minor equipment replacements and enhancements, such as replacement of water heaters, re-roofing and other activities, the Department applies a standard unit cost,
- For major remodeling projects, and for other property enhancements such as the additions of swimming pools, tennis courts or hard-scape features (such as retaining walls, arbors, fountains and gates) the Department relies upon the owner's representation of value.

During the course of this audit, we inquired of the Building Department as to whether and how staff assess the reliability of assertions made by applicants as to their declarations of value.

In response audit staff were advised that Building Department personnel are able to gauge, based upon their own experience, whether property owners are being truthful in declaring the value of a given project. However Building Department staff were unable to cite any examples in which they had challenged an owner's declaration of value. Additionally audit staff identified several instances in which the permitted value of a project appeared to be unreasonably low in light of the feature being constructed.

## **Recommendations**

That the Building Department, drawing upon authoritative sources of information, such as databases provided by the appraisal firm of Marshal and Swift use such data as a means of validating estimates of project values that are not currently assessed on a standard cost basis

That the Building Department require property owners to provide evidence (such as executed contracts) in support of valuations (such as major remodels) in those instances in which standard unit cost data is not available.



**Town of Atherton**  
**Finance Department**

91 Ashfield Road  
Atherton, California 94027  
650-752-0531  
Fax 650-688-6528

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**DATE:** July 26<sup>th</sup>, 2006

**TO:** Atherton Audit Committee  
Jim Robinson, City Manager

**FROM:** John P. Johns, Finance Director

**SUBJECT:** Building Permit and Process Audit – Phase II report

**Introduction**

Transmitted herein is our Phase II report on the Building Department permit and process audit. This phase II audit was initiated pursuant to the direction of the City Manager and the Finance Committee and in accordance with the recommendations contained within the Phase I report.

As indicated in our Phase I Building Department Permit and Process Audit Report, internal audit staff identified certain weaknesses in the Building Department's administrative and financial controls related to the assessment and calculation of building permit and permit-related fees.

Our Phase I report also described certain exceptions within the Building Department's permit files that came to the attention of internal audit staff. These exceptions (such as the acceptance of incomplete applications for excavation permits shortly before the effective date of the Town's excavation surcharge) appeared to have occurred as a result of the administrative and financial control weaknesses identified during Phase I.

The purpose of this Phase II study is as follows:

- To verify that the Building Department correctly determined the permitted value of a project for fee calculation purposes based upon the parameters of the project being initiated;
- To verify that the Building Department correctly calculated the amount of fees due and payable given a project's permitted value;
- To ascertain whether fee assessments as recorded within the Department's permit tracking system were entered accurately and were properly receipted into the City's general ledger system;

- To identify and quantify the fiscal impact from any instances in which the Building Department assessed and collected building permit fees in a manner that was inconsistent with the applicable fee ordinances and resolutions in effect at the time of permit processing; and,
- To recommend changes in the Building Department's fee assessment and collection procedures to provide for a satisfactory level of assurance that all permit fees will be calculated and assessed in a manner that is consistent with applicable fee ordinances and that such fees are properly accounted for.

### **Audit Procedures Employed**

In conducting this Phase II review, we applied the following procedures:

- Reviewed the resolutions adopted by the City Council during the past six years that pertain to building permit and permit related fees;
- Obtained an extract from the City's permit tracking system to identify all permits issued since May 2005 which had a permitted value equal to or greater than \$100,000;
- Independently calculated the amount of permit fees due and payable by fee category based upon the schedule of fees applicable at the time of permit issuance;
- Traced the fees recorded as having been paid according to the Building Department's permit tracking system to the City's general ledger to verify that fees recorded as having been collected had in fact been receipted into the City's custody;
- Examined building plans submitted by applicants and other documentation to verify the valuations recorded by the Building Department were in fact consistent with the parameters of the project itself; and,
- For each instance in which the fees collected appeared to be improperly calculated or assessed, prepared additional research to determine the amount due from (or due to) the applicant.

Based upon the audit procedures described above, our findings are as follows:

**Finding 1: Due to input errors or omissions of essential data within the Building Department's computerized permit tracking system, audit staff was able to validate fee calculations on only 68 of the 185 permit files selected for review through an analysis of the electronic records. As a result a time consuming and labor intensive examination of the Building Department's physical records was necessary to complete the validation work on fee collections.**

To assess whether the Building Department had properly calculated permit fees, internal audit staff obtained an extract of the Department's permit tracking system. This extract consisted of all projects with a permitted value equal to or greater than \$100,000 for which a permit had been issued on or after May 16<sup>th</sup>, 2005. Using these parameters, 185 records with a combined permitted value of \$153 million were selected for review.

In examining the data contained within the records selected, audit staff frequently encountered instances in which either incomplete or inaccurate data existed within the records. These included:

- Errors in the recorded values for the project and/or amount of fees collected;
- An absence of any cross-reference to the unique record locator used to identify the cash receipt documenting the amount of fees paid by the applicant; and,
- Missing data with respect to the basis upon which the permitted value of the project was calculated.

As a result, of the aforementioned errors and omissions, audit staff encountered difficulty in verifying the accuracy of fees computed by the Building Department and in tracing the permit fees collection through the City's general ledger. In fact of the 185 files selected for review only 68, or 37 percent, of the records could be validated without an examination of the physical records supporting the entries into the Department's permit tracking system. As a result, the process of verifying fee calculations and collections through a physical examination remains work in process at the time of this report writing.

However based upon the efforts conducted to date, audit staff has recommended and the Building Department has agreed to implement, a number of procedural changes that will enhance the reliability of the Department's fee assessment and collection functions. These revised procedures are documented in Attachment I to this report and include:

- The use of computer-based algorithms, rather than pre-printed tables to calculate permit fees due and payable;
- Independent quality assurance review of fees calculated by front-counter staff;
- An ongoing reconciliation of permitted values, fees assessed and calculated at monthly intervals; and,
- Improved segregation of duties with respect to permit application receipt and permit issuance activities.

**Finding 2: A detailed review of permit files involving excavation activity that were processed between May 2005 and June 2006 indicates that 11 projects representing \$134,000 in excavation surcharges were not assessed by the Building Department as prescribed by City Council Resolution 05-34.**

As discussed in our Phase I report, internal audit staff identified a number of exceptions in applications receipted shortly before May 16<sup>th</sup>, 2005, the effective date of the excavation surcharge. These exceptions suggested that the Building Department either knowingly or unwittingly allowed applicants to effectively circumvent the excavation surcharge. Accordingly the Phase I report recommended additional research be conducted with respect to the knowledge or intent of Building Department personnel in this matter.

In light of the Phase I finding, audit staff conducted a comprehensive examination of building permit files that involved some form of excavation activity during the past 14 months.

As a result of this examination, audit staff identified 11 instances in which applicants were allowed to perform excavation activity without having paid a \$22 per cubic yard off-haul fee as prescribed by

Council Resolution 05-34. While the Building Department does have some discretion in waiving fees under certain circumstances, these 11 files appear to have been instances in which the Building Department assessed fees in a manner that was not consistent with either the intent or the letter of the excavation surcharge resolution that was adopted by Council.

The results of this examination are summarized in the following table.

<b>Working Paper Reference</b>	<b>Project Description</b>	<b>Exception Noted:</b>	<b>Cubic Yards</b>	<b>Off-haul value at \$22 per yd</b>
A	Pool	Application received on or after effective date of excavation surcharge.	277	\$ 6,094
B	Basement	Excavation permit issued prior to effective date of excavation surcharge in support of a project for which the underlying permit had expired.	650	14,300
C	Basement	Improper application of excavation permit issued prior to effective date of excavation surcharge ("bait and switch").	1,349	29,678
D	Pool	Improper acceptance of incomplete application immediately prior to effective date of excavation surcharge.	132	2,904
E	Basement	Excavation permit issued prior to effective date of excavation surcharge without adequate documentation concerning the nature, scope and extent of excavation activity.	1,406	30,932
F	Basement	Improper application of excavation permit received prior to effective date of excavation surcharge ("bait and switch").	979	21,538
G	Pool	Improper acceptance of incomplete application immediately prior to effective date of excavation surcharge.	170	3,740
I	Pool	Application received on or after effective date of excavation surcharge.	171	3,764
J	Pool	Application received on or after effective date of excavation surcharge.	203	4,466
K	Basement	Application received on or after effective date of excavation surcharge	770	16,940
<b>Total</b>			<b>6,107</b>	<b>\$134,356</b>

Audit staff has referred these 11 cases along with the supporting documentation to the City Attorney for advice on a case-by-case basis as to whether or not to initiate collection proceedings. Audit staff has also prepared a sample letter for review and approval by the City Attorney that is intended to notify applicants of the excavation surcharges that are due and payable. This sample letter is included as Attachment II to this report.

**Finding 3: City Council Resolution 00-13 establishes a \$250 per square foot valuation on residential remodeling projects. Based upon an examination of all such projects currently active within the Town of Atherton, audit staff identified six files in which the Department accepted an owner's declaration of value, rather than using the prescribed standard unit value. The amount due and payable for these six projects is approximately \$9,900. Additionally 52 cases or nearly one-half of the files selected for review, the basis upon which fees were calculated could not be determined from either the permit application or the permit itself. As a result a detailed examination of the plans was required to verify the Department's fee calculations.**

In conducting our Phase I review, audit staff identified a number of instances in which the Building Department had accepted an owner's declaration of value for a residential remodeling project. Since City Council's fee resolution 00-13 states that new construction and residential remodeling projects shall be based upon a standard unit cost of \$250 per square foot, audit staff deemed it necessary to examine all active construction projects that involved some form of remodeling activity, irrespective of project value. This review identified a total of 105 projects with a combined permitted value of \$19.4 million.

Of this review we determined that:

- In 46 of the 105 projects reviewed, the Building Department had documentation within the file that was both readily accessible and which demonstrated that permit processing staff had correctly applied Fee Resolution 00-13 for 46 of the 105 projects reviewed;
- In six instances the Building Department incorrectly calculated fees based upon the owner's declaration of value, rather than the requisite \$250 per square foot resulting in additional fees due and payable amounting to approximately \$9,900; and,
- In 52 of the 105 projects reviewed, a more detailed and labor intensive examination of the plans submitted by the applicant was necessary in order to validate the Department's fee calculations. This validation remains work in progress and is being conducted by internal audit staff with the assistance of Building Department plan check personnel.

In order to ensure that fee calculations can readily be verified in the future, it is recommended that the extent of remodeling should be clearly documented on the permit application and fee calculation worksheets.



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: JAMES H. ROBINSON, CITY MANAGER**

**DATE: FOR THE MEETING OF AUGUST 16, 2006**

**SUBJECT: CONSIDERATION OF APPOINTING ALTERNATES TO CITY COUNCIL STANDING COMMITTEES**

#### **RECOMMENDATION**

Council to consider appointing alternates to City Council Standing Committees.

#### **BACKGROUND:**

Currently, City Council Standing Committees are comprised of two Council Members and there is no provision for an alternate. The Other Governmental Committees are comprised of one Council Member with an alternate designated.

#### **ANALYSIS:**

Mayor Marsala has suggested that the City Council appoint alternates to the City Council Standing Committees to attend meetings when one of the Council Members appointed to the committee is unable to attend, e.g., the General Plan Committee. Currently, there are nine (9) Standing Committees of the Council: 1) the Finance Subcommittee; 2) the Transportation/Traffic Subcommittee; 3) the Screening Committee; 4) the Waste Reduction and Recycling Committee; 5) the General Plan Committee; 6) the Atherton Channel Drainage District Subcommittee; 7) the Buildings and Facilities Subcommittee; 8) the Atherton Rail Committee; and 9) the Emergency Preparedness Subcommittee. Council may want to consider appointing alternates to some or all of the committees.

One potential problem might be the lack of continuity if any items under discussion occurred over several meetings. The alternate would not necessarily have a working knowledge of the previous background information. However, having two Council Members present at the meeting may override that concern.

#### **FISCAL IMPACT:**

There is no fiscal impact.



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: JAMES H. ROBINSON, CITY MANAGER**

**DATE: FOR THE MEETING OF AUGUST 16, 2006**

**SUBJECT: DISCUSSION AND DIRECTION TO STAFF REGARDING THE DEVELOPMENT OF GOALS AND OBJECTIVES FOR THE TOWN OF ATHERTON**

### **RECOMMENDATION**

Staff recommends that the City Council review the attached previously established list of Goals and Objectives as well as those identified by the City Council and discussed at the meeting of June 14, 2006, to determine if there are any appropriate additions or changes so that the list can be prioritized.

### **DISCUSSION:**

Listed below are previously established Goals and Objectives that were prioritized by the City Council. In addition, the City Council identified additional goals for review at its June 14, 2006, meeting and requested that a meeting be set for prioritizing the list as well as any additional goals identified by the City Council.

### **Prior List of Goals**

1. Establish Objectives and Identify Funding sources for El Camino Real and Other Drainage Improvements: Completed for the Atherton Drainage Channel, not for El Camino Real.
2. Establish a Strategy for the Atherton Channel Upgrade, Repairs and Long-Term Maintenance: First phase completed; ongoing.
3. The Valparaiso Study and Implementation of Appropriate Recommendations: Completed.
4. The Housing Element: Ongoing.
5. Developing a Long-Term Financial Plan: Completed/ongoing evaluation every year.
6. Review and Revise the Strategic Park and Recreation Plan: Completed.

7. Establish a Strategy for Maintaining a Full Staffing for the Police Department that Currently Exists: Completed.
8. The Needs Assessment for Town Facilities: Needs assessment begun.
9. The Town Home: Ongoing.
10. Town-wide Street Striping Improvements: Completed.
11. The General Plan Review and Update: A great deal had been done; however the required five-year review was not completed.
12. Volunteer Recognition: A policy was not yet established, recognition occurred at Council Meetings, and an event was contemplated.
13. The Strategic Plan for Town Computer Technology Needs: Accomplishments in the Finance and Police Departments, ongoing in other departments.
14. Update the Atherton Resident Handbook: Completed.
15. Revise and Update the Commission and Committee Handbook: Completed.
16. Construction Noise Control Techniques: Ongoing.
17. Revise Employee Personnel Rules and Procedures: Not completed/proposals being solicited.
18. Review and Revise the City Council Rules of Procedures: Completed.
19. Updating the Municipal Code: Ongoing.

#### **Goals identified at the June 14, 2006 Special Meeting**

1. Develop Alternative Funding Sources for the Town Budget that were Non-Parcel Tax Funding Sources: Ongoing.
2. A Drainage Plan: BKF review underway/ongoing.
3. Prioritization of Giving and Membership Support to Various Groups: Not accomplished.
4. Code Enforcement: CSG review underway/not completed.
5. Emergency Preparedness: Ongoing.
6. Specific Facility Architectural Insight, Plans, and Funding Sources: Ongoing.
7. Grant Resource Person: Not accomplished/handled by individual staff.
8. Alternative Power Sources: Not completed.
9. Caltrain Service Issues: Ongoing.
10. Town Home Renovations: Ongoing.
11. Building Department Operations Review: Ongoing.



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

**FROM: KATHI HAMILTON, ACTING CITY CLERK**

**DATE: FOR THE MEETING OF AUGUST 16, 2006**

**SUBJECT: CONSIDER ADOPTION OF A RESOLUTION PROVIDING FOR  
THE APPOINTMENT TO THE OFFICE OF CITY COUNCIL  
THOSE PERSONS WHO HAVE BEEN NOMINATED, OR  
ADOPTION OF A RESOLUTION TO HOLD THE GENERAL  
MUNICIPAL ELECTION AS SCHEDULED ON NOVEMBER 7,  
2006**

#### **RECOMMENDATION:**

After consideration, adopt a Resolution providing for the appointment to the office of City Council those persons who have been nominated, or adopt a Resolution to hold the General Municipal Election as scheduled for November 7, 2006.

#### **ANALYSIS:**

The nomination period for candidates for the Atherton City Council closed on Friday, August 11, 2006. At the close of the nomination period, there were an equal number of candidates (three) for the offices to be elected. Pursuant to Section 10229 of the Elections Code of the State of California, the City Clerk must post a notice of these facts and notify the City Council. After the fifth day following the posting of the notice, and prior to August 24, 2006, the City Council may take one of the following courses of action:

1. Appoint to the office the persons who have been nominated.
2. Hold the election.

Attached are two proposed resolutions: one appointing the nominees and canceling the election; one providing for holding the election as scheduled. If the Council adopts the

resolution appointing the nominees, the nominees will take office at the regular December Council meeting.

**CONCLUSION:**

Notice of these facts has been posted and given to the City Council as required. The City Council may make the appointments or direct the election to be held.

Prepared by:

Approved by:

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Kathi Hamilton  
Acting City Clerk

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James H. Robinson  
City Manager

**RESOLUTION NO. 06-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
PROVIDING FOR APPOINTMENTS TO THE OFFICE OF CITY COUNCIL  
OF THE TOWN OF ATHERTON THAT WERE TO BE ELECTED ON  
TUESDAY, NOVEMBER 7, 2006**

**WHEREAS**, pursuant to Section 10229 of the Elections Code of the State of California, as of the close of the nomination period on August 11, 2006, there are not more candidates than offices to be elected and that Section 10229 of the Elections Code allows one of the following courses of action to be taken by the City Council:

1. Appoint to the office the person who has been nominated.
2. Appoint to the office any eligible voter if no one has been nominated
3. Hold the election if either no one or only one person has been nominated.

**WHEREAS**, a notice was posted on August 11, 2006, pursuant to law.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the Town of Atherton does resolve, declare, determine and order as follows:

SECTION 1. That pursuant to Section 10229 of the Elections Code of the State of California, the following action is being taken:

The following persons are being appointed to the office of City Council to which they were nominated:

Alan B. Carlson  
Jerry Carlson  
Charles E. Marsala

SECTION 2. The election scheduled to be held on Tuesday, November 7, 2006, is now canceled.

SECTION 3. The persons appointed shall qualify and take office and serve exactly as if elected at a municipal election for the office of City Council.

SECTION 4. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 16<sup>th</sup> day of August, 2006, by the following vote:*

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

\_\_\_\_\_  
Charles E. Marsala, Mayor  
TOWN OF ATHERTON

ATTEST:

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

*/s/ Marc G. Hynes* \_\_\_\_\_  
Marc G. Hynes, City Attorney

**RESOLUTION NO. 06-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
PROVIDING THAT THE TOWN OF ATHERTON GENERAL MUNICIPAL  
ELECTION FOR TUESDAY, NOVEMBER 7, 2006  
WILL BE HELD AS SCHEDULED**

**WHEREAS**, pursuant to Section 10229 of the Elections Code of the State of California, as of the close of the nomination period on August 11, 2006, there are not more candidates than offices to be elected and that Section 10229 of the Elections Code allows one of the following courses of action to be taken by the City Council:

1. Appoint to the office the person who has been nominated.
2. Appoint to the office any eligible voter if no one has been nominated
3. Hold the election if either no one or only one person has been nominated.

**WHEREAS**, a notice was posted on August 11, 2006, pursuant to law.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the Town of Atherton does resolve, declare, determine and order as follows:

SECTION 1. That pursuant to Section 10229 of the Elections Code of the State of California, the following action is being taken:

The General Municipal Election scheduled to be held on Tuesday, November 7, 2006 will be held as scheduled.

SECTION 2. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 16<sup>th</sup> day of August, 2006, by the following vote:*

<i>AYES:</i>	<i>COUNCILMEMBERS:</i>
<i>NOES:</i>	<i>COUNCILMEMBERS:</i>
<i>ABSENT:</i>	<i>COUNCILMEMBERS:</i>
<i>ABSTAIN:</i>	<i>COUNCILMEMBERS:</i>

Charles E. Marsala, Mayor  
TOWN OF ATHERTON

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

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