



## Item No. 17 Town of Atherton

### **CITY COUNCIL STAFF REPORT – REGULAR AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
GEORGE RODERICKS, CITY MANAGER**

**FROM: WILLIAM B. CONNERS, CITY ATTORNEY**

**DATE: SEPTEMBER 21, 2016**

**SUBJECT: APPROVAL OF 4<sup>th</sup> AMENDMENT TO CITY MANAGER'S AGREEMENT**

### **RECOMMENDATION**

Approve 4<sup>th</sup> amendment to City Manager's Agreement.

### **BACKGROUND**

Every March, the City Council conducts a one-year evaluation of the City Manager's past performance. Following the appraisal, the Council directs the Mayor and Vice Mayor to meet with the City Manager to discuss the results of the performance appraisal and discuss any proposed revisions to the Manager's Employment Agreement. That occurred, and the Mayor and Vice Mayor shared recommended revisions to the Agreement with the remainder of the City Council in closed session.

Recommended revisions to the Agreement include the same percentage change granted the unrepresented employees July 1, 2016 approved by the City Council. The salary will be adjusted again on October 1, 2016 by an additional 0.5% pursuant to that resolution of approval. This will be articulated in the annual salary resolution adopted by the City Council.

In addition to the salary adjustment, there are several other revisions:

- 1) A revision associated with how future salary adjustments are reflected – within the Town's annual salary resolution and budget process – to allow conformity to CalPERS requirements.
- 2) Creation of a future process to allow the Council to separately consider cost of living adjustments to the City Manager's base salary. By adding this clause, it allows the Council to hold the City Manager's base salary constant instead of automatic increases to the base when other management employees receive such adjustments.
- 3) Addition of a mid-term Performance Evaluation in January to allow for the possibility of a performance bonus up to a maximum of \$15,000.

## **POLICY CONSIDERATIONS**

There are no significant policy issues related to this item. However, consistent with new State law, SB 1436, the Council must orally recite a summary of my salary and benefits.

For ease of record, that recitation is as follows, and must be read orally:

*“With this 4<sup>th</sup> Amendment to the Employment Agreement, after 4 years of service to the Town and with the additional 0.5% to be received on October 1, 2016, the City Manager will receive \$209,725 per year, a \$400 per month auto allowance (\$4,800 per year), a \$3,000 per year technology benefit allowance (forfeited if not used), and the potential for a \$15,000 annual performance bonus. The City Manager receives retirement, health, and leave benefits consistent with all other management staff. The City Manager pays the employee share of retirement – 7% of pay. Total annual pay, excluding benefits, to the City Manager is \$214,525. Total annual cost, with benefits, including assumed full receipt of the technology allowance and the current CalPERS employer pension rate (9.2%) is \$249,840. This amount does not include the potential non-pensionable annual performance bonus or the accrual of 2-weeks of vacation per year.”*

## **FISCAL IMPACT**

As noted above.

## **PUBLIC NOTICE**

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

## **ATTACHMENTS**

- City Manager’s Employment Agreement with Amendments 1 through 3.
- 4<sup>th</sup> Amendment to Agreement

## Attachment 1

EMPLOYMENT AGREEMENT—CITY MANAGER  
TOWN OF ATHERTON

This Agreement ("Agreement") is entered into on or about 19 Oct, 2012, by and between the TOWN OF ATHERTON, a municipal corporation ("Town") and GEORGE RODERICKS ("Manager").

1. EMPLOYMENT.

City, by its City Council, hereby employs Manager to serve as Atherton City Manager and Manager hereby accepts such employment.

Such employment shall be as an at-will employee and Manager serves at the pleasure of the City Council in accordance with Government Code section 36506.

2. TERM/TERMINATION/SEVERANCE.

A. The term of this Agreement shall begin on 19 Oct, 2012, and shall remain in effect indefinitely from year-to-year thereafter unless either party gives written notice of intention to terminate.

B. Either party may terminate this Agreement at any time by providing at least sixty (60) days written notice to the other party.

C. In the event Manager is terminated other than for cause by Town during such time as Manager is willing and able to perform the duties of City Manager under this Agreement, then in that event Town agrees to pay Manager a lump sum severance payment equal to six months' base salary then in effect, unless Manager has been employed for a period of more than one year in which case the six months shall be increased by an additional month for each full year of employment beyond one up to a maximum of nine months' base salary. Such severance payment shall be made only upon Manager executing a full and final release of any and all claims, actual or potential, which Manager has or could have against Town.

As used herein, the term "cause" shall mean one or more of the following:

- (a) Conviction of or plea of no contest to a felony;
- (b) Use or abuse of non-prescription drugs or alcohol that materially affects the performance of Manager's duties;
- (c) Repeated and protracted unexcused absences from the Manager's office and duties;
- (d) Conviction of any criminal offense involving moral turpitude, including entering a plea of no contest or guilty to any such offense or any lesser included offense;
- (e) Demonstrated insubordinate behavior;
- (f) Any intentional or grossly negligent action or inaction that materially and substantially impedes or disrupts the operations of the Town or its departments, is detrimental to employee or public safety, or violates properly established rules or procedures of the Town

causing, or likely having a potential to cause, a material and substantial adverse effect on Town's interests; or

(g) Demonstrated acts of material dishonesty, willful breach of duties, engaging in unlawful discrimination or harassment of employees or others on Town premises.

3. DUTIES.

Town employs Manager to provide any and all work necessary to act as City Manager as set forth in Atherton Municipal Code chapter 2.12 as that chapter may be amended from time to time. Manager shall be the chief executive officer of the Town and be responsible to the City Council for the proper administration of all affairs of the Town. Manager shall endeavor to meet with all management employees and staff, and attend a meeting of each board, commission, or committee, within a reasonable time after hire, and shall meet as appropriate with the City Council to outline goals and objectives.

4. COMPENSATION.

Town shall pay a base salary of One Hundred-sixty Thousand dollars (\$160,000.00) per year, payable in prorated monthly installments, payable at the same intervals and in the same manner as regular employees. Manager shall also receive a temporary monthly living and travel allowance of Two Thousand Five Hundred dollars (\$2,500.00) from the date of hire until June 30, 2013 or until Manager permanently relocates to the Atherton area, whichever comes first. This allowance shall not be reportable as compensation to CalPERS. Manager shall also receive a cellular telephone allowance of up to One Hundred Dollars (\$100.00) per month based on actual cost.

5. EVALUATION.

Manager shall receive an initial six-month performance evaluation from the City Council, and an annual evaluation thereafter. Copies of such performance evaluations shall be placed in Manager's personnel file. The format and method for such evaluations shall be as agreed to by the parties, but should at a minimum discuss goals and expectations of each and review performance of the Manager since the last evaluation.

6. VACATION AND LEAVE.

Town agrees that Manager shall accrue the following leaves comparable to vacation and leaves granted other management employees:

A. Manager shall receive an initial bank of forty (40) hours of vacation which shall accrue at the rate of 80 hours per year for the first two years of service, 120 hours per year for years of service three to seven, and 160 hours per year for service in excess of seven years.

B. Sick leave shall accrue in accordance with the amount of sick leave accruing for other management employees, currently eight hours per month with a cap of 960 hours. There shall be no payout for hours in excess of the cap, including no payout upon separation.

C. Administrative leave of forty (40) hours per fiscal year.

D. Manager shall be entitled to time off for all holidays recognized by Town as such.

7. LIFE INSURANCE.

Town shall provide Manager with a term life and accidental death and dismemberment insurance policy consistent with plans offered other management employees.

8. HOUSING.

In order for Manager to provide oversight and active supervision of Holbrook-Palmer Park, Manager shall at no cost be allowed to occupy the Town-owned house at 160 Watkins Avenue, Atherton, California. Manager will exercise diligence in assuring the security of the park and will take steps to remedy any special problems and/or difficulties experienced with the park's operation as quickly as possible. Manager shall vacate the house within 14 days of the termination of his employment.

Except as otherwise provided herein, Town shall pay all costs for non-routine maintenance, repairs, and upkeep including replacement of major built-in appliances, property or use taxes, fees, and assessments. Manager shall be responsible for all utilities used by Manager while occupying this house (including, but not limited to metered water usage within the house, electricity, gas, cable television service, internet service, and telephone service as such utilities may be connected to the house and used by Manager) and routine maintenance. Town shall provide gardening services.

9. OTHER BENEFITS.

During the term of this Agreement, Town shall provide Manager with health insurance, dental insurance, vision insurance, long-term disability insurance, and retirement benefits (CalPERS) consistent with plans and benefits offered other management employees. It is intended that unless inconsistent with this Agreement, Manager shall receive any and all other benefits provided other non-police managers including any modification, suspension, or discontinuance of any or all of such benefits in the Management Resolution that impact all of the management employees pursuant to revisions of the Management Resolution. Manager shall not receive any post-employment health care benefits.

10. PROFESSIONAL MEETINGS.

Manager is expected to represent the Town at appropriate professional local and state meetings and conferences approved by the City Council, at no cost to Manager.

11. REIMBURSEMENT OF EXPENSES.

Manager shall comply with Town's Purchasing Ordinance with respect to legitimate expenses incurred in the course and scope of his employment, and Town shall pay for or reimburse as appropriate actual and necessary expenses incurred by Manager while acting in the course and scope of his employment and as approved by the City Council. Expenses regarding membership in professional organizations, civic organizations, and service clubs shall be permitted as an expense if authorized in advance by the City Council.

12. INDEMNIFICATION.

Town agrees to indemnify, defend, and hold harmless Manager against any and all claims and legal actions against Manager pursuant to Government Code § 825.

13. ENTIRE AGREEMENT.

The parties agree that this Agreement contains all of the agreements of the parties and cannot be amended or modified except by written amendment or agreement. This Agreement may be amended at any time by the mutual consent of the parties by written amendment.

14. NOTICES.

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

- A. Town: Mayor, 91 Ashfield Road, Atherton, CA 94027.
- B. Manager: George Rodericks, 91 Ashfield Road, Atherton, CA 94027.

15. INTERPRETATION OF AGREEMENT AND FORUM.

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

16. SEVERABILITY.

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

17. SURVIVAL.

Many sections of this Agreement are intended by their terms to survive termination of Manager, including but not limited to sections regarding separation or termination of Manager. Such sections shall survive termination of employment and termination of this Agreement.

18. CONFLICT OF INTEREST.

Manager shall not engage in any business or transaction, or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independent judgment or action in the performance of official duties. Manager shall also be subject to conflict of interest provisions of the Political Reform Act of 1974 and Government Code section 1090 as applicable to Manager's employment.

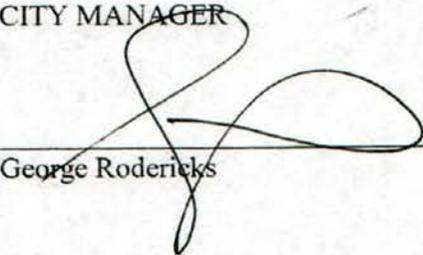
19. EXECUTION.

In witness whereof, the parties have executed this Agreement as of the day and year first above written.

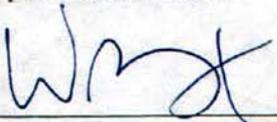
TOWN OF ATHERTON

  
\_\_\_\_\_  
William Widmer, Mayor

CITY MANAGER

  
\_\_\_\_\_  
George Rodericks

Approved as to form:

  
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William B. Connors, City Attorney

1<sup>st</sup> AMENDMENT TO EMPLOYMENT AGREEMENT—CITY MANAGER

TOWN OF ATHERTON

The Employment Agreement (“Agreement”) entered into by and between the TOWN OF ATHERTON, a municipal corporation (“Town”) and GEORGE RODERICKS (“Manager”) on or about October 19, 2012, is amended effective July 1, 2013, as set forth following:

1. The text of Paragraph 4 of Agreement (COMPENSATION) is amended to read as follows:

“Town shall pay a base salary of One Hundred Ninety Thousand Dollars (\$190,000.00) per year, payable in prorated monthly installments, payable at the same intervals and in the same manner as regular employees, as may be amended from time-to-time to reflect percentage increases granted to all other management employees.”

2. Paragraph 5, EVALUATION, is amended by replacing the first sentence of the paragraph as follows:

“Manager has received an initial satisfactory six-month performance evaluation from the City Council, and shall hereafter receive annual evaluations.”

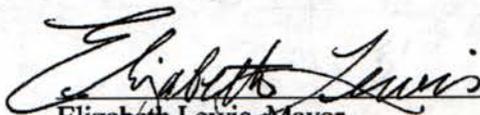
3. Paragraph 8, HOUSING, is deleted in its entirety.

4. Paragraphs 9 through 19 are renumbered as 8 through 18 to reflect the deleted former paragraph 8.

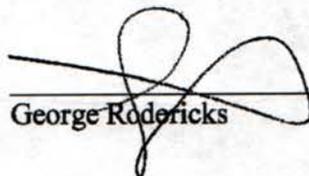
5. All remaining provisions of the Agreement shall remain in full force and effect.

In witness whereof, the parties have executed this 1<sup>st</sup> Amendment to the Agreement as of May 22, 2013.

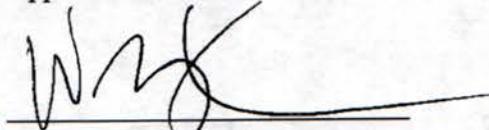
TOWN OF ATHERTON

  
Elizabeth Lewis, Mayor

CITY MANAGER

  
George Rodericks

Approved as to form:

  
William B. Connors, City Attorney

2nd AMENDMENT TO EMPLOYMENT AGREEMENT—CITY MANAGER

TOWN OF ATHERTON

The Employment Agreement (“Agreement”) entered into by and between the TOWN OF ATHERTON, a municipal corporation (“Town”) and GEORGE RODERICKS (“Manager”) on or about October 19, 2012, and amended effective July 1, 2013, is further amended effective July 1, 2014, as set forth following:

1. The amount of base salary set forth in Paragraph 4 of Agreement (COMPENSATION) is amended to read as follows:

“Town shall pay a base salary of One Hundred Ninety-nine Thousand Six Hundred Dollars (\$199,600.00) per year, payable in prorated monthly installments, payable at the same intervals and in the same manner as regular employees, as may be amended from time-to-time to reflect percentage increases granted to all other management employees.”

2. Paragraph 4 is further amended by adding a new sentence as follows:

“Manager shall, commencing July 1, 2014, receive a monthly automobile allowance of Two Hundred Fifty Dollars (\$250.00) and an annual allowance for personal technology purchases in the sum of Three Thousand Dollars (\$3,000.00).”

3. All remaining provisions of the Agreement shall remain in full force and effect.

In witness whereof, the parties have executed this 2nd Amendment to the Agreement as of June 30, 2014.

TOWN OF ATHERTON

Cary Weist, Mayor

CITY MANAGER

George Rodericks

Approved as to form:

  
William B. Connors, City Attorney

3rd AMENDMENT TO EMPLOYMENT AGREEMENT—CITY MANAGER

TOWN OF ATHERTON

The Employment Agreement (“Agreement”) entered into by and between the TOWN OF ATHERTON, a municipal corporation (“Town”) and GEORGE RODERICKS (“Manager”) on or about October 19, 2012, and amended on July 1, 2013 and July 1, 2014, is further amended effective July 1, 2015, as set forth following:

1. The amount of base salary set forth in Paragraph 4 of Agreement (COMPENSATION) is amended to read as follows:

“Town shall pay a base salary of Two Hundred Three Thousand Five Hundred ninety-two Dollars (\$203,592.00) per year, payable in prorated monthly installments, payable at the same intervals and in the same manner as regular employees, as may be amended from time-to-time to reflect percentage increases granted to all other management employees.”

2. Paragraph 4 is further amended by adding a new sentence as follows:

“Manager shall, commencing July 1, 2015, receive a monthly automobile allowance of Four Hundred Dollars (\$400.00) and an annual allowance for personal technology purchases in the sum of Three Thousand Dollars (\$3,000.00); however, any part of this allowance not expended during the fiscal year shall be forfeited.”

3. All remaining provisions of the Agreement shall remain in full force and effect.

In witness whereof, the parties have executed this 3rd Amendment to the Agreement as of November 17 2015.

TOWN OF ATHERTON

\_\_\_\_\_  
Rick DeGolia, Mayor

CITY MANAGER

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George Rodericks

Approved as to form:

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William B. Connors, City Attorney

4<sup>TH</sup> AMENDMENT TO EMPLOYMENT AGREEMENT – CITY MANAGER

## TOWN OF ATHERTON

The Employment Agreement (“Agreement”) entered into by and between the TOWN OF ATHERTON, a municipal corporation (“Town”) and GEORGE RODERICKS (“City Manager”) on or about October 19, 2012, and amended on July 1, 2013, July 1, 2014, and July 1, 2015, is further amended effective July 1, 2016, as set forth following:

1. The amount of base salary set forth in Paragraph 4 of Agreement (COMPENSATION) and subsequent amendments thereto is amended to read as follows:

“Town shall pay a base salary of Two Hundred Eight Thousand Six Hundred Eighty-Two Dollars (\$208,682.00) per year, payable in prorated monthly installments, at the same intervals and in the same manner as regular employees; such base salary may be amended from time to time to reflect percentage increases granted to all other management employees or amended pursuant to an annual salary resolution approved by the City Council as part of the budget.”

“Whenever a cost of living adjustment or other non-merit based salary increase is provided to other management employees, the City Council shall consider whether it is reasonable and appropriate to grant a similar increase to the City Manager’s Base Salary. This decision may be affirmatively made at the time the City Council adopts the annual salary resolution and shall be determined by separate resolution or incorporation of the appropriate City Manager’s Base Salary within the annual salary resolution.”

Manager shall, commencing July 1, 2015, receive a monthly automobile allowance of Four Hundred Dollars (\$400.00) and an annual allowance for personal technology purchases in the sum of Three Thousand Dollars (\$3,000.00); however, any part of this allowance not expended during the fiscal year shall be forfeited.”

2. The consideration of a performance bonus shall be added to Paragraph 5 of Agreement (EVALUATION) and shall be amended to add the following subparagraph, which shall expressly not be considered as extra compensation or extra allowance after service by the City Manager has already been rendered in violation of California Constitution art. XI, section 10(A).

“Following the completion of a future mid-term Performance Evaluation in January of each year, the City Council may, in its sole discretion grant the City Manager a Performance Bonus in any lump sum amount from Zero Dollars (\$0) to a maximum of Fifteen Thousand Dollars (\$15,000.00) to reflect positive performance in accordance with goals established by the City Council in his latest annual review.”

3. All remaining provisions of the Agreement as previously amended in the 1<sup>st</sup> through 3<sup>rd</sup> Amendments to the initial Agreement shall remain in full force and effect.

In witness whereof, the parties have executed this 4<sup>th</sup> Amendment to the Agreement as of September 21, 2016.

TOWN OF ATHERTON

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Elizabeth Lewis, Mayor

CITY MANAGER

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George Rodericks

Approved as to form:

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William B. Conners, City Attorney