



**AGENDA**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**AUGUST 20, 2008**  
**5:30 P.M.**  
**Meeting Room**  
**Town Administrative Offices**  
91 Ashfield Road  
Atherton, California  
**Special Meeting**

**5:30 P.M.     ROLL CALL             Dobbie, J. Carlson, Marsala, Janz, McKeithen**

**5:32 P.M.     PUBLIC COMMENTS**

**5:35 P.M.     CLOSED SESSION**

**A.     CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9 John P. Johns vs. the Town of Atherton, Superior Court of California, San Mateo County, CIV 473834**

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

**Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:**

**Three (3) potential cases**

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

**Agency Negotiators: Jerry Gruber, City Manager;  
Glenn Berkheimer, I.E.D.A.**

**Employee Organization: Miscellaneous - Teamsters Local Union 856**

**Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.**

**Employee Organization: Atherton Police Officers Association (APOA)**

**Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.**

**Employee Organization: Management Employees**

**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 20, 2008**

**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**      Dobbie, J. Carlson, Marsala, Janz, McKeithen
- 7:05 P.M.    3.    **PRESENTATIONS**
- 7:05 P.M.    4.    **PUBLIC COMMENTS** (only for items which are not on the agenda –  
limit of three minutes per person)
- 7:20 P.M.    5.    **REPORT OUT OF CLOSED SESSION**
- 7:30 P.M.    6.    **CITY MANAGER’S REPORT**
- 7:40 P.M.    7.    **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** (Directed  
by Resolution No. 99-6)

**THE ATHERTON DAMES – Marylue Timpson**

- 7:55 P.M.    **CONSENT CALENDAR** (Items 8-28)

*(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 CITY COUNCIL MEETING, THE SPECIAL CLOSED SESSION MEETING, AND REGULAR CITY COUNCIL MEETING OF JULY 18, 2008**

9. **APPROVAL OF BILLS AND CLAIMS FOR JULY IN THE AMOUNT OF \$1,215,264**

10. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR JULY 2008 AND ADOPTION OF A RESOLUTION MAKING A TECHNICAL CORRECTION TO THE 2008-09 BUDGET**

**Recommendation: Receive the Monthly Financial Report for July 2008. Adopt a Resolution increasing the Budget for FY 2008-09.**

11. **ACCEPTANCE OF THE QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2008**

12. **APPROVAL OF THE FIRST AMENDMENT TO THE JOINT POWERS AGREEMENT WITH THE HOUSING ENDOWMENT AND REGIONAL TRUST (HEART) OF SAN MATEO COUNTY**

**Recommendation: Staff recommends that Council authorize the Mayor to execute the attached first Amendment to the Joint Exercise of Powers Agreement (JPA) for the Housing Endowment and Regional Trust of San Mateo County (HEART) to continue the Town's participation in the San Mateo County Housing Foundation.**

13. **APPROVE A PURCHASE ORDER TO SILICON CONSTELLATIONS FOR THE IN-STREET LIGHTED CROSSWALK AT SACRED HEART, PROJECT NO. 08-013**

**Recommendation: Approve a purchase order for the In-Street Lighted Crosswalk at Sacred Heart Project, project number 08-013 to Silicon Constellations, the low bidder on informal bids, for \$20,884.34, with a 10% construction contingency of \$2,088.43, for a total authorization of \$22,972.77; and to authorize the City Manger to sign the contract on behalf of the Town.**

14. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH WILSEY HAM FOR FINAL DESIGN SERVICES FOR THE FLETCHER-RIDGEVIEW PROJECT**

**Recommendation: Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Wilsey Ham to provide final design services for the Fletcher Ridgeview Project in an amount not exceed \$70,244, plus a 10% contingency, for a total authorization of \$77,268.40.**

15. **APPROVE A PURCHASE ORDER WITH KIMLEY HORN AND ASSOCIATES, INC., FOR SPEED SURVEY SERVICES FOR 12 STREETS, IN AN AMOUNT NOT TO EXCEED \$20,000**

**Recommendation:** Accept the proposal and authorize the City Manager to sign a Purchase Order with Kimley-Horn and Associates, Inc., to provide Speed Survey services for 12 streets in an amount not exceed \$20,000.

16. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH BKF ENGINEERS FOR CREEK STABILIZATION DESIGN SERVICES FOR THE UPPER ATHERTON CHANNEL REPAIR PHASE 2 PROJECT**

**Recommendation:** Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with BKF Engineers to provide creek stabilization design services for the Upper Atherton Channel Repair Phase 2 Project in an amount not to exceed \$151,653, plus a 10% contingency, for a total authorization of \$166,818.30.

17. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH BIGGS CARDOSA ASSOCIATES, INC., FOR STRUCTURAL AND CIVIL ENGINEERING DESIGN SERVICES FOR THE HOLBROOK-PALMER PARK TRAIL AND BRIDGE PROJECT**

**Recommendation:** Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Biggs Cardosa Associates, Inc., (BCA) to provide Structural and Civil Engineering Design services for the Holbrook-Palmer Park Trails and Bridge Project in an amount not exceed \$33,500, plus a 10% contingency, for a total authorization of \$36,850.

18. **APPROVE AN AMENDMENT TO REVISE THE PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC., FOR MUNICIPAL CIVIL ENGINEERING SERVICES**

**Recommendation:** Approve an amendment to revise the Professional Services Agreement (PSA) with CSG Consultants, Inc.

19. **APPROVAL OF LEASE AGREEMENT TO WILLIAMS SCOTSMAN, INC., FOR THE POLICE DEPARTMENT TRAILER REPLACEMENT PROJECT, PROJECT NO. 08-016**

**Recommendation:** Approve a lease for the Police Department Trailer Replacement, Project No. 08-016, to Williams Scotsman, the low bidder for \$37,616, with a demolition cost of \$4,856, for a total authorization of \$42,472; and to authorize the City Manager to sign the contract on behalf of the Town.

**20. REVIEW OF PROPOSAL FROM PMC FOR EXPANDED SCOPE OF SERVICES AND BUDGET FOR TOWN OF ATHERTON ZONING CODE UPDATE**

**Recommendation:** Staff recommends that the City Council authorize PMC's expanded scope of services and budget for the zoning code update.

**21. APPROVAL OF REVISED CITY COUNCIL COMMITTEE ASSIGNMENTS**

**Recommendation:** Approve revised Council Committee assignments recommended by Mayor Janz.

**22. APPROVAL OF STATE TELECOMMUNICATIONS CONTRACT**

**Recommendation:** Authorize the City Manager to sign State contracts with AT&T.

**23. RECOMMENDATIONS FROM THE SCREENING COMMITTEE REGARDING THE APPOINTMENT PROCESS FOR COMMITTEES/COMMISSIONS IN CONJUNCTION WITH RESOLUTION NO. 08-24**

**Recommendation:** Approve the recommendations of the Screening Committee on a process to fill those terms that have expired or have been extended and/or recruit for new members on Committees/Commissions.

**24. APPROVAL OF 9-1-1 UPGRADE FROM ZETRON COMMUNICATIONS**

**Recommendation:** The City Council approves the contract with Zetron Inc., for the 9-1-1 emergency phone system upgrade.

**25. APPROVAL OF THE PUBLIC WORKS DEPARTMENT PURCHASE OF A BACKHOE TRACTOR FOR FY 2008-09**

**Recommendation:** Authorize the purchase of one John Deere Backhoe for a cost of \$97,742.68. The Town will "piggy back" on the State of California's Multiple Award Schedule (CMAS) 4-08-23-0022A with Pape Machinery in lieu of receiving multiple bids.

**26. APPROVAL OF AN EXTENSION OF THE CONTRACT FOR THE INDEPENDENT AUDITOR**

**Recommendation: Approve extension of contract with independent audit firm Caporicci & Larson with the scope to include updating the Appropriations Limit review.**

**PUBLIC HEARINGS** (Item 29)

- 8:00 P.M. 27. **APPEAL OF THE PUBLIC WORKS DIRECTOR'S DECISION REGARDING 99 DEBELL DRIVE DRIVEWAY ENCROACHMENT PERMIT TO MADRONE ROAD** *(Continued from the City Council meeting of July 16, 2008.)*

**Recommendation:** Staff recommends that the City Council conduct the public hearing, deny the appeal, and uphold the decision of Staff for the reasons outlined in this report.

**REGULAR AGENDA** (Items 30-34)

- 8:30 P.M. 28. **REQUEST TO INITIATE REZONING OF PARKER AVENUE FROM R1-A TO R1-B ZONING DISTRICT**

*At the request of the applicant, this item has been continued to the City Council meeting of September 17, 2008.*

- 8:30 P.M. 29. **AMENDMENTS TO CITY COUNCIL RULES OF PROCEDURE/TOWN CODE OF CONDUCT REGARDING STATEMENTS REPRESENTING TOWN POLICY** *(Continued from the City Council meeting of July 16, 2008.)*

**Recommendation:** Consider proposed revisions to paragraph 11 of "miscellaneous rules" of City Council Rules of Procedure. Alternatively, or in addition, consider revisions to the Town of Atherton Code of Conduct and Procedures.

- 9:00 P.M. 30. **DISCUSS SETTING ASIDE BUILDING FUNDS FOR TOWN CENTER** *(Continued from the City Council meeting of July 16, 2008.)*

**Recommendation:** Discuss setting aside General Fund (101) and Facilities Construction Fund (406) balances for a new Town Center.

- 9:30 P.M. 31. **APPROVAL OF MEMBERS TO THE BLUE RIBBON TASK FORCE REGARDING A NEW TOWN CENTER**

**Recommendation:** Staff recommends that Council consider approval of a Blue Ribbon Task Force to design a new or remodeled Town facility.

- 9:45 P.M. 32. **CITY MANAGER'S WORK PLAN FOR IMPLEMENTATION OF GOALS AND OBJECTIVES**

**Recommendation:** Approve work plan for goals and objectives from May 2, 2008, Council/Staff workshop.

10:15 P.M. 33. **APPROVAL OF THE SCREENING COMMITTEE  
RECOMMENDATION FOR AN APPOINTMENT TO THE ARTS  
COMMITTEE**

**Recommendation: Accept and approve the recommendation of the City Council Screening Committee to appoint a member to the Arts Committee.**

10:20 P.M. 34. **COUNCIL REPORTS**

10:30 P.M. 35. **PUBLIC COMMENTS**

10:40 P.M. 36. **ADJOURN**

**PLEASE NOTE:**

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

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**DRAFT MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**JULY 16, 2008**  
**5:30 P.M.**  
**Meeting Room**  
**Town Administrative Offices**  
91 Ashfield Road  
Atherton, California  
**Special Meeting**

The meeting was called to order by Mayor Janz at 5:30 p.m.

**ROLL CALL**

**PRESENT:** Jim Dobbie  
Jerry Carlson  
Charles E. Marsala  
James R. Janz  
Kathy McKeithen

**PUBLIC COMMENTS**

There were no public comments.

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

**John P. Johns vs. the Town of Atherton, Superior Court of California, San  
Mateo County, CIV 473834**

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

- B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION – pursuant to  
Government Code Section 54957(b)(1)**

**Title: City Manager**

**Title: City Attorney**

**RECONVENE TO OPEN SESSION**

**Report of action taken.**

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

**Regarding Item A, Existing Litigation, John P. Johns vs. the Town of Atherton, Superior Court of California, San Mateo County, CIV 473834, there was no reportable action taken; Existing Litigation, Lamb vs. Town of Atherton, et al. Superior Court of California, San Mateo County, CIV 461630, the case was settled, the suit was dismissed, and copies of the settlement were available from the City Clerk.**

**Regarding Item B.**

**ADJOURN**

**The meeting was adjourned by Mayor Janz at 6:40 p.m.**

**Respectfully submitted,**

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**James R. Janz**  
**Mayor**

**Minutes Prepared by:**  
**Kathi Hamilton**



**DRAFT MINUTES**  
**Town of Atherton**  
**CITY COUNCIL**  
**ATHERTON CHANNEL DRAINAGE DISTRICT**  
**JULY 16, 2008**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

Mayor Janz called the meeting to order at 7:06 p.m.

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

**PRESENT**    **Jim Dobbie**  
                 **Jerry Carlson**  
                 **Charles E. Marsala**  
                 **James R. Janz**  
                 **Kathy McKeithen**

City Manager Jerry Gruber and City Attorney Marc Hynes were also present.

Mayor Janz welcomed Council Member Jim Dobbie to the Council.

Council Member Dobbie said he took very seriously the commitments he made during his campaign. He would do his best, working with the rest of the Council, to make decisions in the best interests of all Athertonians. Even though growth was inevitable, growth needed to be controlled in such a way that the character of the Town was not destroyed. He won support in every precinct, which he believed proved his message of unity was well accepted. He gave a heartfelt and humble thank you to everyone.

3. **PRESENTATIONS**

**LAFCO REPORT – Municipal Services Review – Martha Poyatos**

City Manager Jerry Gruber introduced Martha Poyatos, Executive Director of LAFCO. Ms. Poyatos gave a PowerPoint presentation regarding the draft Municipal Service Review for the Town of Atherton. LAFCO was required by State law to complete a Municipal Service and Sphere of Influence Review for all cities and special districts in the County. Council was to provide comments, followed by a public hearing held at the Commission, and consideration of determinations would be adopted. She responded to Council questions regarding the various components. Ms.

**Poyatos recommended that Council engage in formal discussions with Redwood City regarding possible annexation of unincorporated areas into the Town. There was a method to amend the Sphere of Influence, as well as the time period could also be extended with a request to the Commission to consider the Municipal Services Review separately and continue the Sphere of Influence to a later date. Mayor Janz said the Council would like to have the discussion of the Sphere of Influence extended. He would discuss with staff whether the Municipal Services Review needed to be extended as well.**

#### **4. PUBLIC COMMENTS**

**Steve Nachtsheim, Atherton, spoke regarding an evacuation plan for Walsh Road and west Atherton. Meetings were held with Cal Water, the Circus Club, the Menlo Park Fire Protection District (MPFPD), and the Town of Atherton. The MPFPD Board passed two motions at its meeting the previous evening regarding the development of a rational emergency evacuation plan. He urged Council to give a high priority to solving the problem.**

**Berna Davis, Atherton, said a Crisis Preparedness Overall Committee for the Walsh Road area included an Evacuation Committee. She noted there was only one point of egress for west Atherton, i.e., Walsh Road. The MPFPD was asked to take the lead, and residents wanted a process immediately, i.e., a schedule/timeline to finalize an evacuation plan. She urged Council to pass a motion in support of the MPFPD motions. She distributed a preliminary evacuation plan; however, an MOU was needed with the various parties. She asked Council to schedule a special meeting to discuss the evacuation plan.**

**Caroline Bererstock, Atherton, recognized that Council supported disaster preparedness including appropriations for equipment. Residents were asking for support of the citizen's Disaster Preparedness Committee. The Area 16 neighborhood was different and had different needs, i.e., an evacuation plan.**

**Bob Jenkins, Atherton, summarized the status of the citizens' Disaster Preparedness Committee. Currently, the Town was divided into 16 neighborhoods, 7 were organized and functioning. The Committee was also working closely with 7 school groups, 175 persons were CERT qualified, 45 persons were licensed radio operators, 70 were medical professionals, and others were specialists working with pets. Over 500 families' profiles were in the database, secured to financial institution standards. A budget was approved for \$73,000; however, only \$6,000 had been expended. Neighborhoods 15 and 16 were seriously concerned with high fire potential.**

**Suzanne Beekley, Atherton, concurred with the previous speakers. Her personal concern was that few escape routes existed. She lived directly below the dam and was also concerned if there was a dam failure during a natural disaster. She requested any guidance or assistance the Town could provide.**

**Marylue Timpson, Atherton, was the chairperson for the Holbrook-Palmer Park and Atherton Dames' fundraiser scheduled for September 7. She asked Council for its support and help from 2 to 6:30 p.m. A silent auction and live auction would be held, and State Senator Joe Simitian was the auctioneer.**

**Virginia Levik, co-chair of the disaster preparation for the Walsh Road area, said motivation in the neighborhood had taken two years to get going; presently, there were eight districts, six captains, and a number of people involved who wanted to help. Neighbors have walked the properties, the woods, the meadows, the yards, etc. They needed support, training for volunteers, and Council's support for giving the MPFPD the lead.**

**Susan Finocchio spoke regarding being trapped on Walsh Road recently in a traffic jam. If there had been a fire, it would have been disastrous. An evacuation plan was urgent to the residents.**

**Mayor Janz was very appreciative of all the efforts taken by the Walsh Road area residents. He and the City Manager took a flight over the area. The City Manager met with MPFPD and the Police Chief. There was not a lack of support on behalf of staff and Council.**

**Council Member McKeithen was aware that Walsh Road was a unique area, not only environmentally but also with the restriction of the road. The Atherton Channel was undercutting the road, which was part of her impetus for forming the citizens group. She said a motion was not possible that evening because the item was not on the agenda. Further, she was told early on by the MPFPD that Council Members did not have a role. MPFPD would work with the citizens group and the Police Department, but it was clear MPFPD was the lead. The Council and staff had been involved in keeping the residents informed.**

**Council Member Marsala was familiar with the neighborhood. He thought more input from the residents was needed. He thought the Council's Emergency Preparedness Committee should be reinstated because there were other issues of concern for the Town such as the dam or mountain lions. Negotiations should be initiated with the Circus Club, Cal Water, and the Town of Woodside to learn what other options were available.**

**Vice Mayor Carlson was very concerned about the fire danger in the foothills. He was also concerned about canceling the August meeting if Council needed to take any action. He asked the status of the MOU with the MPFPD.**

**City Attorney Marc Hynes understood that counsel for the MPFPD was preparing an MOU; however, MPFPD counsel had changed recently. He was prepared to review whatever came forward. He had been presented with an MOU between the Town and the Circus Club, which was a small piece.**

**Council Member Dobbie said the MPFPD had resources and funds and should take the leadership role. Council would support whatever plans were brought forth.**

**City Manager Jerry Gruber clarified the original MOU between the Town and MPFPD regarded CERTs graduates and who was responsible for what; however, there had been little progress. The MOU related to an evacuation plan was in circulation and addressed the relationship between the Town and Cal Water and needed to be finalized. There were some liability issues. Police Chief Brennan’s main responsibility was to focus on the issue. There was frustration because everyone was not working together. An operation meeting was scheduled with the Circus Club, MPFPD, the Town, and residents. The MOU between the Circus Club, the MPFPD, and the Town was for the Circus Club to be used for a staging area for multi-jurisdictional fire agencies. Lieutenant Glenn Nielsen would serve as the Interim Police Chief to ensure the process continued. The Police Department was responsible for directing traffic; however, the MPFPD had responsibility to coordinate and initiate to develop the evacuation plan.**

**Mayor Janz did not believe there was a contradiction, i.e., the MPFPD could take the lead in finalizing the evacuation plan as long as it incorporated input from the Police Department.**

**City Attorney Marc Hynes suggested Council could add a motion to the agenda by a 4/5 vote of the Council since the matter arose after the agenda was posted the previous Friday.**

**At the urging of residents who live in west Atherton, Vice Mayor Carlson made the following motion to add to the evening’s agenda a motion in support of two motions made the previous evening by the Menlo Park Fire Protection District Board:**

**MOTION – to add to the agenda, after the Public Comment section, a motion in support of two motions made by the Menlo Park Fire Protection District regarding an evacuation plan for the area west of the Alameda de las Pulgas**

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

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

**John Ruggeiro, Atherton, spoke regarding the possible annexation of unincorporated areas into the Town and was concerned residents had not been informed.**

**Bob Jenkins, Atherton, suggested the Town consider developing MOUs with some of the more advanced schools, such as Menlo School, Menlo College and Sacred Heart. They had complete systems, supplies, plans, highly trained people, and radio operators and were very well prepared.**

**Virginia Ruggeiro, Atherton, suggested Council Members should each have a cell phone, supplied by Town, so they could be reached at any time.**

**Mayor Janz took up the emergency motion to endorse actions taken by the MPFPD.**

**MOTION- to endorse Menlo Park Fire Protection District motions as follows:**

**1) The Fire District will provide assistance and leadership for disaster and evacuation planning and preparedness for the area of Atherton west of the Alameda (Walsh Road, Neighborhood 16; Fletcher/Ridgeview, Neighborhood 15); and 2) The fire District will**

offer to Atherton and to Menlo Park to become the lead agency (versus the police) for evacuation planning and implementation for the high threat zone between Alpine Road and Woodside road west of the Alameda; Further the MPFPD, as lead agency, is to take into account the Police Department's comments and assistance

M/S J.Carlson/McKeithen

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

**5. REPORT OUT OF CLOSED SESSION**

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

**John P. Johns vs. the Town of Atherton, Superior Court of California, San Mateo County, CIV 473834**

No reportable action was taken.

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

The case was settled, the court case was dismissed, and copies of the settlement would be available from the City Clerk's Office.

**B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION – pursuant to Government Code Section 54957(b)(1)**

Title: City Manager

Title: City Attorney

No reportable action was taken.

City Attorney Marc Hynes noted the need to add an emergency item to the agenda regarding the delegation of authority to the City Manager to make determinations under Section 21152(C) of the Government Code.

**MOTION – to add, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON DELEGATING AUTHORITY TO THE CITY MANAGER TO MAKE DETERMINATIONS UNDER SECTION 21152(C) OF THE GOVERNMENT CODE,” to be placed on the Regular Agenda for adoption.**

M/S Janz/.McKeithen

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

**6. CITY MANAGER'S REPORT**

City Manager Jerry Gruber introduced David Huynh, new Assistant Engineer in the Public Works Department. City Manager Gruber reported on several meetings he attended during the month. Regarding recruitments, interviews for Finance Director were held the previous day, interviews for Police Chief would take place next week followed by Assistant City Manager interviews. He and the Interim Finance Officer

continued to evaluate alternative funding resources. The SBWMA was in the process of finalizing the Request for Proposals for the Town's refuse carrier. The director would make a presentation at Council's September meeting.

Public Works Supervisor Steve Tyler responded to Vice Mayor Carlson that the bridge to Holbrook-Palmer Park needed to tie into the quad gates at Watkins Avenue.

Council Member Dobbie wanted a spreadsheet listing all projects with dates, intermediate checkpoints, priorities, etc., in order to ascertain when projects would be completed.

Council Member McKeithen suggested the August meeting could be dedicated to Park issues, namely maintenance, use of the Park, discontinuing weddings, and a new capital project.

**7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

None.

**CONSENT CALENDAR (Items 8-21)**

Item Nos. 13 and 14 were removed and placed at the beginning of the Regular Agenda for discussion.

Council Member McKeithen removed Item No. 19 for discussion.

Council Member Marsala removed Item No. 20 for discussion.

Vice Mayor Carlson commented on Item Nos. 9 and 10.

**MOTION – to approve the Consent Calendar as presented with the exception of Item Nos. 13, 14, 19, and 20, which were removed and placed on the Regular Agenda for discussion.**

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

**8. APPROVED MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION MEETING AND SPECIAL CITY COUNCIL MEETING OF JUNE 11, 2008; THE SPECIAL CITY COUNCIL CLOSES SESSION MEETING AND REGULAR CITY COUNCIL MEETING OF JUNE 18, 2008**

**9. APPROVED BILLS AND CLAIMS FOR JUNE IN THE AMOUNT OF \$896,006**

**10. ACCEPTED MONTHLY FINANCIAL REPORT FOR JUNE 2008**

**11. APPROVED FY 2008-09 INVESTMENT POLICY**

Approved the Investment Policy.

**12. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE AND AWARD STREET RECONSTRUCTION PHASE 4 PROJECT, PROJECT NO. 08-001**

**Recommendation: Approve the plans and specifications and authorize advertisement for bids for the Street Reconstruction Phase 4 Project, Project No. 08-001; Authorize the City Manager to award the contract for the Street Reconstruction Phase 4 Project, Project No. 08-001, for an amount not to exceed the Engineer's Estimate of \$424,489.20.**

- ~~13. AWARD OF CONTRACT FOR ALAMEDA DE LAS PULGAS CAPE SEAL PROJECT, PROJECT NO. 07-012 (Removed and placed on the Regular Agenda for discussion.)~~

~~**Recommendation: Award the contract for the Alameda de las Pulgas Cape Seal Project, Project No. 07-012, to the low bidder on the July 11, 2008, bids and authorize the City Manager to sign the contract on behalf of the Town.**~~

- ~~14. AWARD OF CONTRACT FOR 2008 PARK PATH MICRO-SURFACING PROJECT, PROJECT NO. 08-003 (Removed and placed on the Regular Agenda for discussion.)~~

~~**Recommendation: Award the contract for the 2008 Park Path Micro-Surfacing Project, Project No. 08-003, to the low bidder on the July 11, 2008, bids and authorize the City Manager to sign the contract on behalf of the Town.**~~

15. **AUTHORIZATION TO AWARD THE STEVICK DRIVE RECONSTRUCTION PROJECT, PROJECT NO. 08-002**

**Authorized the City Manager to award the contract for the Stevick Drive Reconstruction Project, Project No. 08-002, for an amount not to exceed the Engineer's Estimate of \$546,815.29 based on the August 7, 2008 bids opening.**

16. **APPROVAL OF THE POLICE DEPARTMENT PURCHASE OF A POLICE VEHICLE FOR FY 2008-09**

**Authorized the Town to "piggy back" on the City and County of San Francisco's bid in order to purchase one marked police vehicle for the fiscal 2008-2009 budget cycle for a total cost not to exceed \$24,228.61.**

17. **SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON REPEALING CHAPTERS 2.37 AND 2.40 OF THE ATHERTON MUNICIPAL CODE PERTAINING TO THE GENERAL PLAN COMMITTEE AND THE PARK AND RECREATION COMMISSION**

**Adopted Ordinance 576 repealing Chapters 2.37 and 2.40 of the Atherton Municipal Code pertaining to the General Plan Committee and Park and Recreation Commission.**

**18. FIFTH AMENDMENT TO AGREEMENT FOR MARC HYNES**

**Approved Fifth Amendment to City Attorney's Agreement between Town of Atherton and Marc G. Hynes of Atkinson-Farasyn, LLP.**

~~**19. AMENDMENTS TO CITY COUNCIL RULES OF PROCEDURE/TOWN CODE OF CONDUCT REGARDING STATEMENTS REPRESENTING TOWN POLICY**~~

~~**Recommendation: Consider proposed revisions to paragraph 11 of "miscellaneous rules" of City Council Rules of Procedure. Alternatively, or in addition, consider revisions to the Town of Atherton Code of Conduct and Procedures. (Removed and placed on the Regular Agenda for discussion.)**~~

~~**20. ADOPTION OF SECONDARY GOALS AND OBJECTIVES FROM THE MAY 2, 2008, COUNCIL WORKSHOP**~~

~~**Recommendation: Approve lower-priority goals and objectives based on availability of staff time, resources, and a philosophy of a "pay-as-you-go" budget for fiscal year 2008/2009. (Removed and placed on the Regular Agenda for discussion.)**~~

**PUBLIC HEARINGS (Items 21-22)**

**21. APPEAL OF THE PUBLIC WORKS DIRECTOR'S DECISION REGARDING 99 DEBELL DRIVE DRIVEWAY ENCROACHMENT PERMIT TO MADRONE ROAD**

**City Attorney Marc Hynes said because he worked with the staff regarding the appeal in the first instance, he recused himself. Attorney Jean Savaree would advise Council on the item.**

**Council Member McKeithen recused herself as she was a resident of the area.**

**Attorney Jean Savaree said what was before Council that evening was an appeal of a decision by the Public Works Director granting an encroachment permit at 99 DeBell Drive. Other residents appealed that decision asking Council to deny the encroachment permit. On page 2 of the staff report, appropriate code sections were listed as well as an explanation of the findings made by the Public Works Director in granting the permit.**

**Mayor Janz opened the public hearing.**

**Leigh White, appellant, Madrone Road, said the remodel began on 99 DeBell Drive approximately one year ago, and Oak Grove and Madrone were completely screened at that time. She met the owners of 99 DeBell Drive in March and discovered they did not intend to screen the property being accessed on Madrone. She and her husband met with the City Attorney, the Public Works Director, and the City Manager to discuss the encroachment permit and were told there was nothing to be done before the Town issued the encroachment permit; however, the course of action would be to appeal it once it was issued. The City Attorney also advised that the residents could**

apply for a zoning overlay to protect Madrone in the future. She believed if the five houses on DeBell Drive all decided to access their properties from Madrone, the street would become an alley, which changed the character of the street and eroded property values. If the property rights were being given to someone else that eroded others' property rights, the system was designed for the Council to step in and make a decision. She discussed the property owners' letter which included six objections: 1) the property was part of the original Ringwood subdivision; 2) the appeal was untimely; 3) the owners' had a vested right to complete the garage project, and the Town was estopped from revoking the encroachment permit; 4) accessing the garage from Oak Grove or DeBell was not feasible; 5) allowing the project to be completed would not mean the Town would have to grant similar access to all properties between DeBell and Madrone; and 6) The Town adequately considered setback and other zoning regulations. Ms. White believed that 1) the property was part of the Maple Manor subdivision; 2) the appeal was of the encroachment permit, not the building permit and therefore timely; 3) the garage was completed, access was the issue; 4) the garage could be accessed by using the existing driveway access from DeBell; 5) the precedent would be set and denying access to others would be difficult; and 6) the setbacks were fine so long as the encroachment was according to the purpose stated in the Municipal Code, which was to preserve the rural nature of the Town. Code Section 17.64.060 gave the Council authority to act within 60 days. Additionally, a landscape screening plan was required to reduce the visual impact of structures on neighborhoods. The General Plan's intent was to preserve the rural character.

David White, appellant, said the value of maintaining the scenic and rural quality of Atherton was well established. There was no question that a service yard and open parking area on Madrone degraded the quality of the street. Madrone was a 14-foot wide private road and was not adequate for heavier traffic. He believed the encroachment permit did away with the 60-foot setback requirement and the landscape screening requirement. The street became an alleyway. He urged Council to grant the appeal.

Thom Bryant, property owner of 99 DeBell Drive, said both he and the Whites started building their dream houses approximately at the same time. Atherton's zoning ordinance was very clear and his project was in complete compliance. The setbacks were not 10 feet but were 30 feet from the property boundary which was 20 feet from the center of the road. The garage was set back 50 feet. The Menlo Park Fire Protection District approved the plans. Additionally, the landscape screening requirements would be met and plans were underway. Trying to reengineer the driveway would be a significant undertaking and would be completely different from what was approved by the Town. Significant trees would have to be removed and an adequate turning radius would not be possible to make a U-turn. He noted the home the Whites were building also changed the character of the neighborhood. Extensive landscaping along Madrone had been removed. The City Council had the authority to change zoning laws to effect any "go-forward" rights of the other properties. By the fact that his property was part of the Ringwood Park subdivision in 1907, it had the same access rights to Madrone as the White's parcel. Mr. Bryant stated he went through the entire permit process, obtained the proper approvals, complied completely, the driveway was identified on the plans, and to deny the encroachment permit at the present time would be unjust. He urged Council to deny the appeal.

**Mike Gaulke, Madrone Road, was a resident at the end of Madrone for 21 years. The attraction when he bought his property was the rural nature of the area. That rural nature would be fundamentally changed if Council allowed the road to become an alley. The encroachment permit was an opportunity for him and his neighbors to look at up to five properties' rear-ends. He urged Council to grant the appeal.**

**Wayne Cappa, Oak Grove Avenue, said his residence was at the corner of Oak Grove and Madrone. He supported granting the appeal. He believed the owners of 99 DeBell benefited by approving a driveway on Madrone which, in effect gave, them two accesses while the people on Madrone and he were being burdened by the driveway, as it was not complementary to the street scene.**

**Michael Demeter, Toyon Road, said his street was also a private road with public access. The property owners paid for all maintenance of the road just like the property owners on Madrone Road. The road was narrow, about 14 feet, and maintained by 3 or 4 property owners. For the past 63 years, access to 99 DeBell was on DeBell. By granting the encroachment permit, the Town was turning his neighbors' street into an alley.**

**John Beltramo, Madrone, said for more than 65 years, Madrone was a rural country road. Granting access from Madrone completely obliterated the nature of the road. He believed property values would be adversely affected. He urged Council to grant the appeal.**

**Jeff Beltramo, Madrone Road, said he lived on the road when it was a dirt, country road. The road was private with public access. The property owners on Madrone paid for the road to be paved and maintained. The encroachment permit would change the nature of the road. He wanted the permit to be revoked.**

**Kathy McKeithen, Maple Leaf Way, spoke as a private citizen. What was at issue was to what extent one had a right to develop one's property to adversely affect that of one's neighbor or neighborhood. If the driveway was allowed to come off of Madrone, a precedent would be set which could potentially create an alley-like situation. She believed allowing the driveway off of Madrone could radically change the nature of the neighborhood and diminish property values. A review of whether it was in accordance with the General Plan was missing. She supported granting the appeal.**

**Mayor Janz called for a recess at 9:53 p.m. The meeting was reconvened at 9:58 p.m.**

**Carol Smith, Oak Grove Ave., said the situation was unfortunate. Madrone was a small, idyllic road where there was a common belief it was a private road. Both parties were being damaged. She believed staff should have brought it to the attention of the community before the plans were approved. She recommended that Council support the appeal. The existing garage could be accessed from the existing driveway on DeBell.**

**Thom Bryant confirmed his project had the same screening requirements as any other project and plans had been reviewed by the Town. The driveway was the minimum**

**“throat-width” required by the Town. The parking area in front of the garage was larger and on his property, which would be screened. The screening for the garbage bins had not been completed because the paving was not yet completed. He was sympathetic to the fact that many people viewed the driveway as a private driveway; however, it had been a public street since 1907.**

**Leigh White believed her project had increased the property values of her neighbors. Access to her property was very similar to that of 99 DeBell if access were from DeBell. There were three areas of the law that were important to the issue: 1) the building code; 2) the encroachment code; and 3) the landscape screening code. There were absolute rules that the applicants had followed, and the garage was in compliance in its location on the property. The objection was the interaction of the three areas of law and flexibility was built into the law. The zoning codes were designed to access properties, including accessory structures and garages, from the front, set back 60 to 100 feet. Access from Madrone was contrary to what was in the General Plan and Council had the authority to revoke a permit.**

**Mayor Janz closed the public hearing.**

**Council Member Dobbie thought staff should have looked at the access before issuing a permit for the garage. He believed access off of Madrone Road was not consistent with the General Plan.**

**Council Member Marsala believed the situation was difficult for everyone. If the property owner was denied access from Madrone, the garage might need to be torn down. However, changing the nature of the street would be a loss to the neighbors. He asked Attorney Savaree what would happen if Council estopped the project.**

**Attorney Jean Savaree said the cases cited by the property owners were distinguishable in that the projects were finished but a certificate of occupancy was not issued. In the current instance, whether the encroachment permit was issued or not they would have the use of the garage. There was conflicting evidence of what that meant.**

**Attorney Jean Savaree responded to Mayor Janz that Section 12.06.060 of the Municipal Code stated if Council found the two findings in the affirmative, an encroachment permit shall be issued: 1) the encroachment would not interfere with any Town facility or use thereof; and 2) the encroachment would not be detrimental to the best interests of the Town. Council needed to determine whether the findings were in the affirmative or not: if both were affirmed, the encroachment permit would stand; if one or both did not stand, the encroachment permit would be revoked.**

**Council Member Dobbie said the decision was difficult; however, he was in favor of granting the appeal. Every other house on DeBell was accessed from the front. Although, it might not be as convenient, access would be possible from DeBell. He believed a precedent would be set if access was allowed from Madrone. He believed the rural character of the street would be totally changed; therefore, it was detrimental to the best interests of the Town.**

Vice Mayor Carlson understood how staff reached its conclusions. He looked at it from a 1,000 foot perspective. The Town had its unique mini communities. He was in favor of maintaining the quality of life of those mini communities and granting the appeal.

Council Member Marsala said Council had 60 days to make a decision and he wanted more time to consider the appeal. He thought a Closed Session might be appropriate to secure more legal advice to protect the Town and believed legal action was a possibility.

Attorney Jean Savaree said the open questions that evening were: 1) whether or not access from DeBell was actually possible; 2) whether there would be significant changes necessary to the garage if access was from DeBell; and 3) whether access off of Madrone would devalue property.

Council Member Dobbie did not believe much more information would be forthcoming and did not want the issue postponed any further.

Mayor Janz wanted the applicant to address the issue of access from DeBell, e.g., to see what trees, if any, would be destroyed and what impact it would have on the garage. He proposed those questions to the applicant and wanted him to return to the next meeting.

Town Planner Neal Martin suggested that staff also talk to the applicant regarding what other types of landscape screening were available to satisfy the rural character of Madrone.

**MOTION** – to continue the item to the City Council meeting of August 20 to allow staff to work with the applicant and the neighbors to find other possible solutions

M/S Janz/Marsala Ayes: 3 Noes: 1 (Dobbie) Absent: 0 Abstain:1 (McKeithen)

## 22. **ADOPTION OF A RESOLUTION FOR PLANNING FEE INCREASE**

Interim Finance Officer Bill Yeomans presented the staff report. He said Deputy Town Planner Lisa Costa Sanders researched planning fees in six similar jurisdictions. In an attempt to have full cost recovery, staff recommended planning fee increases and an ability to collect a deposit. He clarified that some of the proposed deposits were incorrect in the resolution; however, the staff report listed the correct fee. The table showed current fees and proposed fees, and proposed deposits. There were direct fees in addition, so billing rates for the Town's actual cost plus a 15% overhead charge were also included. If the fees were adopted, the estimated annual recovery was \$40 to \$50,000, which had been included in the budget.

Vice Mayor Carlson noted the Town had not raised fees in eight years. As part of the budgeting process, a review of fees should automatically take place. A discussion ensued regarding the fee structures in surrounding jurisdictions. Vice Mayor Carlson was not satisfied that the fees were appropriate. There was opportunity to review fees

for a greater cost recovery. Cost accounting needed to be done in a more detailed manner on a routine basis.

Council Member Dobbie questioned the fee for School Master Plans.

Town Planner Neal Martin explained there was no current fee, so the fee was the institution of a new fee at \$250. The amount of staff time was minimal and was a matter of presenting the Master Plan Update at the Planning Commission.

Council Member Dobbie thought \$400 was barely enough to cover the Deputy Town Planner's time at a Planning Commission meeting.

Council Member McKeithen was concerned as well. There was no way to tell what the scope of an amendment might be. She thought the fee should be \$750 and should include a proposed deposit. Everything should be reviewed on a yearly basis. She suggested changing the wording for deposits from "Proposed Deposit" to "Initial Proposed Deposit" to allow the Building Department the ability to charge an additional deposit based upon the size of the project.

Council Marsala thought some fees were higher than other jurisdictions such as a tree removal permit or lot line adjustment.

Town Planner Neal Martin said the \$1500 fee was for a heritage tree removal permit which required the Town Arborist's time, the planning staff's time to prepare for the Planning Commission meeting, etc. Previously, the Building Official was a civil engineer and could do lot-line adjustments. Currently, an outside engineer was needed to plan check lot-line adjustments.

Mayor Janz opened the public hearing. No one came forward to speak and the public hearing was closed.

Interim Finance Officer Bill Yeomans clarified the proposed changes as discussed and Mayor Janz made the following motion:

**MOTION – to adopt Resolution No. 08-28, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RELATING TO CHARGES FOR PLANNING SERVICES" with the following changes: 1) change the title "Proposed Deposit" to "Initial Proposed Deposit"; 2) raise the Initial Proposed Deposit for Conditional Use Permit, Variance, Heritage Trees Removal Permit, and Excessive Height from \$1,000 to \$2,000; 3) raise the Initial Proposed Deposit for Appeal from \$500 to \$1,000; 4) reduce to zero the Current Fee for School Master Plan, raise the Proposed Fee to \$750, and institute an Initial Proposed Deposit of \$1,000; Further, add the word "the" in the first "Whereas" before the word "cost," add the word "the" after the third "Whereas," change Heritage Tree to Heritage Trees, change the word "planned" to "planning services" in the "Now Therefore" clause, and eliminate the words "with \$500 deposit" after the "first hour free, bill hourly thereafter" under Staff Time**

**M/S Janz/McKeithen**

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

**REGULAR AGENDA (Items 24-25)**

- 13. AWARD OF CONTRACT FOR ALAMEDA DE LAS PULGAS CAPE SEAL PROJECT, PROJECT NO. 07-012 (Removed from the Consent Calendar and placed here for discussion.)**

**Public Works Superintendent Steve Tyler presented the staff report. He said two bids were received. Graham Contractors was the low bidder with \$185,095.61 including a 10% contingency. Although the bid was a few thousand over the engineer's estimate, Public Works Superintendent Tyler recommended approval.**

**Council Member Dobbie queried whether, in general, the engineer's estimate was made public. He did not believe it was a good idea.**

**Public Works Superintendent Tyler said as a general rule, staff did make the engineer's estimate public; however, with the item under discussion, it had not been made public.**

**City Attorney Marc Hynes said he would check Public Works law to determine whether making the engineer's estimate public was a requirement.**

**MOTION – to award the contract to Graham Contractors for \$168,268.74 based on the July 11, 2008, bids, with a 10% contingency of \$16,826.87, for a total of \$185,095.61**

**M/S McKeithen/Janz**

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

- 14. AWARD OF CONTRACT FOR 2008 PARK PATH MICRO-SURFACING PROJECT, PROJECT NO. 08-003 (Removed from the Consent Calendar and placed here for discussion.)**

**City Manager Jerry Gruber said only one bid was received which was considerably over the engineer's estimate. Staff recommended rejecting the bid and wanted to reassess the project. Council concurred.**

- 23. APPROVAL OF PROCESS FOR PREPARATION OF THE 2007-14 HOUSING ELEMENT UPDATE INCLUDING APPROVAL OF THE NEAL MARTIN & ASSOCIATES SCOPE OF WORK AND APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH GOLDFARB & LIPMAN FOR LEGAL ASSISTANCE (Continued from the City Council meeting of June 18, 2008)**

**City Manager Jerry Gruber gave a brief staff report. Additional information was provided from the last meeting. A detailed chronological history was included to inform the Council on the reasons it was required, as well as a breakdown of the Neal Martin & Associates fees.**

**Council Member McKeithen said with regard to Goldfarb & Lipman, she had the following concerns: 1) the law firm had done a fair amount of litigation in the Housing Element area with regard to appeals and issues; and 2) the law firm had not developed**



- 19. AMENDMENTS TO CITY COUNCIL RULES OF PROCEDURE/TOWN CODE OF CONDUCT REGARDING STATEMENTS REPRESENTING TOWN POLICY (Removed from the Consent Calendar and placed here for discussion.)**

The item was continued to the City Council meeting of August 20, 2008.

- 20. ADOPTION OF SECONDARY GOALS AND OBJECTIVES FROM THE MAY 2, 2008, COUNCIL WORKSHOP (Removed from the Consent Calendar and placed here for discussion.)**

The item was continued to a City Council Workshop, date to be determined.

- 25. DISCUSSION AND POSSIBLE CANCELLATION OF AUGUST MEETING**

Mayor Janz believed there was a need to have an August meeting. He asked his colleagues whether a workshop or regular meeting or both would be appropriate. In addition to Item Nos. 19 and 20, he believed the items mentioned for the Finance Committee to discuss should be addressed as part of a workshop for the entire Council.

Council Member Marsala was in favor of a regular meeting because he believed workshops did not allow for residents' participation.

Council Member Dobbie pointed out there was also a need for a regular meeting with regard to the appeal of 99 DeBell Drive.

Council Member McKeithen also noted there were issues related to Holbrook-Palmer Park. People involved with Park and Recreation had strong feelings about the issue, e.g., park irrigation (adding it to capital improvements), the maintenance issue, and the wedding events issue.

Council Member Dobbie also stated there was a need for a complete financial analysis of the Park to ascertain how much money was being lost and where it was going.

Vice Mayor Carlson suggested having a joint meeting with the Park and Recreation Commission.

Council Member McKeithen had already requested a financial analysis of how many weddings were planned and when, i.e., how far out on the schedule in case weddings were terminated. Additionally, she asked what the general cost was for Park maintenance with the Jensen contract, with one full-time and one part-time staff, etc.

Mayor Janz said he would work with the City Manager on the setup of the agenda for the August meeting and an agenda for a joint meeting with the Park and Recreation Commission.

Vice Mayor Carlson suggested an agenda item for the August meeting regarding the City Manager's work plan for goals and objectives, as well as the City Attorney's goals, staff goals, etc.

Mayor Janz said there was still a need for a workshop to discuss Item No. 20.

Acting City Clerk Kathi Hamilton clarified that Item No. 19 was continued to the August City Council meeting, Item No. 20 was continued to a workshop in September, and a Joint workshop of the Council and the Park and Recreation Commission was to be scheduled in August.

## 26. COUNCIL REPORTS

- Council Member McKeithen attended a meeting of the San Francisco Airport Roundtable where the Woodside corridor was discussed. Pacific oceanic flights came in either over Point Reyes or the Woodside corridor. With the new aircraft, they would be turning right over Atherton and Menlo Park. However, the new aircraft should not generate more noise. She attended several meetings regarding Holbrook-Palmer Park. She was looking into the Safe Routes to School issue regarding Encinal. A preliminary meeting to discuss the Felton Gables gate alternative with the co-presidents was scheduled for the next evening. She ascertained that Las Lomas and La Entrada had a school bus service. After raising the issue with the Peninsula Congestion Relief Alliance, the Alliance would look into possibly providing a shuttle program for schools.
- Mayor Janz said tomorrow evening at the ABAG meeting, two items would be discussed: 1) The executive from Building Green would discuss a certification program for green development; and 2) a discussion on the adoption of priority conservation areas. He attended a public hearing for the adoption of project level EIR/EIS for the connection of high-speed rail from the Central Valley. The staff-recommended route was chosen coming through the Pacheco Pass through San Jose and up the Caltrain corridor. He and the mayor of Menlo Park both recommended looking at other routes and trenching it as much as possible. Nonetheless, the staff recommendation was adopted and it would be on the ballot in November.
- Council Member Marsala said the Environmental Programs Committee would hold a Town evening meeting on August 13 to seek input from residents on issues. He attended a solar hot water heater workshop in Palo Alto. Since heating water was one of the biggest consumers of energy for Atherton, solar hot water heaters could be an answer. At the Town Center meeting, a discussion was held regarding a potential for a bond election, perhaps \$400 per household per year to raise \$10 million. He asked the Joint Powers Board for the Library to agendize the library reserve funds and how they could be used. He was on the screening committee for the new executive director for the Library. He met with the Friends of the Library. He corrected an assumption that comments he made increased the expense of the Building Department audit by \$15,000. He said the actual cost was \$2,300.
- Vice Mayor Carlson said there was an ad hoc committee regarding Safe Routes to Schools chaired by Supervisor Richard Gordon. He suggested Council Member McKeithen attend the next meeting. He attended a Council of Cities function in Redwood City. Using public transportation was discussed with an emphasis on senior mobility. The Metropolitan Transportation Commission was suggesting diverting the \$91 million for the Dumbarton Rail project to the

**BART extension. The City of Menlo Park installed red light cameras on Valparaiso and El Camino and needed Atherton's approval.**

- **Council Member Dobbie attended a meeting regarding Safe Routes to School at Encinal School. With the augmentation in the lower grades, substantial traffic congestion would result. He wanted to know how many keys were issued to the Felton Gable residents and how many Felton Gable residents had keys to the tennis court. Public Works Superintendent Steve Tyler said the gate belonged to Felton Gable residents and they issued the keys. He could provide the information on the tennis court keys.**

**27. PUBLIC COMMENTS**

**There were no further public comments.**

**28. ADJOURN**

**Mayor Janz adjourned the meeting at 12:02 a.m.**

**Respectfully submitted,**

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**Kathi Hamilton  
Acting City Clerk**

**TOWN OF ATHERTON**  
**CLAIMS LIST**  
 July 2008

Payroll Checks	11672 – 11806	\$ 41,161
Electronic Transfers		374,851
A/P Checks	26573 – 26801	799,252
<b>TOTAL</b>		<b>\$1,215,264</b>

I, Jerome Gruber, City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 11672 - 11806 (payroll) and 26573 – 26801 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$1,215,264; are true and correct, and that there are sufficient funds for payment.

\_\_\_\_\_  
 Jerome Gruber  
 City Manager

The above claims, check numbers 11672 – 11806 (payroll) and 26573 - 26801 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$1,215,264; are true and correct, and are authorized for payment.

\_\_\_\_\_  
 James R. Janz  
 Mayor, Town of Atherton

**SOURCE OF FUNDS**

<b>101</b>	General Fund	\$598,159
<b>105</b>	Tennis	544
<b>201</b>	Special Parcel Tax	41,863
<b>202</b>	Transportation	24,845
<b>203</b>	Gas Tax	3,920
<b>210</b>	Road Construction Impact Fees	3,178
<b>211</b>	Park Grants	484
<b>213</b>	Library	981
<b>401</b>	General Capital Projects	7,591
<b>403</b>	Atherton Channel District	1,472
<b>610</b>	Vehicle Replacement	-
<b>611</b>	Computer Maint. & Replacement	8,446
<b>612</b>	Administrative Services	107,769
<b>715</b>	Evans Estate	-
<b>740</b>	Tree Committee	-
<b>TOTAL</b>		<b>\$799,252</b>



**Town of Atherton**

**CITY COUNCIL STAFF REPORT**

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

**FROM: BILL YEOMANS, INTERIM FINANCE OFFICER**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: MONTHLY FINANCIAL REPORT FOR JULY 2008 AND TECHNICAL  
CORRECTION OF FY 2008-2009 BUDGET**

**RECOMMENDATION:**

Receive the Monthly Financial Report for July 2008. Adopt the Resolution increasing the Budget for FY 2008-2009.

**INTRODUCTION:**

The attached schedules show revenues and expenditures for all funds as of July 31, 2008.

**HIGHLIGHTS:**

The adopted budget is posted to the 2008-09 Budget column of the Expenditure Summary report and has been posted to the books. In posting the budget, I found an error I made in posting the Capital Improvements (CIP) to the FY08-09 Budget Expenditure totals. The total projects in the Parcel Tax CIP are higher than the adopted Budget by \$350,000. To complete those projects, the budget will need to be increased by \$350,000.

A Resolution increasing the Parcel Tax Budget for FY2008-2009 is attached to correct the error along with a revised Budget Summary page.

Revenues in the General Fund for July are at \$431,895. Expenditures in the General Fund for July are \$499,899. The Liability Insurance deposit of \$87,342 for the year is paid to ABAG in July from the Administrative Services Fund (612); \$9,447 in annual Memberships and Dues are paid in July from the City Council Department.

**FISCAL IMPACT:**

The projected Parcel Tax Fund balance at June 30, 2009, is reduced from \$1,102,899 to \$752,899. Budget Summary and Expenditure Summary for FY 2008-09 are attached.

Prepared by:

Approved by:

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William Yeomans  
Interim Finance Officer

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Jerome Gruber  
City Manager

**Town of Atherton  
Budget Summary  
Fiscal Year 2008-09**

<b>Fund</b>	<b>Description</b>	<b>Beginning Fund Balance July 1, 2008 Projected</b>	<b>Revenues Projected</b>	<b>Transfers</b>	<b>Expenditures Projected</b>	<b>Ending Fund Balance June 30, 2009 Projected</b>
101	<b>General Fund</b>	\$ 9,145,527	\$ 10,392,522	\$ 250,000	\$ 10,637,886	\$ 9,150,163
	<b>Special Revenue Funds:</b>					
105	Tennis	29,770	8,000		7,176	30,594
201	Parcel Tax	1,264,899	1,858,000	(150,000)	2,220,000	752,899
202	Transportation	267,107	280,000		464,845	82,262
203	Street Improvement	143,249	139,000	(100,000)	175,000	7,249
208	Police on the Street	4,455	-		-	4,455
209	Law Enforcement	16,556	100,000		100,000	16,556
210	Road Impact Fees	771,309	1,265,033		2,020,500	15,842
211	Grants	440,486	247,300		646,300	41,486
213	Library Special Revenue	3,182,622	650,000		203,900	3,628,722
	Sub Total	\$ 6,120,454	\$ 4,547,333	\$ (250,000)	\$ 5,837,721	\$ 4,580,066
	<b>Capital Projects Funds:</b>					
401	Capital Improvement	102,900	27,200		96,200	33,900
402	Storm Drainage	43,761	21,000		20,049	44,712
403	Channel Drainage District	115,783	79,666		110,000	85,449
406	Building Facilities	71,147	20,000	-	-	91,147
	Sub Total	\$ 333,591	\$ 131,866	\$ -	\$ 226,249	\$ 255,208
	<b>Internal Service Funds:</b>					
610	Vehicle Replacement	361,251	59,620		125,000	295,871
611	Information Technology	71,198	109,641		112,751	68,088
612	Administrative Services	198,877	311,024		335,480	174,421
	Sub Total	631,326	480,285	-	573,231	538,380
	<b>Trust and Agency Funds:</b>					
715	Evans Creative Design	120,219	14,500		11,500	123,219
740	Tree Committee	41,619	4,600		1,900	44,319
	Sub Total	161,838	19,100		13,400	167,538
	<b>Grand Total</b>	<b>\$ 16,392,736</b>	<b>\$ 15,571,106</b>	<b>\$ -</b>	<b>\$ 17,288,487</b>	<b>\$ 14,691,355</b>

## Town of Atherton Expenditure Summary by Fund

Department	2005-06 Actual	2006-07 Actual	2007-08 Budget	2007-08 Projected	2008-09 Adopted
101 General Fund	\$ 7,747,162	\$ 9,127,763	\$ 10,408,681	\$ 10,745,981	\$ 10,637,886
<b>Special Revenue Funds:</b>					
105 Tennis	15,549	4,402	5,521	6,885	7,176
201 Parcel Tax	1,768,016	1,958,394	1,910,535	495,813	2,220,000
202 Transportation	60,871	56,800	444,500	54,845	464,845
203 Street Improvement (Gas Tax)	227,747	123,250	150,000	40,000	175,000
208 Police on the Street	-	-	-	-	-
209 Law Enforcement	100,000	94,349	100,000	95,251	100,000
210 Road Impact Fees	559,518	645,825	1,470,000	225,000	2,020,500
211 Grants	300	96,430	277,040	494,890	646,300
213 Library Special Revenue	352,081	42,046	78,326	42,301	203,900
Total	<u>3,084,082</u>	<u>3,021,496</u>	<u>4,435,922</u>	<u>1,454,985</u>	<u>5,837,721</u>
<b>Capital Project Funds:</b>					
401 Capital Improvement	55,256	-	-	333,557	96,200
402 Storm Drainage	-	2,563	21,394	19,642	20,049
403 Channel Drainage District	55,632	462,758	60,000	10,000	110,000
406 Facilities Construction	209,272	-	-	-	-
Total	<u>349,309</u>	<u>494,470</u>	<u>81,394</u>	<u>363,199</u>	<u>226,249</u>
<b>Internal Service Funds:</b>					
610 Vehicle Replacement	71,669	42,663	76,000	64,000	125,000
611 Information Technology	94,995	183,474	108,304	114,600	112,751
612 Administrative Services	267,477	306,510	351,533	290,118	335,480
614 Workers Compensation Insurance	-	-	-	-	-
Total	<u>434,141</u>	<u>532,647</u>	<u>535,837</u>	<u>468,718</u>	<u>573,231</u>
<b>Trust and Agency Funds:</b>					
715 Evans Creative Design	36,613	915	11,500	4,900	11,500
740 Tree Committee	-	2,159	2,200	2,100	1,900
Total	<u>36,613</u>	<u>3,074</u>	<u>13,700</u>	<u>7,000</u>	<u>13,400</u>
<b>Grand Total</b>	<b><u>\$ 11,651,307</u></b>	<b><u>\$ 13,179,450</u></b>	<b><u>\$ 15,475,534</u></b>	<b><u>\$ 13,039,883</u></b>	<b><u>\$ 17,288,487</u></b>

**RESOLUTION NO. 08-**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
TO MAKE A TECHNICAL CORRECTION TO THE FY 2008-2009 BUDGET**

**WHEREAS**, the City Council has adopted the FY 2008-09 Budget in June, 2008 and

**WHEREAS**, capital projects listed in the Parcel Tax Fund backup were not included in the Summary Totals.

**NOW, THEREFORE**, the City Council of the Town of Atherton hereby resolves as follows:

**Section 1. Budget Adjustment.** The Fiscal Year 2008-2009 budget shall be increased by \$350,000 in the Parcel Tax Fund.

**Section 2. Effective Date.** This Resolution shall be effective immediately upon adoption.

*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 \_\_\_\_\_ day of \_\_\_\_\_ 2008, by the following vote:*

<i>AYES:</i>	<i>Council Members:</i>
<i>NOES:</i>	<i>Council Members:</i>
<i>ABSENT:</i>	<i>Council Members:</i>
<i>ABSTAIN:</i>	<i>Council Members:</i>

\_\_\_\_\_  
James R. Janz, Mayor  
Town of Atherton

ATTEST:

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

APPROVED AS TO FORM:

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

**TOWN OF ATHERTON**  
**Revenue Summary**  
**for the Month Ended July 31, 2008**

<b>Fund</b>	<b>Revenue source</b>	<b>2008-09 Budget</b>	<b>Current Period Revenue</b>	<b>Year to date Revenues</b>	<b>% received</b>
	Property Tax	4,731,282	0	0	0%
	Sales & Use Tax	238,235	0	0	0%
	Other Taxes	1,461,300	14,993	14,993	1%
	Licenses & Permits	1,870,000	156,783	156,783	8%
	Fines & Forfeitures	41,000	2,686	2,686	7%
	Revenue from Other Agencies	782,706	57,540	57,540	7%
	Charges for Services	723,000	93,164	93,164	13%
	Investment & Rental Income	511,000	9,096	9,096	2%
	Other Revenues	34,000	1,375	1,375	4%
	<b>Total General Fund Revenues</b>	<b>10,392,523</b>	<b>335,637</b>	<b>335,637</b>	<b>3%</b>
	Interfund (Operating Transfers) In	250,000			
101	<b>General Fund Total</b>	<b>10,642,523</b>	<b>335,637</b>	<b>335,637</b>	<b>3%</b>
	<b>Special Revenue Funds</b>				
105	Tennis	8,000	150	150	2%
201	Special Parcel Tax	1,858,000	0	0	0%
202	Transportation	280,000	0	0	0%
203	Street Improvement (Gas Tax)	139,000	0	0	0%
208	Police on the Street Grant		0	0	
209	State COPS Grant	100,000	0	0	0%
210	Road Construction Impact Fees	1,265,033	96,108	96,108	8%
211	Grants Fund	247,300	0	0	0%
213	Library	650,000	0	0	0%
	<b>Total</b>	<b>4,547,333</b>	<b>96,258</b>	<b>96,258</b>	<b>2%</b>
	<b>Capital Project Funds:</b>				
401	Capital Improvement	27,200	0	0	0%
402	Storm Drainage	21,000	0	0	0%
403	Channel Drainage District	79,666	0	0	0%
406	Facilities Construction	4,000	0	0	0%
	<b>Total</b>	<b>131,866</b>	<b>0</b>	<b>0</b>	<b>0%</b>
	<b>Internal Service Funds:</b>				
610	Vehicle Replacement	59,620	0	0	0%
611	Information Technology	109,641	0	0	0%
612	Administrative Services	311,024	0	0	0%
614	Workers Compensation Insurance				
	<b>Total</b>	<b>480,285</b>	<b>0</b>	<b>0</b>	<b>0%</b>
	<b>Trust and Agency Funds:</b>				
715	Evans Creative Design	14,500	0	0	0%
740	Tree Committee	4,600	0	0	0%
	<b>Total</b>	<b>19,100</b>	<b>0</b>	<b>0</b>	<b>0%</b>
	<b>Total Revenues</b>	<b>15,821,107</b>	<b>431,895</b>	<b>431,895</b>	<b>3%</b>

**TOWN OF ATHERTON**  
**Expenditure Summary**  
for the Month Ended July 31, 2008

Fund	Description	2008-09 Budget	Current Period Expenditures	Year to date Expenditures	% spent
101	General Fund				
	11 City Council	37,277	9,657	9,657	26%
	12 City Manager	737,136	35,244	35,244	5%
	16 City Attorney	206,228	8,500	8,500	4%
	18 Finance	442,256	11,278	11,278	3%
	25 Building	1,542,253	48,910	48,910	3%
	40 Police	5,151,586	198,267	198,267	4%
	50 Public Works	2,521,151	66,969	66,969	3%
	Total General Fund Expenditures	<b>10,637,887</b>	<b>378,825</b>	<b>378,825</b>	<b>4%</b>
	Interfund (Operating Transfers) out	-			
101	<b>General Fund Total</b>	<b>10,637,887</b>	<b>378,825</b>	<b>378,825</b>	
	<b>Special Revenue Funds</b>				
105	Tennis	7,176	307	307	4%
201	Special Parcel Tax	1,870,000	-6,369	-6,369	0%
202	Transportation	464,845	24,845	24,845	5%
203	Street Improvement (Gas Tax)	175,000	3,920	3,920	2%
209	Law Enforcement (State COPS)	100,000	0	0	0%
210	Road Construction Impact Fees	2,020,500	0	0	0%
211	Grants	646,300	0	0	0%
213	Library	203,900	4,879	4,879	2%
	<b>Total</b>	<b>5,487,721</b>	<b>27,582</b>	<b>27,582</b>	<b>1%</b>
	<b>Capital Project Funds:</b>				
401	Capital Improvement	96,200	530	530	1%
402	Storm Drainage	20,049	0	0	0%
403	Channel Drainage District	110,000	0	0	0%
	<b>Total</b>	<b>226,249</b>	<b>530</b>	<b>530</b>	<b>0%</b>
	<b>Internal Service Funds:</b>				
610	Vehicle Replacement	125,000	0	0	0%
611	Information Technology	112,750	3,084	3,084	3%
612	Administrative Services	335,480	89,878	89,878	27%
	<b>Total</b>	<b>573,230</b>	<b>92,962</b>	<b>92,962</b>	<b>16%</b>
	<b>Trust and Agency Funds:</b>				
715	Evans Creative Design	11,500	0	0	0%
740	Tree Committee	1,900	0	0	0%
	<b>Total</b>	<b>13,400</b>	<b>0</b>	<b>0</b>	<b>0%</b>
	<b>Total Expenditures</b>	<b>16,938,487</b>	<b>499,899</b>	<b>499,899</b>	<b>3%</b>



**Town of Atherton**

**CITY COUNCIL STAFF REPORT**

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

**FROM: BILL YEOMANS, INTERIM FINANCE OFFICER**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: QUARTERLY INVESTMENT REPORT, JUNE 30, 2008**

**RECOMMENDATION:**

Receive the Quarterly Investment Report for April through June 2008.

**INTRODUCTION:**

The attached schedules show the Town balances in the two investment funds as of June 30, 2008.

**HIGHLIGHTS:**

Investment returns have diminished over the last year. For example, the State Pool (LAIF) has gone from 4.630% in January 2008 to 2.894% in June 2008.

These pools include US Treasuries, Agencies and Bank Deposits. With the attention to agencies Fannie Mae (FNMA) and Freddy Mac (FHLMC), you might be interested that LAIF has 30% of its funds in these agencies' debts, and the County Pool (SMCIP) has 22%. The recent actions to provide US government guarantees to pay this debt make these funds more secure in a shaky environment.

**FISCAL IMPACT:**

Interest return may be somewhat lower unless rates increase.

Prepared by:

Approved by:

---

William Yeomans  
Interim Finance Officer

---

Jerome Gruber  
City Manager

**OFFICE OF THE TREASURER**  
 SACRAMENTO

 Local Agency Investment Fund  
 PO Box 942809  
 Sacramento, CA 94209-0001  
 (916) 653-3001  
 www.treasurer.ca.gov/pmia-laif


June, 2008 Statement

TOWN OF ATHERTON

 Attn: FINANCE DIRECTOR  
 91 ASHFIELD ROAD  
 ATHERTON CA 94027
**Account Number :****Transactions**

<u>Effective Date</u>	<u>Transaction Date</u>	<u>Tran Type</u>	<u>Confirm Number</u>	<u>Authorized Caller</u>	<u>Amount</u>
06-25-2008	06-24-2008	RD	1175948	JEROME GRUBER	2,000,000.00

**Account Summary**

Total Deposit :	2,000,000.00	Beginning Balance :	5,252,821.57
Total Withdrawal :	0.00	Ending Balance :	7,252,821.57

 RECEIVED  
 TOWN OF ATHERTON  
 JUL 14 11:17 AM 2008



**Bill Lockyer, State Treasurer**  
**Inside the State Treasurer's Office**  
**Local Agency Investment Fund (LAIF)**



**PMIA Performance Report**

Date	Daily Yield	Quarter to Date Yield	Average Maturity (in days)
7/10/2008	2.79	2.78	223
7/11/2008	2.79	2.78	223
7/12/2008	2.79	2.78	223
7/13/2008	2.79	2.78	223
7/14/2008	2.79	2.78	221
7/15/2008	2.79	2.79	220
7/16/2008	2.80	2.79	223
7/17/2008	2.80	2.79	224
7/18/2008	2.78	2.79	227
7/19/2008	2.78	2.79	227
7/20/2008	2.78	2.79	227
7/21/2008	2.78	2.79	226
7/22/2008	2.78	2.79	225
7/23/2008	2.78	2.79	226

**LAIF Performance Report**

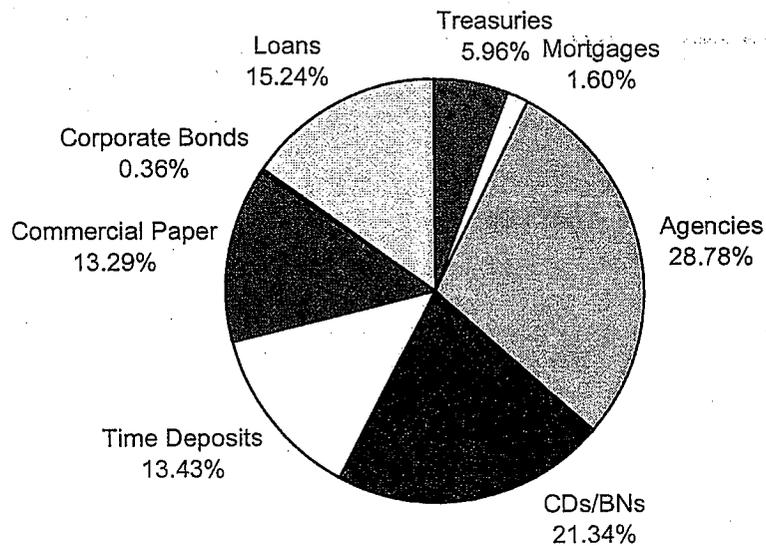
Quarter ending 6/30/2008

Apportionment Rate: 3.11%  
 Earnings Ratio: 0.00008483669448820  
 Fair Value Factor: 0.999950219

**PMIA Average Monthly Effective Yields**

June 2008 2.894%  
 May 2008 3.072%  
 April 2008 3.400%

**Pooled Money Investment Account**  
**Portfolio Composition**  
**\$70.0 Billion**  
**06/30/08**



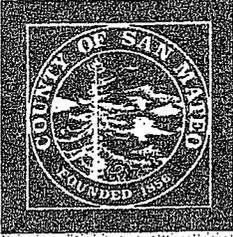
To: Town of Atherton  
 Attn: Paula Pierce, Asst. Finance Director  
 From: San Mateo County Treasurer's Office  
 Subj: SM County Investment Fund Summary  
 Date: June 30, 2008

Account #

Activity		Date	Debit	Credit	Balance
BEGINNING BALANCE		05/31/08	---	---	\$11,861,427.21
HOMEOWNER'S PROP. TAX RELIEF	1	06/09/08		4,804.65	\$11,866,231.86
WIRE OUT	1	06/19/08	2,000,000.00		\$9,866,231.86
SB813 SEC. SUPPL. TAX	1	06/23/08		3,501.69	\$9,869,733.55
CURRENT SECURED	1	06/30/08		229,036.79	\$10,098,770.34
1/2 CENT PUBLIC SAFETY	1	06/30/08		5,165.85	\$10,103,936.19
SB813 SEC. & UNSEC. TAX	1	06/30/08		13,965.33	\$10,117,901.52
1/2 CENT SALES TAX-MEASURE A	1	06/30/08		25,228.65	\$10,143,130.17
ENDING BALANCE		06/30/08	--	--	\$10,143,130.17
<b>INTEREST ALLOCATION-4thQ 07-08</b>		<b>07/01/08</b>		<b>\$87,364.62</b>	

Total Transactions	7
Total Debits	\$2,000,000.00
Total Credits	\$281,702.96

Office of the County Treasurer



LEE BUFFINGTON  
TAX COLLECTOR - TREASURER

**COUNTY OF SAN MATEO**

CHARLES M. TOVSTEIN  
ASSISTANT TREASURER

555 COUNTY CENTER • REDWOOD CITY • CALIFORNIA 94063 • PHONE (650) 363-4580 • FAX (650) 363-4944

DATE: July 21, 2008  
TO: San Mateo County Pool Participants  
FROM: Lee Buffington, Tax Collector-Treasurer  
SUBJECT: Monthly Investment Reports

Gross earnings for the month of June 30, 2008 were 3.35% and for the quarter ended June 30, 2008 was 3.29%. The current average maturity of the portfolio is 1.2 years with an average duration of 1.7 years. The portfolio continues to hold no derivative products.

San Mateo County Pool fulfills Government Code Section 53646, which states its ability to meet its expenditure requirements for the next six months.

I certify these reports are in compliance with the investment policy dated January 2008. If you have any questions regarding any of these reports, please call Charles Tovstein or myself at (650) 363 - 4580.

Lee Buffington  
Tax Collector-Treasurer

COUNTY OF SAN MATEO  
 ESTIMATED SUMMARY OF POOL EARNINGS  
 FOR THE 4TH QUARTER ENDED JUNE 30, 2008

	06/30/08 <u>Par Value</u>	<u>Gross Earnings</u>
<b><u>Fixed Income Investments</u></b>		
U S Treasury Notes	400,000,000	1,445,606
Federal Agencies	415,000,000	2,563,250
Corporate Notes	121,000,000	948,794
Floating Rate Securities	380,000,000	1,668,502
Asset Backed Securities	7,682,400	16,407
<b><u>Short Term Investments</u></b>		
U S Treasury Notes	50,000,000	363,493
Federal Agencies	240,000,000	869,964
Corporate Notes	128,620,000	1,336,991
Floating Rate Securities	270,000,000	550,660
Commercial Paper	415,000,000	300,328
Certificate of Deposit	375,000,000	1,478,859
Repurchase Agreements	53,000,000	2,356
Money Market - UBOC	50,000,000	332,254
LAIF	37,000,000	288,114
<b>SUBTOTAL - ACCRUED INCOME</b>	<u>\$2,942,302,400</u>	<u>\$12,165,577</u>

**Realized Gain/Loss & Interest Received**

U S Treasury Notes	\$1,474,997
Federal Agencies	\$1,156,512
Corporate Notes	\$1,631,194
Floating Rate Securities	\$2,928,460
Asset Backed Securities	\$94,084
Commercial Paper	\$2,156,118
Certificate of Deposit	\$1,600,034
Repurchase Agreement	\$1,009,175

Securities Lending Income \$600,077

**GROSS POOL RATE/EARNINGS\*** 3.29% \$24,816,226

<u>POOL BREAKDOWN</u>	<u>Pool 1</u>	<u>Pool 2</u>	<u>Pool 3</u>	<u>TOTAL</u>
Average Balance	407,048,668	623,599,729	2,005,002,258	3,035,650,655
Gross Earnings	3,327,594	5,097,883	16,390,750	24,816,226
Admin Fees	(126,508)	(193,810)	(623,139)	(943,457)
Bank Fees	(35,719)	(23,812)		(59,531)
Net Earnings	<u>3,165,367</u>	<u>4,880,261</u>	<u>15,767,610</u>	<u>23,813,238</u>
Net Earnings %	3.13%	3.15%	3.16%	3.16%

Earnings %'s are based on Q4 07-08 average daily balance of investment pools.  
 Pool 1 and Pool 2 are charged with bank fees associated with their disbursement/depository activity.

**Bill Lockyer, State Treasurer**  
**Inside the State Treasurer's Office**



**PMIA Average Monthly Effective Yields**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
1977	5.770	5.660	5.660	5.650	5.760	5.850	5.930	6.050	6.090	6.390	6.610	6.730
1978	6.920	7.050	7.140	7.270	7.386	7.569	7.652	7.821	7.871	8.110	8.286	8.769
1979	8.777	8.904	8.820	9.082	9.046	9.224	9.202	9.528	9.259	9.814	10.223	10.218
1980	10.980	11.251	11.490	11.480	12.017	11.798	10.206	9.870	9.945	10.056	10.426	10.961
1981	10.987	11.686	11.130	11.475	12.179	11.442	12.346	12.844	12.059	12.397	11.887	11.484
1982	11.683	12.044	11.835	11.773	12.270	11.994	12.235	11.909	11.151	11.111	10.704	10.401
1983	10.251	9.887	9.688	9.868	9.527	9.600	9.879	10.076	10.202	10.182	10.164	10.227
1984	10.312	10.280	10.382	10.594	10.843	11.119	11.355	11.557	11.597	11.681	11.474	11.024
1985	10.579	10.289	10.118	10.025	10.180	9.743	9.656	9.417	9.572	9.482	9.488	9.371
1986	9.252	9.090	8.958	8.621	8.369	8.225	8.141	7.844	7.512	7.586	7.432	7.439
1987	7.365	7.157	7.205	7.044	7.294	7.289	7.464	7.562	7.712	7.825	8.121	8.071
1988	8.078	8.050	7.945	7.940	7.815	7.929	8.089	8.245	8.341	8.397	8.467	8.563
1989	8.698	8.770	8.870	8.992	9.227	9.204	9.056	8.833	8.801	8.771	8.685	8.645
1990	8.571	8.538	8.506	8.497	8.531	8.538	8.517	8.382	8.333	8.321	8.269	8.279
1991	8.164	8.002	7.775	7.666	7.374	7.169	7.098	7.072	6.859	6.719	6.591	6.318
1992	6.122	5.863	5.680	5.692	5.379	5.323	5.235	4.958	4.760	4.730	4.659	4.647
1993	4.678	4.649	4.624	4.605	4.427	4.554	4.438	4.472	4.430	4.380	4.365	4.384
1994	4.359	4.176	4.248	4.333	4.434	4.623	4.823	4.989	5.106	5.243	5.380	5.528
1995	5.612	5.779	5.934	5.960	6.008	5.997	5.972	5.910	5.832	5.784	5.805	5.748
1996	5.698	5.643	5.557	5.538	5.502	5.548	5.587	5.566	5.601	5.601	5.599	5.574
1997	5.583	5.575	5.580	5.612	5.634	5.667	5.679	5.690	5.707	5.705	5.715	5.744
1998	5.742	5.720	5.680	5.672	5.673	5.671	5.652	5.652	5.639	5.557	5.492	5.374
1999	5.265	5.210	5.136	5.119	5.086	5.095	5.178	5.225	5.274	5.391	5.484	5.639
2000	5.760	5.824	5.851	6.014	6.190	6.349	6.443	6.505	6.502	6.517	6.538	6.535
2001	6.372	6.169	5.976	5.760	5.328	4.958	4.635	4.502	4.288	3.785	3.526	3.261
2002	3.068	2.967	2.861	2.845	2.740	2.687	2.714	2.594	2.604	2.487	2.301	2.201
2003	2.103	1.945	1.904	1.858	1.769	1.697	1.653	1.632	1.635	1.596	1.572	1.545
2004	1.528	1.440	1.474	1.445	1.426	1.469	1.604	1.672	1.771	1.890	2.003	2.134
2005	2.264	2.368	2.542	2.724	2.856	2.967	3.083	3.179	3.324	3.458	3.636	3.808
2006	3.955	4.043	4.142	4.305	4.563	4.700	4.849	4.946	5.023	5.098	5.125	5.129
2007	5.156	5.181	5.214	5.222	5.248	5.250	5.255	5.253	5.231	5.137	4.962	4.801
2008	4.620	4.161	3.777	3.400	3.072	2.894						



## Town of Atherton

### MEMORANDUM

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: JERRY GRUBER, CITY MANAGER**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVAL OF THE FIRST AMENDMENT TO THE JOINT POWERS AGREEMENT WITH THE HOUSING ENDOWMENT AND REGIONAL TRUST (HEART) OF SAN MATEO COUNTY**

### RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the attached first Amendment to the Joint Exercise of Powers Agreement (JPA) for the Housing Endowment and Regional Trust of San Mateo County (HEART) to continue the Town's participation in the San Mateo County Housing Foundation.

### BACKGROUND/ANALYSIS

In November 2003, the City Council approved the Town's participation in HEART. The Goal of the Housing Endowment and Regional Trust is to raise and distribute funds to serve its goal of increasing the number of permanently affordable housing units in the County. Some of the member cities asked HEART to revise the JPA; and after receiving input from those members, Supervisor Richard Gordon and the San Mateo County Counsel's Office drafted a revised JPA. Attached is a memo from Chris Mohr, Executive Director of HEART, and both a red-lined and final version of the Amended JPA for your consideration.

Attachments

**TO:** City Managers, HEART Member Cities  
County Manager, County of San Mateo

**CC:** HEART Member Agency Committee Members

**FR:** Chris Mohr, Executive Director  
Housing Endowment And Regional Trust (HEART)

**DT:** June 26, 2008

**RE:** **Request for Consideration and Adoption  
of a Revised Joint Powers Agreement for HEART**

The Housing Endowment And Regional Trust (HEART) was formed in 2003 as a joint powers authority to fund affordable housing in San Mateo County. Some of the member cities asked HEART to revise the Joint Powers Agreement. After receiving input from those members, Supervisor Richard Gordon and the San Mateo County Counsel's Office drafted a revised JPA.

I would like to request that the revised JPA be put on an upcoming Council/Board agenda for adoption, and ask that you alert me when it will be agendized. My number is (650) 872-4444, ext. 1#, and my email is [cmohr@heartofsmc.org](mailto:cmohr@heartofsmc.org).

#### **SUMMARY OF PROCESS**

The revised joint powers agreement was conditionally approved by the Member Agency Committee. We subsequently satisfied the condition, which was to include language that satisfied one committee member's concerns about how HEART's financial obligations are handled. The HEART Board of Directors then approved sending the revised JPA to the member agencies for consideration and adoption. The revised JPA becomes effective when it is adopted by the members.

#### **SUMMARY OF CHANGES**

The following are the primary changes to the JPA:

1. Requested changes from members:
  - a. Clarify HEART's role is to facilitate housing programs and production, and not to regulate or govern housing activities.
  - b. Clarify that HEART would take on debt only if it is secured by a dedicated funding source or other security, such as real property.
2. HEART has applied for 501(c)(3) tax-exempt status with the Internal Revenue Service. Certain phrases were added to meet IRS requirements. The JPA now specifies that HEART has a charitable purpose, which is to develop funds for affordable housing.
3. Finally, we are changing the official name of the JPA from the "Housing Endowment And Trust" (HEAT) to "Housing Endowment And Regional Trust" (HEART). We have been doing business as HEART since early on.

Thank you for your participation in this countywide effort to raise public and private funds to meet critical housing needs in San Mateo County. Please contact me if you have any questions.

**First Amended**  
**Joint Exercise of Powers Agreement**  
**Housing Endowment and Regional Trust of San Mateo**  
**County**

This Agreement which superesedes in its entirety the Joint Exercise of Powers Agreement ~~is~~ entered into ~~this-the~~ 13th day of May 2003, which established the Housing Endowment and Trust of San Mateo County, pursuant to the provisions of the Joint Exercise of Powers Act (Title 1, Division 7, Article 1, §6500 et seq. of the California Government Code), is by and between the County of San Mateo (“County”) and those cities and towns within the County of San Mateo who become signatories to this Agreement, and relates to the joint exercise of powers among the signatories hereto, hereafter individually referred to as “Member Agency” and collectively referred to “Member Agencies”.

**RECITALS**

A. The Member Agencies are responsible for the health and safety of the residents within their geographic boundaries.

B. Each Member Agency has the individual power to plan, acquire, construct, manage, regulate, operate, and control the development, construction and operation of workforce and affordable housing programs generated within its jurisdictional boundaries, as well as to create and issue development agreements for such activities.

C. The Member Agencies find it in their mutual economic interest to address work force and affordable housing issues on a regional level.

D. A county-wide adequate supply of housing will provide social and economic benefits to residents and taxpayers of the Member Agencies.

E. The Member Agencies desire to act in the public interest to ~~reduce-lesser~~ the burden of a government and they by reducing the need for each Member aAgency to act individually, and to provide charitable support for workforce and affordable housing in San Mateo County.-

F. California Government Code §6500 et seq. (“Joint Exercise of Powers Act” or “Act”) permits two or more public agencies to create joint powers authorities for the purposes cited herein, and permits the agencies to exercise jointly any power that the public agencies could exercise separately, and further grants certain additional powers to such joint powers authorities.

G. Local land-use decisions, ~~except as they may be affected by state mandated county-wide requirements,~~ remain solely ~~within the cognizant Agency jurisdiction~~ with the Member Agencies. Nothing in this Agreement deprives member agencies of their sovereign powers or transfers those powers to the joint powers authority.

**NOW, THEREFORE BE IT RESOLVED** that the Member Agencies do hereby establish the entity to be known as the Housing Endowment and Regional Trust of San Mateo County (hereinafter referred to herein as “HEART-SMC”), to ~~generate and disburse~~ support and generate programs ~~and~~ funding that will result in permanent additions to the workforce and affordable housing stock within San Mateo County, and do hereby agree as follows:

1. **Purpose.**

1.1 ~~This Agreement is entered into pursuant to the Act to provide for the exercise of powers as provided therein, and to provide for the joint exercise of certain powers common to the Member Agencies, operating through the Board of Directors for control, direction, and administration.~~—The purpose of this Agreement is to establish an organization that shall be responsible for the joint fundraising, planning, adoption, financing, administration, review, monitoring, ~~enforcement,~~ and reporting of certain workforce and affordable housing program activities in San Mateo County. By entering this joint powers authority, the Member Agencies earn economic benefits not realized when operating individually. Further, the establishment of

this joint powers authority provides for the economic viability and coordination of workforce and affordable housing program financing and facilities throughout San Mateo County.

1.2 This organization is organized exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

1.23. ~~HEAT SMCHEART~~ shall be an entity which is ~~separate-legally independent~~ from the parties to this Agreement and shall be responsible for the administration of this Agreement.

1.34 The assets, rights, debts, liabilities, and obligations of ~~HEAT SMCHEART~~ shall not constitute assets, rights, debts, liabilities, or obligations of any of the Member Agencies. However, nothing in this Agreement shall prevent any of the Member Agencies from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of ~~HEAT SMCHEART~~, provided that both the Board and the Member Agency approve such contract or assumption.

## 2. Powers.

2.1 The HEAT SMCHEART is authorized, but is in no way required, to act in its own name on any or all of the following matters, as each Member Agency could act separately, and as it deems in the best interest of its Members, to the extent permitted by any and all applicable laws, codes, ordinances, resolutions and regulations:

- a. Facilitate and assist the Member Agencies and others in the housing sector to acquire, construct, finance, refinance, operate, regulate and maintain~~the acquisition, construction, financing, refinancing, operation, regulation, and maintenance of~~ housing programs, projects and facilities ~~by Member Agencies and others in the housing sector.~~
- b. Facilitate the planning, study, and recommendation of proper and appropriate housing programs, projects and facilities, and management practices. Research and study issues related to housing, including without limitation workforce, affordable and special needs housing.
- c. Educate the public, its Member Agencies, and other agencies and entities as to housing programs, projects and facilities, including without limitation workforce, affordable and special needs housing.

- d. Provide for or enter into agreements to provide for financial, engineering, legal, audit, and any other professional services supporting any of the ~~HEAT-SMCHEART~~'s programs or activities.
- e. Solicit, apply for, accept, and receive grants, gifts, donations, advances, and contributions.
- f. Hire agents and employees, including consultants and legal counsel.
- g. Sue and be sued in its own name.
- h. Incur and discharge debts, liabilities, and obligations provided that such debt shall be in the form of secured bonds, revenue bonds or other similar forms of secured debt.
- i. Issue bonds or notes and associated covenants, for designated purposes, subject to the provisions and limitations of the California Government Code.
- j. Acquire or protect any necessary security or leasehold interests involved in loans, bonds, notes, or other financing methods implemented to carry out the purposes of this Agreement.
- k. Acquire, ~~improve~~, hold, lease and dispose of real and personal property as may be necessary and appropriate in connection with the ~~Administrative or~~ programmatic needs of ~~HEAT-SMCHEART~~.
- l. Issue and receive loans.
- m. Acquire such insurance protection as it deems necessary.
- n. Adopt, as authorized by California law, ~~ordinances and~~ resolutions necessary to carry out the purposes of this Agreement
- o. Utilize and establish advisory committees or subcommittees whenever necessary.
- p. Adopt bylaws and such other rules and procedures as may be deemed necessary.

2.2 HEART shall exercise its powers to facilitate and encourage the creation, construction, development, and maintenance of certain workforce and affordable housing throughout San Mateo County.

### 3. Term and Termination

3.1 This Agreement shall be effective upon its execution by the County and at least three (3) cities, at least two (2) of which have an adopted housing element that the Department of Housing and Community Development has determined to be in substantial compliance with the

requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code (“certified housing element”).

3.2 This Agreement shall continue at least until March 30, 2013, and thereafter shall continue until terminated or dissolved pursuant to Section 3.3 of this Agreement. However, in no event shall the Member Agencies vote to terminate or dissolve ~~the HEAT SMCHEART~~ if its termination or dissolution would conflict with or violate the terms or conditions of any bonds, financial instruments, or related documentation by or on behalf of ~~the HEAT SMCHEART~~, including, without limitation, indentures, resolutions, and letter of credit agreements.

3.3. This Agreement may be terminated by consent of all Member Agencies, and upon full and complete liquidation of all liabilities, including, but not limited to any bonds. Upon the date of termination (hereinafter “Termination Date”), payment of any and all obligations and division of any and all assets of ~~the HEAT SMCHEART~~ shall be conducted subject to the then-applicable requirements of the law, pursuant to the following:

a. In the event of termination of ~~the HEAT SMCHEART~~ where there is a successor public ~~entity-agency~~ that will conduct all of the activities of ~~the HEAT SMCHEART~~ and will assume all of its obligations, any and all ~~HEAT SMCHEART~~ assets and liabilities remaining upon termination of ~~the HEAT SMCHEART~~ shall be transferred to the successor public agency.

b. If there is no successor public agency that would conduct ~~the HEAT SMCHEART~~'s activities, all assets and liabilities shall be apportioned to each Member Agency in proportion to the contribution of each Member Agency's total contribution during the term of this Agreement.

c. If there is a successor public agency that would conduct some of ~~the HEAT SMCHEART~~'s activities, then the Board shall allocate ~~the HEAT SMCHEART~~'s assets and liabilities between the successor public agency and the Member Agencies each in proportion to its total contribution during the term of this Agreement.

d. In the event ~~the HEAT SMCHEART~~ is terminated under circumstances falling within (b) or (c) above, all decisions of the Board with regard to determinations of amounts to be transferred to the Member Agencies or any successor shall be final.

e. The obligations of ~~the HEAT SMCHEART~~ terminate on the Termination Date, and each Member Agency shall pay all amounts owed to ~~the HEAT SMCHEART~~ prior to that date. In the event of default by a Member Agency with regard to payment of amounts due, the obligation to pay all sums due to ~~the HEAT SMCHEART~~ shall survive and remain in full force

after the Termination Date.

         f. By unanimous agreement of all then current Member Agencies, said current Member Agencies may dispose of, divide, distribute, or return assets on a basis different from that established in this Section 3.

         g. The assets distributed pursuant to this Section 3 to Member Agencies will be used for public purposes.

#### 4. **Governance**

4.1 ~~The HEAT-SMCHEART~~ is governed and administered by a Board of Directors (“Board”) that shall exercise all powers and authority on behalf of ~~the HEAT-SMCHEART~~. The Board shall consist of no more than 21 voting members (hereinafter “Directors”), as follows:

- 2 No more than two (2) members of the San Mateo County Board of Supervisors
- 9 No more than nine (9) City representatives appointed by the City Selection Committee of the Council of Cities from among city council members, provided only those cities that are Member Agencies may have a representative Director and no city may have more than one (1) representative Director.

These foregoing Directors shall be referred to as the “Public Directors”. Subject to any restriction that may be in the bylaws, the body selecting a Public Director may decide whether to select or allow alternates who may participate when the regular Public Director is absent.

- 10 Not more than 10 individuals who are not publicly elected officials, and who as broadly as may be reasonable, represent the following interests or constituencies: housing advocate groups; labor groups; non-profit developers; real estate development or sales; the population seeking below market housing; the faith community; local school districts or the County Office of Education; the business community; private foundations interested in housing; and finance or financial institutions. These Directors shall be referred to as the “At Large Directors”.

Initially, the Public Directors shall, by majority vote of those present at the meeting, select the At Large Directors. Thereafter, successor At Large

Directors shall be selected by a majority vote of the voting Directors (Public Directors and At Large Directors) present at the meeting.

The number of Public Directors shall at all times be at least one more than the number of At Large Directors. Vacancies among the Public Directors shall be filled as soon as practical by the City Selection Committee of the Council of Cities to assure that this condition is met.

Additional ex-officio, non-voting, Affiliate Directors may be established by unanimous Board action, and such Affiliate Directors shall be referred to as "Affiliates". Regular attendance by each Director and Affiliate shall be encouraged by the ~~HEAT-SMCHEART~~ Board and the Member Agencies.

4.2. Directors shall hold office as follows:

a. The Public Directors' terms shall be three (3) calendar years from March of the first year through February of the third year; provided, however the initial Public Sector Directors selected by the City Selection Committee of the Council of Cities shall each be deemed to have started in March 2003, and shall have staggered terms such that three (3) have a one (1) year term, three (3) have a two (2) year term, and three (3) have a three (3) year term.

b. The At Large Directors' terms shall be three (3) calendar years from March of the first year through February of the third year; provided, however the initial At Large Directors shall each be deemed to have started in March 2003, and shall have staggered terms such that four (4) have a one (1) year term, three (3) have a two (2) year term, and three (3) have a three (3) year term.

c. There shall be no limit to the number of terms that a Director may serve.

4.3. Directors shall receive no compensation from ~~the HEAT-SMCHEART~~ for serving on the Board. ~~The HEAT-SMCHEART~~ may reimburse Directors for reasonable expenses necessarily incurred on the Board's behalf, with prior approval of the Board.

4.4 The Board may establish an Executive Committee to carry out any and all functions of the Board that the Board may delegate to said Executive Committee. Executive Committee members shall be Board members, but the exact composition of the Executive Committee shall be as determined by the Board.

4.5 The Board may establish Advisory Committees to advise the Board or the Executive Committee. Advisory Committee members need not be Board members. The composition and role of an Advisory Committee shall be as determined by the Board.

4.6 There is established a Member Agency Committee, at any given time composed of all the current Public Directors, plus one (1) City Council member from each Member Agency (as may be selected by that Member Agency) that does not have a council member on the Board at the time. The Board shall receive advice and input from the Member Agency Committee in all matters involving budgets, assessments to Member Agencies and decisions as to the jurisdictions in which Program funds are to be spent. The Member Agency Committee is intended to provide an opportunity for every Member Agency, whether or not it has a council member on the Board, to participate in the fiscal and programmatic deliberations of ~~HEAT-SMCHEART~~. The Member Agency Committee may provide advice and input to the Board on additional topics or matters as may be set forth in the bylaws, or as may otherwise be determined by the Board from time to time.

## 5. Budgets and Financing.

5.1 The Board annually shall adopt, by a date ~~HEAT-SMCHEART~~ designates by resolution, an operating budget for ~~HEAT-SMCHEART~~ setting forth anticipated expenses, financing sources and proposed service levels necessary to carry out the purposes of this Agreement. The budget for ~~HEAT-SMCHEART~~ shall distinguish between Administrative costs (i.e., the cost of operating ~~HEAT-SMCHEART~~) and Program costs (i.e., the financing of the programs funded or sponsored by ~~HEAT-SMCHEART~~). ~~HEAT-SMCHEART~~ shall establish its fiscal year by resolution. Immediately after approving the annual budget, the Board shall recommend the budget to the governing bodies of the Member Agencies. The Board shall secure from each Member Agency contributions, appropriations and/or commitments to contribute services or other consideration in accordance with each Member Agency's obligations as determined by the Board as set forth in this Agreement. It is expressly agreed and understood that the Board has no authority to bind any governing board of any Member Agency to make the recommended contribution, appropriation and/or commitment and that this decision rests solely with each governing body. Each Member Agency shall deposit its monetary contribution to the budget with the ~~HEAT-SMCHEART~~ Treasurer on or before the date ~~HEAT-SMCHEART~~ designates by resolution. Contributions from private persons or entities and not-for-profit entities, whether or not their interests are represented by any At Large Directors, are acceptable so long as they do not cause a violation of any applicable conflict of interest statutes, rules or regulations.

5.2. In consideration of the mutual promises contained herein, the parties agree that they shall make the following annual contributions towards the Administrative budget of ~~HEAT-SMCHEART~~: Initially, the County of San Mateo has or will, make available up to Seventy-Five Thousand Dollars (\$75,000) for the Administrative budget during the start up and initial work of ~~HEAT-SMCHEART~~. Thereafter, funds required for the Administrative budget shall be provided by the contribution of each Member Agency and each Member Agency's contribution shall be its pro-rata share of the revenue needed for the Administrative budget as adopted by the Board of Directors. The pro-rata share of each Member Agency shall be based upon its population as then currently in use by City/County Association of Governments of San Mateo County (C/CAG). By unanimous vote, under special circumstances, the Board of Directors may waive one or more Member Agency's contribution. If a Member Agency fails to pay its annual contribution to the Administrative budget, during the period of such non-payment it shall forfeit any right it may have to have a Public Director from its jurisdiction on the Board. A Member Agency's contribution to the Administrative budget shall be in the form of money, unless the Board approves another form of contribution such as services, personal property or use of real or personal property, or other in-kind contributions. The acceptance and valuation of any such non-monetary contributions shall be as determined by the Board.

5.3 The particular Programs and Program budget, funded, sponsored or operated by ~~HEAT-SMCHEART~~, as well as the level of, and mechanisms for, the involvement of ~~HEAT-SMCHEART~~ and each Member Agency, in such Programs and Program budget, shall be determined and approved by the Board. A Member Agency's individual contribution, involvement and role in any particular Program or the Program budget shall be as may be mutually agreed between the Member Agency and ~~HEAT-SMCHEART~~. By way of example only, said contributions, involvement or role may include: cash contributions, provision of services or staffing, use or transfer of title to real or personal property, participation or funding from the Redevelopment Agency under the control of or under contract with the Member Agency, pledges, guarantees or whatever other instruments or involvement the Member Agency and ~~HEAT-SMCHEART~~ may agree to. Contributions of all kinds to the Program budget from private persons or entities and not-for-profit entities, whether or not their interests are represented by any At Large Directors, are encouraged, so long as they do not cause a violation

of any applicable conflict of interest statutes, rules or regulations.

6. **Financial Management**

6.1. ~~The HEAT-SMCHEART~~ may appoint a financial manager to manage, hold, invest and distribute the funds of ~~the HEAT-SMCHEART~~ (“Financial Manager”). The duties of the Financial Manager shall include those responsibilities as deemed necessary or appropriate by the Board. There shall be a strict accountability of all funds and report of all receipts and disbursements.

6.2. The public office or officers or person or persons who may be designated to have charge of, handle, or have access to any property of ~~the HEAT-SMCHEART~~, shall file an official bond in an amount to be fixed by the Board.

7. **Staffing.**

7.1. It is understood that ~~HEAT-SMCHEART~~ may require the support of its own administrative staff. When deemed necessary, the Board may employ or use a managing agent (“Managing Agent”), to implement the objectives of ~~the HEAT-SMCHEART~~. The Managing Agent may consist of a separate entity or an executive director. The Board shall have responsibility for all employment decisions regarding said Managing Agent, who shall serve at the pleasure of the Board.

7.2. The Managing Agent may be delegated authority as deemed necessary or appropriate by the Board.

7.3. The Managing Agent shall be responsible for the day-to-day administration of ~~HEAT-SMCHEART~~ under the direction of the Board. The Managing Agent shall have the authority to employ or use administrative staff consistent with the goals, needs and approved budget of ~~HEAT-SMCHEART~~.

7.4 If there is a Managing Agent that is a separate entity, that Managing Agent shall designate who on its staff shall be the Executive Director of ~~the HEAT-SMCHEART~~, but the acceptance of such choice shall be subject to the approval of the Board.

## 8. Meetings

8.1. The Board shall schedule by Resolution at least two (2) regular meetings each Fiscal Year.

8.2. Special meetings of the Board may be called by the Chairperson and otherwise as in accordance with provisions of the California Government Code §54956.

8.3. All meetings of the Board shall be held subject to the provisions of California Government Code §54950 et seq. and other applicable laws of the State of California.

8.4 All meetings of the Board must be held within the County of San Mateo at a location determined by the Chairperson, except that the Board may hold a special meeting outside the County of San Mateo upon an affirmative vote in accordance with Section 8.8 of this Agreement.

8.5 The Secretary shall cause the taking and keeping of minutes of all Board meetings. Promptly after each meeting, the Secretary shall cause a copy of the minutes to be forwarded to each Director, either electronically or in paper form.

8.6 A majority of the Directors shall constitute a quorum for the transaction of business of the Board, except that Directors constituting less than a quorum may adjourn any meeting.

8.7 Each Director is entitled to cast one vote on any matter presented to the Board for a vote.

8.8 All decisions and actions shall be by a majority of the total number of Directors, regardless of the number of Directors present, unless otherwise provided in this Agreement. For example, with 21 total Directors, 11 votes are required for a decision or action by the Board; and with 13 total Directors, 7 votes would be required.

8.9 Meetings of the Board shall be conducted by a Chairperson, or in the Chairperson's absence by the Vice Chairperson. In the absence of both the Chairperson and the Vice

Chairperson, meetings shall be conducted by the Public Director in attendance who represents the largest ~~Agency~~ Member Agency with Board representation, by population.

9. **Bylaws.** The Board from time to time may adopt and amend bylaws for the conduct of its affairs, provided that they are consistent with this Agreement and are necessary and appropriate in order to carry out ~~the HEAT-SMCHEART~~'s purpose.

10. **Officers and Employees.**

10.1 Every two (2) years, the Board shall elect a Chairperson and a Vice Chairperson from among its members.

10.2 The Board shall appoint a Secretary who may, but need not be, a member of the Board.

10.3 The Board shall select a Treasurer, from one of the Member Agencies or a certified public accountant, who shall be the depository and have custody of all the money and property of ~~HEAT-SMCHEART~~ from whatever source. The duties of ~~the HEAT-SMCHEART~~ Treasurer shall include those set forth in the Act, including those set forth in Government Code §6505.5. If the Board designates a certified public accountant as the Treasurer, then the auditor of one of the Member Agencies shall be designated as the auditor of ~~HEAT-SMCHEART~~. The Treasurer may, if the Board so elects, also serve as the Financial Manager.

10.4 ~~The HEAT-SMCHEART~~ shall designate its legal counsel.

11. **Withdrawal.** Any Member Agency may withdraw from this Agreement effective as of the end of any fiscal year, provided ninety (90) days~~upon one(1) year's~~ prior written notice is provided to the other Member Agencies, ~~given at the end of any fiscal year~~. The rights and obligations of such withdrawing Member Agency shall terminate as of the last day at the end of the ~~first full~~ fiscal year ~~for which the withdrawing Member Agency has made its contribution following such notice having been given~~. The withdrawal of any Member Agency from this Agreement shall in no way affect the rights and obligations of the remaining parties. If a Member Agency withdraws from this Agreement, such Member Agency shall not be entitled to

the return of any funds contributed to ~~HEAT-SMC~~HEART nor to the return in cash or in kind of any materials or supplies until termination of this Agreement. ~~If a~~ withdrawing Member Agency has obligations under contracts or commitments, including bonds, that are independent from its obligations to HEART, such withdrawal from HEART shall have no impact on such independent obligations~~may have continuing liabilities for contracts and commitments, including bonds, to the extent that it has obligations that are independent from its obligations for contributions to the HEAT-SMC Administrative budget.~~

12. **Amendments.** Subject to all legal obligations of ~~the HEAT-SMC~~HEART, this Agreement may be amended by one or more supplemental agreements executed by all of the Member Agencies of ~~the HEAT-SMC~~HEART.

13. **Filings.** The Secretary shall cause to be filed all required notices with the California Secretary of State, in accordance with California Government Codes §6503.5 and §53051.

14. **Notices.**

14.1. All notices to the Member Agencies shall be deemed to have been given to the Member Agencies when mailed, postage prepaid by United States mail, or when hand delivered to the governing body of each Member Agency during usual business hours at the principal office, or to the person apparently in charge of that office.

14.2 All notices to ~~the HEAT-SMC~~HEART shall be deemed to have been given to ~~the HEAT-SMC~~HEART when mailed, postage prepaid by United States mail, or when hand delivered to each of the Chairperson, Vice Chairperson, and any Executive Director of ~~the HEAT-SMC~~HEART during usual business hours at the principal office, or to the person apparently in charge of that office.

15. **Assignments; Other Agreements.** This Agreement shall be binding upon and shall inure to the benefit of the successors of any Member Agency. No Member Agency may assign any right or obligation hereunder without the written consent of all other Member Agencies.

Participation in ~~HEART SMC~~HEART is not intended to preclude Member Agencies from entering into similar agreements with other jurisdictions.

16. **Severability.** If any provision of this Agreement or its application to any person or circumstances is held invalid or illegal by a final judgment of a court of law in the State of California, the remainder of this Agreement and the application of the provision to other persons or circumstances shall not be affected.

17. **Headings.** All section headings contained in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any provision of this Agreement.

**18. Confirmation of Jurisdictional Authority.** By signing this Agreement, the member Agencies retain all jurisdictional authority granted to them by the State and/or their respective Charters. The powers and/or authority granted to HEART pursuant to this Agreement shall in no way serve to limit or restrict an individual Member Agency's jurisdictional authority.

**IN WITNESS WHEREOF**, the parties hereto by their duly authorized representative, have affixed their signatures on this Agreement, effective as of the date first stated above.

**COUNTY OF SAN MATEO**

By \_\_\_\_\_  
*President of the Board of Supervisors*

ATTEST:

\_\_\_\_\_  
*Clerk of the Board*

**TOWN OF ATHERTON**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of Town Council*

**CITY OF BELMONT**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF BRISBANE**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF BURLINGAME**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**TOWN OF COLMA**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of Town Council*

**CITY OF DALY CITY**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF EAST PALO ALTO**

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

By \_\_\_\_\_  
*Mayor*

**CITY OF FOSTER CITY**

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

By \_\_\_\_\_  
*Mayor*

**CITY OF HALF MOON BAY**

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

By \_\_\_\_\_  
*Mayor*

**TOWN OF HILLSBOROUGH**

ATTEST:

\_\_\_\_\_  
*Clerk of Town Council*

By \_\_\_\_\_  
*Mayor*

**CITY OF MENLO PARK**

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

By \_\_\_\_\_  
*Mayor*

**CITY OF MILLBRAE**

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

By \_\_\_\_\_  
*Mayor*

**CITY OF PACIFICA**

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

By \_\_\_\_\_  
*Mayor*

**TOWN OF PORTOLA VALLEY**

ATTEST:

\_\_\_\_\_  
*Clerk of Town Council*

By \_\_\_\_\_  
*Mayor*

**CITY OF REDWOOD CITY**

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

By \_\_\_\_\_  
*Mayor*

**CITY OF SAN BRUNO**

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

By \_\_\_\_\_  
*Mayor*

**CITY OF SAN CARLOS**

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

By \_\_\_\_\_  
*Mayor*

**CITY OF SAN MATEO**

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

By \_\_\_\_\_  
*Mayor*

**CITY OF SOUTH SAN FRANCISCO**

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

By \_\_\_\_\_  
*Mayor*

**TOWN OF WOODSIDE**

ATTEST:

\_\_\_\_\_  
*Clerk of Town Council*

By \_\_\_\_\_  
*Mayor*

**First Amended  
Joint Exercise of Powers Agreement  
Housing Endowment and Regional Trust of San Mateo  
County**

This Agreement which supersedes in its entirety the Joint Exercise of Powers Agreement entered into the 13th day of May 2003, which established the Housing Endowment and Trust of San Mateo County, pursuant to the provisions of the Joint Exercise of Powers Act (Title 1, Division 7, Article 1, §6500 et seq. of the California Government Code), is by and between the County of San Mateo (“County”) and those cities and towns within the County of San Mateo who become signatories to this Agreement, and relates to the joint exercise of powers among the signatories hereto, hereafter individually referred to as “Member Agency” and collectively referred to “Member Agencies”.

**RECITALS**

A. The Member Agencies are responsible for the health and safety of the residents within their geographic boundaries.

B. Each Member Agency has the individual power to plan, acquire, construct, manage, regulate, operate, and control the development, construction and operation of workforce and affordable housing programs generated within its jurisdictional boundaries, as well as to create and issue development agreements for such activities.

C. The Member Agencies find it in their mutual economic interest to address work force and affordable housing issues on a regional level.

D. A county-wide adequate supply of housing will provide social and economic benefits to residents and taxpayers of the Member Agencies.

E. The Member Agencies desire to act in the public interest to lessen the burden of government by reducing the need for each Member Agency to act individually, and to provide charitable support for workforce and affordable housing in San Mateo County.

F. California Government Code §6500 et seq. (“Joint Exercise of Powers Act” or “Act”) permits two or more public agencies to create joint powers authorities for the purposes cited herein, and permits the agencies to exercise jointly any power that the public agencies could exercise separately, and further grants certain additional powers to such joint powers authorities.

G. Local land-use decisions remain solely with the Member Agencies. Nothing in this Agreement deprives member agencies of their sovereign powers or transfers those powers to the joint powers authority.

**NOW, THEREFORE BE IT RESOLVED** that the Member Agencies do hereby establish the entity to be known as the Housing Endowment and Regional Trust of San Mateo County (hereinafter referred to herein as “HEART”), to generate and disburse funding that will result in permanent additions to the workforce and affordable housing stock within San Mateo County, and do hereby agree as follows:

1. **Purpose.**

1.1 The purpose of this Agreement is to establish an organization that shall be responsible for the joint fundraising, planning, adoption, financing, administration, review, monitoring and reporting of certain workforce and affordable housing program activities in San Mateo County. By entering this joint powers authority, the Member Agencies earn economic benefits not realized when operating individually. Further, the establishment of this joint powers authority provides for the economic viability and coordination of workforce and affordable housing program financing and facilities throughout San Mateo County.

1.2 This organization is organized exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

1.3. HEART shall be an entity which is legally independent from the parties to this Agreement and shall be responsible for the administration of this Agreement.

1.4 The assets, rights, debts, liabilities, and obligations of HEART shall not constitute assets, rights, debts, liabilities, or obligations of any of the Member Agencies. However, nothing in this Agreement shall prevent any of the Member Agencies from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of HEART, provided that both the Board and the Member Agency approve such contract or assumption.

## 2. **Powers.**

**2.1** HEART is authorized, but is in no way required, to act in its own name on any or all of the following matters, as each Member Agency could act separately, and as it deems in the best interest of its Members, to the extent permitted by any and all applicable laws, codes, ordinances, resolutions and regulations:

- a. Facilitate and assist the Member Agencies and others in the housing sector to acquire, construct, finance, refinance, operate, regulate and maintain housing programs, projects and facilities.
- b. Facilitate the planning, study, and recommendation of proper and appropriate housing programs, projects and facilities, and management practices. Research and study issues related to housing, including without limitation workforce, affordable and special needs housing.
- c. Educate the public, its Member Agencies, and other agencies and entities as to housing programs, projects and facilities, including without limitation workforce, affordable and special needs housing.
- d. Provide for or enter into agreements to provide for financial, engineering, legal, audit, and any other professional services supporting any of the HEART's programs or activities.
- e. Solicit, apply for, accept, and receive grants, gifts, donations, advances, and contributions.
- f. Hire agents and employees, including consultants and legal counsel.
- g. Sue and be sued in its own name.

- h. Incur and discharge debts, liabilities, and obligations provided that such debt shall be in the form of secured bonds, revenue bonds or other similar forms of secured debt.
- i. Issue bonds or notes and associated covenants, for designated purposes, subject to the provisions and limitations of the California Government Code.
- j. Acquire or protect any necessary security or leasehold interests involved in loans, bonds, notes, or other financing methods implemented to carry out the purposes of this Agreement.
- k. Acquire, hold, lease and dispose of real and personal property as may be necessary and appropriate in connection with the programmatic needs of HEART.
- l. Issue and receive loans.
- m. Acquire such insurance protection as it deems necessary.
- n. Adopt, as authorized by California law, resolutions necessary to carry out the purposes of this Agreement
- o. Utilize and establish advisory committees or subcommittees whenever necessary.
- p. Adopt bylaws and such other rules and procedures as may be deemed necessary.

2.2 HEART shall facilitate and encourage the creation, construction, development, and maintenance of certain workforce and affordable housing throughout San Mateo County.

### 3. **Term and Termination**

3.1 This Agreement shall be effective upon its execution by the County and at least three (3) cities, at least two (2) of which have an adopted housing element that the Department of Housing and Community Development has determined to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code (“certified housing element”).

3.2 This Agreement shall continue at least until March 30, 2013, and thereafter shall continue until terminated or dissolved pursuant to Section 3.3 of this Agreement. However, in no event shall the Member Agencies vote to terminate or dissolve HEART if its termination or dissolution would conflict with or violate the terms or conditions of any bonds, financial instruments, or related documentation by or on behalf of HEART, including, without limitation, indentures, resolutions, and letter of credit agreements.

3.3. This Agreement may be terminated by consent of all Member Agencies, and upon full and complete liquidation of all liabilities, including, but not limited to any bonds. Upon the date of termination (hereinafter “Termination Date”), payment of any and all obligations and division of any and all assets of HEART shall be conducted subject to the then-applicable requirements of the law, pursuant to the following:

a. In the event of termination of HEART where there is a successor public agency that will conduct all of the activities of HEART and will assume all of its obligations, any and all HEART assets and liabilities remaining upon termination of HEART shall be transferred to the successor public agency.

b. If there is no successor public agency that would conduct HEART’s activities, all assets and liabilities shall be apportioned to each Member Agency in proportion to the contribution of each Member Agency’s total contribution during the term of this Agreement.

c. If there is a successor public agency that would conduct some of HEART’s activities, then the Board shall allocate HEART’s assets and liabilities between the successor public agency and the Member Agencies each in proportion to its total contribution during the term of this Agreement..

d. In the event HEART is terminated under circumstances falling within (b) or (c) above, all decisions of the Board with regard to determinations of amounts to be transferred to the Member Agencies or any successor shall be final.

e. The obligations of HEART terminate on the Termination Date, and each Member Agency shall pay all amounts owed to HEART prior to that date. In the event of default by a Member Agency with regard to payment of amounts due, the obligation to pay all sums due to HEART shall survive and remain in full force after the Termination Date.

f. By unanimous agreement of all then current Member Agencies, said current Member Agencies may dispose of, divide, distribute, or return assets on a basis different from that established in this Section 3.

g. The assets distributed pursuant to this Section 3 to Member Agencies will be used for public purposes.

#### 4. **Governance**

4.1 HEART is governed and administered by a Board of Directors (“Board”) that shall exercise all powers and authority on behalf of HEART. The Board shall consist of no more than 21 voting members (hereinafter “Directors”), as follows:

- 2 No more than two (2) members of the San Mateo County Board of Supervisors
- 9 No more than nine (9) City representatives appointed by the City Selection Committee of the Council of Cities from among city council members, provided only those cities that are Member Agencies may have a representative Director and no city may have more than one (1) representative Director.

These foregoing Directors shall be referred to as the “Public Directors”. Subject to any restriction that may be in the bylaws, the body selecting a Public Director may decide whether to select or allow alternates who may participate when the regular Public Director is absent.

- 10 Not more than 10 individuals who are not publicly elected officials, and who as broadly as may be reasonable, represent the following interests or constituencies: housing advocate groups; labor groups; non-profit developers; real estate development or sales; the population seeking below market housing; the faith community; local school districts or the County Office of Education; the business community; private foundations interested in housing; and finance or financial institutions. These Directors shall be referred to as the “At Large Directors”.

Initially, the Public Directors shall, by majority vote of those present at the meeting, select the At Large Directors. Thereafter, successor At Large Directors shall be selected by a majority vote of the voting Directors (Public Directors and At Large Directors) present at the meeting.

The number of Public Directors shall at all times be at least one more than the number of At Large Directors. Vacancies among the Public Directors shall be filled as soon as practical by the City Selection Committee of the Council of Cities to assure that this condition is met.

Additional ex-officio, non-voting, Affiliate Directors may be established by unanimous Board action, and such Affiliate Directors shall be referred to as “Affiliates”. Regular attendance by each Director and Affiliate shall be encouraged by the HEART Board and the Member Agencies.

4.2. Directors shall hold office as follows:

a. The Public Directors' terms shall be three (3) calendar years from March of the first year through February of the third year; provided, however the initial Public Sector Directors selected by the City Selection Committee of the Council of Cities shall each be deemed to have started in March 2003, and shall have staggered terms such that three (3) have a one (1) year term, three (3) have a two (2) year term, and three (3) have a three (3) year term.

b. The At Large Directors' terms shall be three (3) calendar years from March of the first year through February of the third year; provided, however the initial At Large Directors shall each be deemed to have started in March 2003, and shall have staggered terms such that four (4) have a one (1) year term, three (3) have a two (2) year term, and three (3) have a three (3) year term.

c. There shall be no limit to the number of terms that a Director may serve.

4.3. Directors shall receive no compensation from HEART for serving on the Board. HEART may reimburse Directors for reasonable expenses necessarily incurred on the Board's behalf, with prior approval of the Board.

4.4 The Board may establish an Executive Committee to carry out any and all functions of the Board that the Board may delegate to said Executive Committee. Executive Committee members shall be Board members, but the exact composition of the Executive Committee shall be as determined by the Board.

4.5 The Board may establish Advisory Committees to advise the Board or the Executive Committee. Advisory Committee members need not be Board members. The composition and role of an Advisory Committee shall be as determined by the Board.

4.6 There is established a Member Agency Committee, at any given time composed of all the current Public Directors, plus one (1) City Council member from each Member Agency (as may be selected by that Member Agency) that does not have a council member on the Board at the time. The Board shall receive advice and input from the Member Agency Committee in all matters involving budgets, assessments to Member Agencies and decisions as to the jurisdictions in which Program funds are to be spent. The Member Agency Committee is intended to provide an opportunity for every Member Agency, whether or not it has a council member on the Board, to participate in the fiscal and programmatic deliberations of HEART. The Member Agency Committee may provide advice and input to the Board on additional topics or matters as may be set forth in the bylaws, or as may otherwise be determined by the Board from time to time.

5. **Budgets and Financing.**

5.1 The Board annually shall adopt, by a date HEART designates by resolution, an operating budget for HEART setting forth anticipated expenses, financing sources and proposed service levels necessary to carry out the purposes of this Agreement. The budget for HEART shall distinguish between Administrative costs (i.e., the cost of operating HEART) and Program costs (i.e., the financing of the programs funded or sponsored by HEART). HEART shall establish its fiscal year by resolution. Immediately after approving the annual budget, the Board shall recommend the budget to the governing bodies of the Member Agencies. The Board shall secure from each Member Agency contributions, appropriations and/or commitments to contribute services or other consideration in accordance with each Member Agency's obligations as determined by the Board as set forth in this Agreement. It is expressly agreed and understood that the Board has no authority to bind any governing board of any Member Agency to make the recommended contribution, appropriation and/or commitment and that this decision rests solely with each governing body. Each Member Agency shall deposit its monetary contribution to the budget with the HEART Treasurer on or before the date HEART designates by resolution. Contributions from private persons or entities and not-for-profit entities, whether or not their interests are represented by any At Large Directors, are acceptable so long as they do not cause a violation of any applicable conflict of interest statutes, rules or regulations.

5.2 In consideration of the mutual promises contained herein, the parties agree that they shall make the following annual contributions towards the Administrative budget of HEART: Initially, the County of San Mateo has or will, make available up to Seventy-Five Thousand Dollars (\$75,000) for the Administrative budget during the start up and initial work of HEART. Thereafter, funds required for the Administrative budget shall be provided by the contribution of each Member Agency and each Member Agency's contribution shall be its pro-rata share of the revenue needed for the Administrative budget as adopted by the Board of Directors. The pro-rata share of each Member Agency shall be based upon its population as then currently in use by City/County Association of Governments of San Mateo County (C/CAG). By unanimous vote, under special circumstances, the Board of Directors may waive one or more Member Agency's contribution. If a Member Agency fails to pay its annual contribution to the Administrative budget, during the period of such non-payment it shall forfeit any right it may have to have a

Public Director from its jurisdiction on the Board. A Member Agency's contribution to the Administrative budget shall be in the form of money, unless the Board approves another form of contribution such as services, personal property or use of real or personal property, or other in-kind contributions. The acceptance and valuation of any such non-monetary contributions shall be as determined by the Board.

5.3 The particular Programs and Program budget, funded, sponsored or operated by HEART, as well as the level of, and mechanisms for, the involvement of HEART and each Member Agency, in such Programs and Program budget, shall be determined and approved by the Board. A Member Agency's individual contribution, involvement and role in any particular Program or the Program budget shall be as may be mutually agreed between the Member Agency and HEART. By way of example only, said contributions, involvement or role may include: cash contributions, provision of services or staffing, use or transfer of title to real or personal property, participation or funding from the Redevelopment Agency under the control of or under contract with the Member Agency, pledges, guarantees or whatever other instruments or involvement the Member Agency and HEART may agree to. Contributions of all kinds to the Program budget from private persons or entities and not-for-profit entities, whether or not their interests are represented by any At Large Directors, are encouraged, so long as they do not cause a violation of any applicable conflict of interest statutes, rules or regulations.

## 6. **Financial Management**

6.1. HEART may appoint a financial manager to manage, hold, invest and distribute the funds of HEART ("Financial Manager"). The duties of the Financial Manager shall include those responsibilities as deemed necessary or appropriate by the Board. There shall be a strict accountability of all funds and report of all receipts and disbursements.

6.2. The public office or officers or person or persons who may be designated to have charge of, handle, or have access to any property of HEART, shall file an official bond in an amount to be fixed by the Board.

7. **Staffing.**

7.1. It is understood that HEART may require the support of its own administrative staff. When deemed necessary, the Board may employ or use a managing agent (“Managing Agent”), to implement the objectives of HEART. The Managing Agent may consist of a separate entity or an executive director. The Board shall have responsibility for all employment decisions regarding said Managing Agent, who shall serve at the pleasure of the Board.

7.2. The Managing Agent may be delegated authority as deemed necessary or appropriate by the Board.

7.3. The Managing Agent shall be responsible for the day-to-day administration of HEART under the direction of the Board. The Managing Agent shall have the authority to employ or use administrative staff consistent with the goals, needs and approved budget of HEART.

7.4. If there is a Managing Agent that is a separate entity, that Managing Agent shall designate who on its staff shall be the Executive Director of HEART, but the acceptance of such choice shall be subject to the approval of the Board.

8. **Meetings**

8.1. The Board shall schedule by Resolution at least two (2) regular meetings each Fiscal Year.

8.2. Special meetings of the Board may be called by the Chairperson and otherwise as in accordance with provisions of the California Government Code §54956.

8.3. All meetings of the Board shall be held subject to the provisions of California Government Code §54950 et seq. and other applicable laws of the State of California.

8.4. All meetings of the Board must be held within the County of San Mateo at a location determined by the Chairperson, except that the Board may hold a special meeting outside the County of San Mateo upon an affirmative vote in accordance with Section 8.8 of this Agreement.

8.5 The Secretary shall cause the taking and keeping of minutes of all Board meetings. Promptly after each meeting, the Secretary shall cause a copy of the minutes to be forwarded to each Director, either electronically or in paper form.

8.6 A majority of the Directors shall constitute a quorum for the transaction of business of the Board, except that Directors constituting less than a quorum may adjourn any meeting.

8.7 Each Director is entitled to cast one vote on any matter presented to the Board for a vote.

8.8 All decisions and actions shall be by a majority of the total number of Directors, regardless of the number of Directors present, unless otherwise provided in this Agreement. For example, with 21 total Directors, 11 votes are required for a decision or action by the Board; and with 13 total Directors, 7 votes would be required.

8.9 Meetings of the Board shall be conducted by a Chairperson, or in the Chairperson's absence by the Vice Chairperson. In the absence of both the Chairperson and the Vice Chairperson, meetings shall be conducted by the Public Director in attendance who represents the largest Member Agency with Board representation, by population.

9. **Bylaws.** The Board from time to time may adopt and amend bylaws for the conduct of its affairs, provided that they are consistent with this Agreement and are necessary and appropriate in order to carry out HEART's purpose.

10. **Officers and Employees.**

10.1 Every two (2) years, the Board shall elect a Chairperson and a Vice Chairperson from among its members.

10.2 The Board shall appoint a Secretary who may, but need not be, a member of the Board.

10.3 The Board shall select a Treasurer, from one of the Member Agencies or a certified public accountant, who shall be the depository and have custody of all the money and property of HEART from whatever source. The duties of HEART Treasurer shall include those set forth in

the Act, including those set forth in Government Code §6505.5. If the Board designates a certified public accountant as the Treasurer, then the auditor of one of the Member Agencies shall be designated as the auditor of HEART. The Treasurer may, if the Board so elects, also serve as the Financial Manager.

10.4 HEART shall designate its legal counsel.

11. **Withdrawal.** Any Member Agency may withdraw from this Agreement effective as of the end of any fiscal year, provided ninety (90) days prior written notice is provided to the other Member Agencies.. The rights and obligations of such withdrawing Member Agency shall terminate as of the last day of the fiscal year. The withdrawal of any Member Agency from this Agreement shall in no way affect the rights and obligations of the remaining parties. If a Member Agency withdraws from this Agreement, such Member Agency shall not be entitled to the return of any funds contributed to HEART nor to the return in cash or in kind of any materials or supplies until termination of this Agreement. If a withdrawing Member Agency has obligations under contracts or commitments, including bonds, that are independent from its obligations to HEART, such withdrawal from HEART shall have no impact on such independent obligations.

12. **Amendments.** Subject to all legal obligations of HEART, this Agreement may be amended by one or more supplemental agreements executed by all of the Member Agencies of HEART.

13. **Filings.** The Secretary shall cause to be filed all required notices with the California Secretary of State, in accordance with California Government Codes §6503.5 and §53051.

14. **Notices.**

14.1. All notices to the Member Agencies shall be deemed to have been given to the Member Agencies when mailed, postage prepaid by United States mail, or when hand delivered to the governing body of each Member Agency during usual business hours at the principal office, or to the person apparently in charge of that office.

14.2 All notices to HEART shall be deemed to have been given to HEART when mailed, postage prepaid by United States mail, or when hand delivered to each of the Chairperson, Vice Chairperson, and any Executive Director of HEART during usual business hours at the principal office, or to the person apparently in charge of that office.

15. **Assignments; Other Agreements.** This Agreement shall be binding upon and shall inure to the benefit of the successors of any Member Agency. No Member Agency may assign any right or obligation hereunder without the written consent of all other Member Agencies. Participation in HEART is not intended to preclude Member Agencies from entering into similar agreements with other jurisdictions.

16. **Severability.** If any provision of this Agreement or its application to any person or circumstances is held invalid or illegal by a final judgment of a court of law in the State of California, the remainder of this Agreement and the application of the provision to other persons or circumstances shall not be affected.

17. **Headings.** All section headings contained in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any provision of this Agreement.

18. **Confirmation of Jurisdictional Authority.** By signing this Agreement, the member Agencies retain all jurisdictional authority granted to them by the State and/or their respective Charters. The powers and/or authority granted to HEART pursuant to this Agreement shall in no way serve to limit or restrict an individual Member Agency's jurisdictional authority.

**IN WITNESS WHEREOF**, the parties hereto by their duly authorized representative, have affixed their signatures on this Agreement, effective as of the date first stated above.

**COUNTY OF SAN MATEO**

By \_\_\_\_\_

*President of the Board of Supervisors*

ATTEST:

\_\_\_\_\_  
*Clerk of the Board*

ATTEST:

\_\_\_\_\_  
*Clerk of Town Council*

**TOWN OF ATHERTON**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF BELMONT**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF BRISBANE**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF BURLINGAME**

By \_\_\_\_\_  
*Mayor*

ATTEST:

**TOWN OF COLMA**

By \_\_\_\_\_  
*Mayor*

\_\_\_\_\_  
*Clerk of Town Council*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF DALY CITY**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF EAST PALO ALTO**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF FOSTER CITY**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF HALF MOON BAY**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of Town Council*

**TOWN OF HILLSBOROUGH**

By \_\_\_\_\_  
*Mayor*

**CITY OF MENLO PARK**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF MILLBRAE**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF PACIFICA**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**TOWN OF PORTOLA VALLEY**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of Town Council*

**CITY OF REDWOOD CITY**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF SAN BRUNO**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF SAN CARLOS**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF SAN MATEO**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**CITY OF SOUTH SAN FRANCISCO**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of City Council*

**TOWN OF WOODSIDE**

By \_\_\_\_\_  
*Mayor*

ATTEST:

\_\_\_\_\_  
*Clerk of Town Council*





## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

**FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVE A PURCHASE ORDER TO SILICON  
CONSTELLATIONS FOR THE IN-STREET LIGHTED  
CROSSWALK AT SACRED HEART PROJECT NUMBER 08-013  
IN AN AMOUNT NOT TO EXCEED \$20,884.34 PLUS A TEN  
PERCENT CONSTRUCTION CONTINGENCY, FOR A TOTAL  
AUTHORIZATION OF \$22,972.77.**

### **RECOMMENDATION:**

Pass a motion to approve a purchase order for the In-Street Lighted Crosswalk at Sacred Heart Project, project number 08-013 to Silicon Constellations, the low bidder on informal bids, for \$20,884.34, with a 10% construction contingency of \$2,088.43, for a total authorization of \$22,972.77; and to authorize the City Manger to sign the contract on behalf of the Town.

### **INTRODUCTION:**

The Town of Atherton, supported by Sacred Heart Academy, applied for a Safe Routes to School (SR2S) grant from the State of California for this project. The grant was approved and bids were obtained from three vendors. The grant provides 90% funding of the project. Sacred Heart Academy has agreed to pay the 10% match amount. The Town will incur no cost from this proejct.

### **ANALYSIS:**

Three (3) bids were received for the project as follows:

<u>CONTRACTOR</u>	<u>LOCATION</u>	<u>BID</u>
Silicon Constellations	Santa Clara, CA	\$20,884.34
Spot Devices, Inc.	Sparks, NV	\$35,715
Republic ITS	Novato, CA	\$40,250

Silicon Constellations installed in-street lighted crosswalks on Alejandra Avenue for Menlo School and in Menlo Park at three locations.

**FISCAL IMPACT:**

Safe Route to School funds in the amount of \$24,750 and Sacred Heart funds in the amount of \$2,750 are budgeted for this project in FY 2008-09. The Town will incur no cost from this project. Informal bids were received for the project and Silicon Constellations was the low bidder at \$20,884.34. This bid was 24% below the engineer's estimate prepared by staff of \$27,500. A 10% construction contingency of \$2,088.43 would bring the total authorization to \$22,972.77, which is within the FY 2008-09 budget.

Prepared By:

Approved:

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

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Jerome D. Gruber  
City Manager

Attachments: Bids (3)



June 25, 2008		CONFIDENTIAL
Prepared for:	Sandy Dubinsky, Sacred Heart Schools Tel: 650-454-8398 Email: sdubinsky@shschools.org	
Quotation Number:	061608-01B	Validity: 60 days

## City of Atherton - Wireless Lighted Crosswalk Project

I am pleased to summarize our discussions on your lighted crosswalk project. The rest of this document outlines our understanding of the project and contains our proposal for equipment and services to fulfill this understanding. I would be grateful if you could notify me of any discrepancies, if any, you find.

### Our Understanding of the Project

Silicon Constellations will provide the equipment for one lighted crosswalk to be installed in the City of Atherton. The location and our understanding of the detailed requirements for this location is as follows:

#### Location 1:

Valparaiso Ave  
Locations details: 2-lane roadway, approximately 45 ft wide.

### Operational points

1. Each location is configured using the closest standard system as a base, with standard pre-programmed crosswalk parameters. The length of time of the flashing is directly related to the width of the road. Any changes to the standard programming should be discussed before placing an order.
2. User programmability of the crosswalk is offered as an optional extra.

On behalf of the entire Silicon Constellations' team, we look forward to working with you on this project.

Best regards,

Craig Martin  
Account Manager  
Office: 408-294-4838  
Cell: 408-406-3022  
[craig@siliconconstellations.com](mailto:craig@siliconconstellations.com)



## Deliverables & Pricing

<b>Atherton Lighted Crosswalk Project</b>			
<b>Date Created:</b>	25-June-08	<b>Date Issued:</b>	25-June-08
<b>Client:</b>	Sacred Heart Schools	<b>Validity:</b>	60 days
<b>Quotation Number:</b>	061608-01B	<b>Service Warranty:</b>	<b>2-Year</b>

**Total Equipment to be delivered by Silicon Constellations**

Product	Quantity
LumiStar Rev 4	10
Std Base Plate	10
Push Button with R62E Plate	2
Advance Flashing Sign	2
Activator Controller	2
Installation	1
Galvanized Pole	4

Equipment Total	20,884.34
Sales Tax Not Included	
Freight	N/C
<b>Total</b>	<b>20,884.34</b>

**PerpeLife Service Plan**

2-Year Parts & Service Warranty. Silicon Constellations provides full service during the warranty period should it be required. Includes system reprogramming if requested by the customer.

**Chrip Company Installation**

Install Silicon Constellations' equipment. 2. Install 4 (ea) Push Button Pole. 3. Lay out, underground service alert and full traffic control.

**Verification**

Each system is tested in unison before it leaves the factory. The installer is responsible for verifying system operation at the time of installation and any issues are resolved with the installer and Silicon Constellations.

**Delivery Schedule**

Upon receipt of the order, and once the order has been reviewed, an estimated delivery schedule is sent to you. Silicon Constellations will endeavor to improve upon this date and is subject to change at the sole discretion of Silicon Constellations.

**Payment**

30 days net upon shipment of the system. Please send checks payable to Silicon Constellations Inc, 2980 Scott Blvd., Santa Clara, CA 95054

**Please accept this signed quote as a Purchase Order**

Authorizing Signature:

Date:

Printed Name:

Purchase Order No:

Note: Signing implies acceptance of above terms, conditions and deliverables.



Monday, June 2, 2008

Sandra A. Dubinsky  
Chief Operations Officer  
Sacred Heart Schools  
150 Valparaiso Avenue  
Atherton, CA 94027

Dear Sandra,

It was a pleasure to meet with you last week. Thank you for setting aside some time to allow me to come to the Sacred Heart Schools and demonstrate Spot Devices traffic safety products.

Following up on our discussion and field survey I have included the following:

- Company information
- Product information
- Diagrams of the proposed system
- Pricing for the proposed system

Please feel free to reach out to me directly with any questions otherwise I will follow up with you shortly to discuss.

Kindest regards,

A handwritten signature in black ink that reads "Dustin Hinds". The signature is written in a cursive, slightly slanted style.

Dustin Hinds  
Spot Devices, Inc.  
888.520.0008 ext. 8419  
dustinh@spotdevices.com



## Spot Devices Lighting System Proposal

Spot Devices is a global leader in pedestrian warning systems. By merging solar, wireless and LED technologies, Spot Devices creates crosswalk safety lighting systems that are durable, effective and easy to install. No matter your needs -- AC or solar power, inroad lights, LED signs or advance warning beacons -- Spot Devices can design, manufacture and support your pedestrian warning system. Unparalleled service and support make Spot Devices the vendor to choose for pedestrian safety projects.

### Why Use In-Road Warning Lights (IRWL's)?

- Because IRWL's activate only when pedestrians are crossing, drivers associate them with a need to stop.
- IRWL's draw attention to pedestrians by defining the crosswalk .
- IRWL's warn drivers in the center lanes of a multi-lane road that a pedestrian is in the crosswalk.

### Scientific Support for In-Road Warning Lights

*"Flashing amber lights embedded in the pavement at uncontrolled crosswalks clearly have a positive effect in enhancing a driver's awareness of crosswalks and modifying driving habits to be more favorable to pedestrians."*

~Godfrey, David P.E. et al. "Success in Redesigning Main Streets for Pedestrians."

*"The percentage of drivers yielding to a pedestrian during the day and at night increased considerably more after the installation of the IRWLs than after the installation of the flashing beacons."*

~ Finley, Melisa D., P.E., et al. "An Assessment of Various Rumble Strip Designs and Pavement Marking Applications for Crosswalks and Work Zones."



## **Engineering Technology**

Spot Devices merges the latest solar, wireless and wired signal/power, and LED technologies into innovative, modular designs to make the brightest, most durable, most affordable in-road warning light systems on the market.

### **Solar Technology**

- All Spot Devices systems can be solar or AC powered at the curbside. Solar power systems eliminate the delays and costs associated with obtaining power permits and connecting to a power source. They also allow Spot Devices systems to be deployed wherever they are needed.
- Road Spot inroad lights can be individually solar powered or wired to the system power source. Standalone solar Road Spot lights use satellite-quality 25% efficient solar cells – the most advanced, efficient solar cells available.

### **Modular Technology**

- Spot Devices Road Spot inroad lights, whether wired or wireless, are sealed units that can easily be replaced in the field. This significantly reduces the costs of installation and any required maintenance.
- Wired Road Spot lights employ proprietary self-purging plugs to create a positive connection with their anchor plugs... even underwater! Other wired in-road lights require costly maintenance due to wiring connections that are difficult to work with and prone to deterioration.
- Road Spot lights mount to modular anchors that don't break through the blacktop – they penetrate only two inches into the road. This eliminates the need for reinforcing concrete and reduces the chance of pavement damage. Other wired inroad lights mount in base cans that penetrate deep into the roadway. This sometimes allows them to sink into the pavement, rendering them useless.

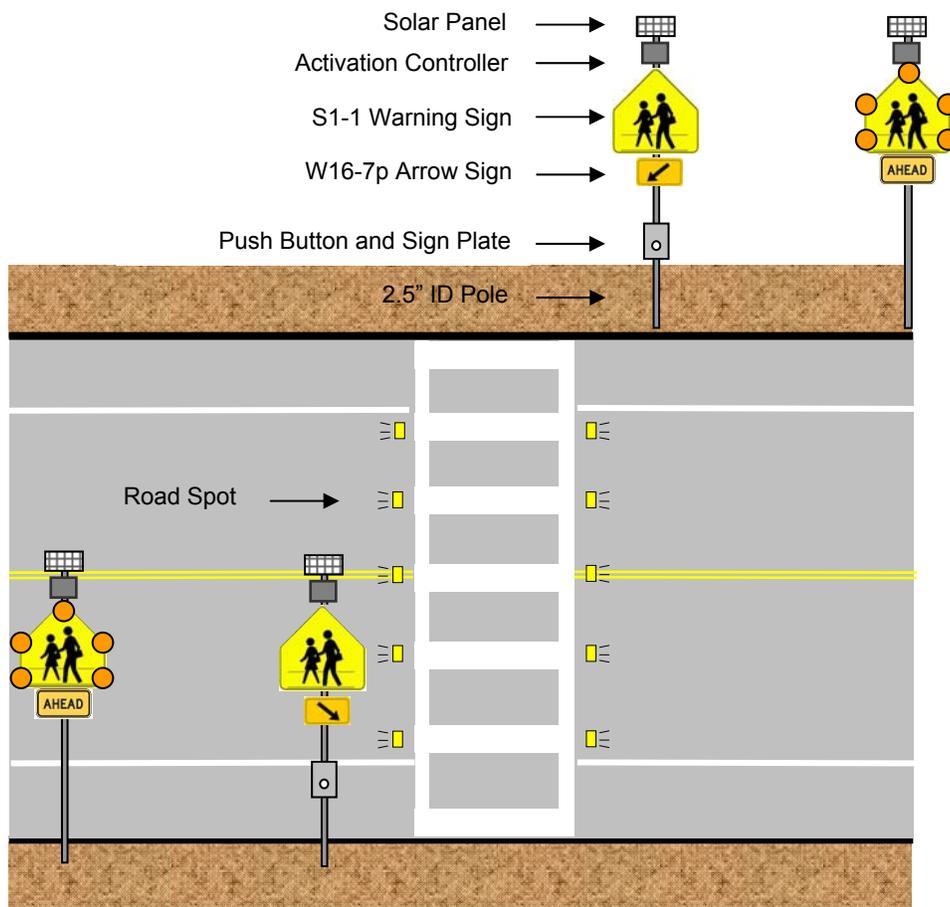
### **Service and Support**

Spot Devices prides itself on surrounding its product offerings with professional and responsive service and support.

### **Flexible System Design**

- Whatever your pedestrian safety needs -- wireless or wired inroad lights, active (pushbutton) or passive (detector) activation, calendar-event or pedestrian activated beacons – Spot Devices can help you design, produce and support a system to meet them.

## Sacred Heart Schools Crosswalk System Layout





**RS310 Crosswalk Equipment Pricing**

Quantity	Equipment Description	
10	Road Spot RS310 Bidirectional Amber	
1	Spot Controller SC310	
1	60W Solar Panel	
2	Pushbutton	
4	2.5" ID Pole	
2	S1-1 School Zone Sign	
2	W16-7p Down Arrow Sign	
2	S1-1 School Zone LED Sign	
3	Spot Controller SC200	
2	5W Solar Panel	
2	W16-9p "Ahead" Sign	
1	Road Spot Cable Estimate	
1	2 Year Warranty	
	<b>Spot Devices Equipment Total</b>	<b>\$21,965</b>
	<b>Installation (Engineering Estimate)</b>	<b>\$13,750</b>
	<b>Total Equipment and Installation</b>	<b>\$35,715</b>

\* Pricing does not include shipping or taxes.

\* Advanced LED Signs need to be within 200 feet of the crosswalk with line of sight.



**RS200 Crosswalk Equipment Pricing**

Qty	Equipment Description
10	Road Spot RS200 Unidirectional Amber
4	Spot Controller SC200
4	5W Solar Panel
2	Pushbutton
4	2.5" ID Pole
2	S1-1 School Zone Sign
2	W16-7p Down Arrow Sign
2	S1-1 School Zone LED Sign
2	W16-9p "Ahead" Sign
1	1 Year Warranty
	<b>Spot Devices Equipment Total</b> <b>\$17,930</b>
	<b>Installation (Engineering Estimate)</b> <b>\$10,550</b>
	<b>Total Equipment and Installation</b> <b>\$28,480</b>

\* Pricing does not include shipping or taxes.

\* Advanced LED Signs need to be within 200 feet of the crosswalk with line of sight.

## Spot Devices In Road Warning Light Crosswalk System



Palos Verdes Estates, CA



June 2, 2008

Chief Operating Officer, Sandy Dubinsky  
150 Valparaiso Avenue  
Atherton, CA 94027

Job Name: **FURNISH AND INSTALL IN-PAVEMENT CROSSWALK SYSTEM**  
Job Location(s): TBD – Adjacent to School Facility

Per your request, this proposal is to furnish and install (1) turnkey in-pavement crosswalk system. System will be solar powered and will include (10) in-pavement fixtures (five units on each side of existing crosswalk). Furnish and install (2) push buttons to be installed on new 4-in diameter Caltrans Type 1B poles. Proposal includes necessary traffic control, equipment, programming, and coordination work with the Town of Atherton.

**Labor, Equipment, & Materials .....\$ 40,250.00**  
**DEDUCT \$ 2,200.00 if non-LED sign is to be used**

**EXCLUSIONS:**

- **Heavy concrete work where more than two flags of concrete is to be removed.**
- **Permit fees**
- **If formal engineering plans are required, add \$ 2,000.00**

This offer shall expire 30 days from the date hereof and may be withdrawn by us at any time prior thereto with or without notice. This offer supersedes any prior offers, commitment or orders, contains all terms, conditions and warranties and when accepted, constitutes the entire contract between the parties. The resulting contract shall not be modified except by formal written amendment. This offer shall be accepted by delivery to us of a copy of this offer duly signed by you in the space provided.

The foregoing offer is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

SACRED HEART SCHOOL

REPUBLIC ITS

Robert Asuncion, TE  
Operations Manager

By: \_\_\_\_\_  
Title: \_\_\_\_\_



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF FEBRUARY 20, 2008**

**SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH  
WILSEY HAM FOR FINAL DESIGN SERVICES FOR THE FLETCHER-  
RIDGEVIEW PROJECT, IN AN AMOUNT NOT TO EXCEED \$70,244  
PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL  
AUTHORIZATION OF \$77,268.40.**

### **RECOMMENDATION:**

Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Wilsey Ham to provide final design services for the Fletcher Ridgeview Project in an amount not exceed \$70,244, plus a 10% contingency, for a total authorization of \$77,268.40.

### **BACKGROUND:**

The project description from the Request For Proposals (RFP) is:

To design a storm drainage system that will redirect the existing flow path to avoid flows through private property by installing a new system connecting the existing storm drain at the corner of Alta Vista Drive and Fletcher Drive, to follow Fletcher Drive and turn east to Ridgeview Drive, where it will connect to an existing 27" storm drain.

To avoid increasing the runoff to the Atherton Channel from the more direct routing, which would cause increased potential for downstream flooding, the time of concentration for the new system will need to be increased by the use of in-line detention, using oversized pipes for storage with low flow outlets calibrated to match the undeveloped condition and high flow weirs for rainfall events in excess of the design event.

Wilsey Ham was chosen by Qualifications Based Selection and approved by Council in February 2008 to be the Town's on-call drainage design consultant. The first task was to develop a Basis of Design (BOD) and conceptual plans for the Fletcher-Ridgeview project based on that BOD. After several iterations in which the overall cost of the project was reduced by refinements to the BOD, a conceptual design was approved. That conceptual design was the basis for this proposal for the final design and construction bid package preparation.

**ANALYSIS:**

\$115,000 was budgeted for the final design work on the Fletcher-Ridgeview project, based on the Nolte Report construction cost estimate, inflated from \$432,000 in 2001 dollars to \$500,000 in 2008 dollars. The current budget estimate of \$1,000,000 (based on the preliminary conceptual estimate) is much higher than the Nolte estimate, but the engineering costs have remained close to the original estimate, and includes the Basis of Design that will be used on all future projects.

**FISCAL IMPACT:**

\$115,000 in Parcel Tax funds were budgeted for Fletcher-Ridgeview drainage design in FY 2007-08. Only \$56,532 of that was spent on conceptual design, with the balance rolled over into the FY 2008-09 project budget of \$1,000,000. The Scope of Services and Fee Estimate were negotiated with Wilsey Ham. The final negotiated fee estimate for the second phase of work (Fletcher-Ridgeview Final Design) is \$70,244. This includes \$15,726 for surveying that would normally be included in CIP support, but it was felt it would be more efficient for Wilsey Ham, who has their own survey crews, to perform this work. A 10% contingency of \$7,024.40 would bring the total authorization to \$77,268.40, which is within the approved budget.

Prepared By:

Approved:

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

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Jerome D. Gruber  
City Manager

Attachments: Professional Services Agreement  
Scope of Work  
Fee Estimate

PROFESSIONAL SERVICES AGREEMENT FOR  
(type-in name of service or project)

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and Wilsey-Ham, 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 Municipal Storm Drain System Final Design services in connection with the project designated as Fletcher-Ridgeview Storm Drain Project.
2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment and supplies.
3. Time for Performance. Work under this contract shall commence upon the giving of written notice by the City to the Consultant to proceed. Consultant receipt of a Purchase Order shall constitute said notice. Consultant shall perform all services and provide all work product required pursuant to this agreement within 90 calendar days from the date written notice is given to proceed, unless an extension of such time is granted in writing by the City.
4. Payment. The Consultant shall be paid by the City for completed work and for services rendered under this agreement as follows:
  - a. Payment for the work provided by Consultant shall be made as provided on Exhibit "B" attached hereto, provided that the total amount of payment to Consultant shall not exceed \$ 70,244 without express written modification of the agreement signed by the City.
  - b. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
  - c. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.
  - d. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.
  - e. The Consultant's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the City and state for a period of three (3) years after final payments. Copies shall be made available upon request.
5. Ownership and Use of Documents. All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this agreement shall be the property of the City whether the project for which they are made is

executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Consultant's endeavors.

6. Compliance with laws. Consultant shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.
7. Indemnification. Consultant shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, including attorneys fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Consultant's own employees, or damage to property to the extent caused by a negligent act, omission or failure of the Consultant.
8. Insurance. The Consultant shall secure and maintain in force throughout the duration of this contract comprehensive general liability insurance with a minimum coverage of \$500,000 per occurrence and \$2,000,000 aggregate for personal injury, and \$500,000 per occurrence/aggregate for property damage. Said general liability policy shall name the Town of Atherton as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this section shall be delivered to the City within fifteen (15) days of execution of this agreement.
9. Independent Contractor. The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Consultant nor any employee of Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Consultant, or any employee of Consultant.
10. Covenant Against Contingent Fees. The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the City shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
11. Assignment. The Consultant shall not sublet or assign any of the services covered by this agreement without the express written consent of the City.

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

13. Termination.

- a. The City reserves the right to terminate this agreement at any time by giving thirty (30) days written notice to the Consultant.
- b. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this agreement between surviving members of the Consultant and the City, if the City so chooses.

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

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

Notices to Consultant shall be sent to the following address:

Jeff Peterson, PE, Principal, Wilsey Ham  
393 Vintage Parkway, Suite 100  
Foster City, CA 94404

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 August, 2008.

Town of Atherton

Wilsey-Ham, Consultant

By \_\_\_\_\_  
City Manager

By \_\_\_\_\_

Approved as to Form

By \_\_\_\_\_  
City Attorney

EXHIBIT "A"  
SCOPE OF SERVICES

EXHIBIT A  
SCOPE OF SERVICES

August 11, 2008

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

WH Job No. 256-079

Re: Proposal for Fletcher Drive/Ridgeview Drive Storm Drainage Improvements

Dear Duncan:

Based on your request, we are pleased to provide you with this proposal for engineering and survey services for Fletcher Drive/Ridgeview Drive Storm Drainage Improvements Project.

**Background**

Wilsey Ham recently prepared Preliminary Improvement Plans for storm drain improvements in the Fletcher Drive/Ridgeview Drive area. These improvements were approved and accepted by the Town of Atherton Public Works Department.

It is with great pleasure that Wilsey Ham submits our second proposal for final engineering design, surveying and the preparation of construction documents for these improvements.

The preliminary improvement plans were prepared using County record topographic data. For final design, a detailed topographic survey will be performed within the public right-of-way and the limits of the project.

The horizontal and vertical storm drain alignments will need to be designed to avoid conflicts with the other existing utilities in the street. Accurate utility information will be necessary to avoid such conflicts and potentially costly construction change orders during construction. From our experience, record mapping of water, gas, communications and other non-gravity utilities is often-times inaccurate. As a result, we propose to engage the services of a utility location company to acquire more accurate horizontal utility locations of the existing utilities. The utility locator uses various methods to detect the underground utilities and then marks their location on the surface with paint or markers. After field marking, the horizontal locations of the existing utilities will be picked up by field surveys and incorporated into the topographic drawings. Potholing of existing utilities is not included in this proposal, and typical depths will be assumed for existing utilities.

August 11, 2008

Duncan Jones

Page 2

In light of the foregoing, Wilsey Ham proposes the following scope of work to prepare the construction improvement plans and bid package for the Fletcher Drive/Ridgeview Drive Storm Drainage Improvement Project.

### Scope of Services

#### Task 1 – Underground Utility Detection and Supplemental Topographic Survey

The utility locator service will field mark existing utilities prior to the topographic survey. Once existing utilities have been marked, a supplemental topographic survey will be performed to pick up the additional detail needed to prepare the improvement plans. This will include information within the public right-of-way and in areas on private property where improvements will be located such as:

- Edge of pavement and curbs,
- Horizontal location of utility markings,
- Surface evidence of utilities,
- Inverts of existing gravity facilities,
- Conform grades, swales.

Three days of field survey have been budgeted for this task.

**Deliverables:** Preparation of/update of project topographic base map.

#### Task 2 – 65% Construction Documents

The construction documents will be developed to approximately 65% complete stage and then submitted to the Town for review and comment. The following tasks will be included:

- Prepare the title sheet and general notes sheet.
- Confirm hydrology for final design and finalize drainage area map.
- Design stormwater storage facility using Pondpack.
- Prepare storm drain plan and profiles.
- Prepare detail sheets.
- Prepare preliminary construction specifications.
- Update Engineer's Estimate.
- Two meetings with either the Town and/or residents are budgeted.

**Deliverables:** Two sets of 24" x 36" design plans developed to the 65% complete stage, preliminary construction specifications and updated construction cost estimate.

#### Task 3 – 95%, 100%, Final Construction Documents, Bid Package Preparation

August 11, 2008

Duncan Jones

Page 3

After receipt of the 65% review comments from the Town of Atherton, the construction documents will be developed to the 95% complete stage and submitted for the Town's review. Revisions will be incorporated into the 95% package based on the Town's review comments. The technical specifications will be fully developed and the full bid package will be prepared using the Town's General Conditions, bid schedule and other standard documents. The construction details will be fully developed and the engineer's estimate will be revised as necessary. The 95% complete plans will be submitted to the Town for their review and comment. After receipt of the Town's comments from the review of the 95% complete package, Wilsey Ham will incorporate the Town's comments, finalize the plans, specifications and engineer's estimate to the 100% level and submit for the Town's review. Any comments from this review will be incorporated into the final package and the full bid package will be stamped, signed and submitted for the Town's use in bidding the project. Development of the 95%, 100% and final construction document and bid package preparation will include the following tasks:

- Incorporate the Town's 65% review comments.
- Develop the plan and profile sheets to the 95% level.
- Develop the detail sheets to the 95% level.
- Develop the construction specifications to the 95% level and prepare the full bid package.
- Develop the Engineer's Estimate to the 95% level.
- Perform quality control check and submit package to Town.
- Make revisions to address the Town's 95% review comments. Submit 100% drawings and documents for review and final approval.
- Make final revisions and submit reproducible documents for bidding.
- One meeting with the Town and/or residents is budgeted.

**Deliverables:** Two sets of 24" x 36" plans, specifications and estimates (PS&E) developed to the 95% complete stage. Two sets of PS&E developed to the 100% complete stage. One set of final bid documents.

### **Assumptions and Exclusions**

The following assumption and exclusions were made in the preparation of this proposal:

1. It is assumed that all storm drains will be gravity mains in roadways, and therefore no pump stations or force mains are included in this proposal.
2. Preparation of easements is not anticipated and therefore has not been included in this proposal.
3. Property lines will be shown per record maps. No property surveys will be performed as part of this work.
4. Potholing of utilities has not been included in this proposal.

August 11, 2008  
Duncan Jones  
Page 4

5. All permit costs and agency/utility fees will be paid by others.
6. It is assumed that no geotechnical investigation or recommendations will be required for this project.
7. No formal survey monuments will be set as part of the proposed work.
8. Bidding and construction services have not been included in this proposal.

**Fee and Schedule**

Wilsey Ham's Labor Fee for the tasks described above is a maximum of \$70,244. An additional budget of \$4,000 is proposed for the reimbursable items. Billings will be monthly based and will be charged on a time and materials basis to the maximum shown above, in accordance with the attached Charge Rate Fee Schedule.

**Authorization**

You may authorize Wilsey Ham to proceed in accordance with this proposal and the Town of Atherton's Contract Provisions upon execution of a contract.

We appreciate the opportunity to participate on your project.

Very truly yours,

WILSEY HAM  
A California Corporation

Amy Dunning, P.E.  
Project Manager  
RCE #69,658

Accepted: Duncan Jones  
Public Works Director/City Engineer

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Jeff Peterson  
Principal  
RCE #41,385

Attached: Standard Contract Provisions  
Fee Estimate

EXHIBIT "B"  
PAYMENT

1. Consultant shall be paid up to \$70,244 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.

**Exhibit B-1**  
**Town of Atherton**  
**Fletcher Drive/Ridgeview Drive Storm Drain Improvement Project**  
**Fee Estimate**  
**August 11, 2008**

Description/Task	SUPERVISING ENGINEER \$190 HRS		SENIOR ENGINEER \$150 HRS		ASSOCIATE ENGINEER \$136 HRS		ASSISTANT ENGINEER \$109 HRS		DESIGNER TECHNICIAN II \$112 HRS		WORD PROCESS/ADMIN SUPPORT \$60 HRS		2 PERSON SURVEY CREW \$225 HRS		Sub Consultants	REIM-BURSABLE EXPENSES	TOTAL WH LABOR \$	TOTAL ALL \$	TOTAL WH LABOR HOURS
	HRS		HRS		HRS		HRS		HRS		HRS		HRS						
<b>1 UG Util Detec/Supp Topo Survey</b>	570	3			544	4			3,584	32			5,400	24	5,628		10,098	15,726	63
1. Supplemental Surveys/Base Mapping	570	3			544	4			3,584	32			5,400	24	5,628		10,098	15,726	63
Subtotal																			
<b>2 65% Complete Plan Prep</b>																			
1. Prep title and general notes sht			600	4	272	2			448	4							1,320	1,320	10
2. Confirm hydrology & DAML			1,800	12	272	2			448	4							2,520	2,520	18
3. Design stormwater storage			2,400	16	816	6											3,406	3,406	23
4. Prep sd plan and profile views	190	1	5,400	36	816	6			4,480	40							10,886	10,886	83
5. Prep prelim detail sheets			1,800	12	272	2			1,792	16							3,864	3,864	30
6. Prep prelim specifications	190	1	3,000	20	272	2											3,272	3,272	22
7. Update const cost estimate			900	6	272	2											1,362	1,362	9
8. Meetings and Coord	1,140	6			816	6											1,956	1,956	12
Subtotal	1,710	9	15,900	106	3,808	28			7,168	64							28,586	28,586	207
<b>3 95% &amp; Final Design+Bid Pkg Prep</b>																			
1. Incorp Town 65% comments	190	1	1,800	12	272	2			896	8							3,158	3,158	23
2. Devel plan & profile sheets- 95%	190	1	3,600	24	272	2			1,792	16							5,854	5,854	43
3. Develop detail sheets to 95%			1,200	8	272	2			896	8							2,368	2,368	18
4. Devel specs-95% + full bid pkg	380	2	2,400	16	1,088	8			672	6							4,540	4,540	32
5. Devel construction estam to 95%			600	4	136	1											736	736	5
6. Qual Contr Check-submit to Twn	1,140	6	600	4	1,088	8			448	4							3,276	3,276	22
7. Devel 100% pkg and submit	190	1	1,200	8	544	4			896	8							2,640	2,640	20
8. Final revs per comments-submit	190	1	1,200	8	544	4			448	4							2,382	2,382	17
9. Meetings	570	3			408	3											978	978	6
Subtotal	2,660	14	12,600	84	4,624	34			6,048	54							25,932	25,932	186
<b>GRAND TOTAL</b>	4,940	26	28,500	190	8,976	66			16,800	150			5,400	24	5,628		64,616	70,244	456

Notes: 1. The amounts may vary between tasks and individuals but the Grand Total amount will not be exceeded without approval of the Client.  
2. Total All includes subconsultants and reimbursable costs.  
3. Hourly rates effective through December 31, 2008 and subject to revision annually thereafter.  
4. All positions may not be shown. If a position is not shown the Charge Rate Fee Schedule will govern.



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVE A PURCHASE ORDER WITH KIMLEY HORN AND  
ASSOCIATES, INC. FOR SPEED SURVEY SERVICES FOR TWELVE  
STREETS, IN AN AMOUNT NOT TO EXCEED \$20,000**

#### **RECOMMENDATION:**

Accept the proposal and authorize the City Manager to sign a Purchase Order with Kimley-Horn and Associates, Inc. to provide Speed Survey services for twelve streets in an amount not exceed \$20,000.

#### **BACKGROUND:**

Speed surveys are required by the courts in order for the Police Department to enforce the speed limits using radar. The surveys are good for five years. Twelve streets are due for re-survey in October 2008:

Atherton Avenue (e/o Stevenson)  
Elena Avenue  
Glenwood Avenue  
Oak Grove (w/o Middlefield)  
Polhemus Avenue  
Selby Lane (200, 300, 400 block)

Atherton Avenue (w/o Stevenson)  
Fredrick Avenue  
Greenoaks Avenue  
Oak Grove (e/o Middlefield)  
Selby Lane (unit and 100 block)  
Stockbridge Avenue

**ANALYSIS:**

Kimley-Horn was chosen by Qualifications Based Selection in 2003 to be the Town's on-call traffic consultant. They have been preparing speed surveys annually since then.

**FISCAL IMPACT:**

General funds in the amount of \$20,000 are budgeted for this project in FY 2008-09. The Scope of Services and Fee Estimate were negotiated with the selected firm. The final negotiated fee estimate is \$20,000, which is within the approved budget.

Prepared By:

Approved:

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

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Jerome D. Gruber  
City Manager

Attachments: Proposal



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH BKF ENGINEERS FOR CREEK STABILIZATION DESIGN SERVICES FOR THE UPPER ATHERTON CHANNEL REPAIR PHASE 2 PROJECT, IN AN AMOUNT NOT TO EXCEED \$151,653 PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$166,818.30.**

#### **RECOMMENDATION:**

Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with BKF Engineers to provide creek stabilization design services for the Upper Atherton Channel Repair Phase 2 Project in an amount not to exceed \$151,653, plus a 10% contingency, for a total authorization of \$166,818.30.

#### **BACKGROUND:**

Phase 1 of the Upper Atherton Channel Repair project was completed in June of 2006. Since that time, H.T. Harvey has been performing red-legged frog monitoring studies and working with the US Fish and Wildlife Service (USFWS) attempting to gain approval to proceed with Phase 2. Because a developer upstream denuded the creek banks, excess sediment has deposited in the Phases 1 frog mitigation pool in the winter of 2006-07. USFWS required the pool to be restored and the frogs resurveyed before they would give permission to move to Phase 2.

The pool was restored in September 2007. During the excavation, three frogs had to be removed from the pool, i.e., it was working! During the winter storms of 2007-08, additional sediment settled in the pool. Surveys conducted in June 2007 and June 2008 showed no frogs in the pool, although frogs were present in the creek below the pool (the Phase 2 site). The USFWS now

requires that the design for the mitigation pool (Phase 1) be revised, the design of the lower portion (Phase 2) be changed and the permit process start again for Phase 2 because of the changed conditions during the years since Phase 1 was approved.

Staff met with BKF and H.T. Harvey to discuss modifications to the Phase 1 construction and the Phase 2 conceptual plan. Phase 1 will be modified to increase scour in the pool to inhibit sedimentation. The new Phase 2 plan will continue to repair creek banks where needed, and include a staged plan to use weirs to trap the sediment and build up the scoured creek bottom using the sediment coming down the creek. This solution will need to develop frog pools at each weir. A similar solution has been ongoing on Belmont Creek at the University of Notre Dame de Namur. When completed, the creek in a canyon will be replaced with gently sloping banks and a stabilized streambed.

**ANALYSIS:**

The current plan for the Upper Atherton Channel is more ambitious than the previous conceptual plan. This is necessary to gain federal permit approval for the project. The cost to engineer this revised design and complete the permit process is reasonable.

**FISCAL IMPACT:**

Parcel Tax funds in the amount of \$100,000 are budgeted for this project in FY 2008-09. Additional Parcel Tax funds have been made available by the Street Reconstruction Phase 4 bids that came in \$123,492.55 under budget. It is recommended that a portion of these funds be used for the additional authorization needed. The Scope of Services and Fee Estimate were negotiated with the selected firm. The final negotiated fee estimate is \$151,653. A 10% contingency of \$15,165.30 would bring the total authorization to \$166,818.30.

Prepared By:

Approved:

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

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Jerome D. Gruber  
City Manager

Attachments: Professional Services Agreement  
Proposal

PROFESSIONAL SERVICES AGREEMENT FOR  
(type-in name of service or project)

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and BKF Engineers, 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 Creek Stabilization Design services in connection with the project designated as the Upper Atherton Channel Repair Phase 2 project.
2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment and supplies.
3. Time for Performance. Work under this contract shall commence upon the giving of written notice by the City to the Consultant to proceed. Consultant receipt of a Purchase Order shall constitute said notice. Consultant shall perform all services and provide all work product required pursuant to this agreement within 270 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 \$151,653 without express written modification of the agreement signed by the City.
  - b. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
  - c. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.
  - d. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.
  - e. The Consultant's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the City and state for a period of three (3) years after final payments. Copies shall be made available upon request.
5. Ownership and Use of Documents. All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this agreement shall be the property of the City whether the project for which they are made is

executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Consultant's endeavors.

6. Compliance with laws. Consultant shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.
7. Indemnification. Consultant shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, including attorneys fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Consultant's own employees, or damage to property to the extent caused by a negligent act, omission or failure of the Consultant.
8. Insurance. The Consultant shall secure and maintain in force throughout the duration of this contract comprehensive general liability insurance with a minimum coverage of \$500,000 per occurrence and \$2,000,000 aggregate for personal injury, and \$500,000 per occurrence/aggregate for property damage. Said general liability policy shall name the Town of Atherton as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this section shall be delivered to the City within fifteen (15) days of execution of this agreement.
9. Independent Contractor. The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Consultant nor any employee of Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Consultant, or any employee of Consultant.
10. Covenant Against Contingent Fees. The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the City shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
11. Assignment. The Consultant shall not sublet or assign any of the services covered by this agreement without the express written consent of the City.

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

13. Termination.

- a. The City reserves the right to terminate this agreement at any time by giving thirty (30) days written notice to the Consultant.
- b. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this agreement between surviving members of the Consultant and the City, if the City so chooses.

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

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

Notices to Consultant shall be sent to the following address:

Edward Boscacci, Jr., P.E.  
 BKF Engineers  
 540 Price Avenue  
 Redwood City, CA 94063

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 \_\_\_\_\_, 2008.

Town of Atherton

Consultant

By \_\_\_\_\_  
City Manager

By \_\_\_\_\_

Approved as to Form

By \_\_\_\_\_  
City Attorney

EXHIBIT "A"  
SCOPE OF SERVICES

EXHIBIT "B"  
PAYMENT

1. Consultant shall be paid up to \$151,653 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.



**PROPOSED SCOPE OF SERVICES**

**ATHERTON CHANNEL STABILIZATION PROJECT - PHASE 2  
ADDITIONAL SERVICES FOR PERMITTING AND DESIGN**

**Project # 2190-10**

**20 June 2008**

H. T. Harvey & Associates proposes to provide ecological consulting services to the Town of Atherton to assist with permitting for Phase 2 of the Upper Atherton Channel Bank Stabilization Project. The project site is a 1200-foot long reach of Atherton Channel located adjacent to Walsh Road in Atherton, California. The following scope of work is based on the modified design approach developed during our team meeting with Duncan Jones on 28 February 2008. The modified design approach for Phase 2 will include earthwork, instream weir construction, and revegetation to stabilize the bed and banks of the channel from the existing constructed pool downstream to Reservoir Road. There will be specific locations that will require earthwork to stabilize eroding banks and limited instream work, including the construction of weirs to allow aggradation of the channel bed over time.

In 2007, the Town of Atherton approved a total of \$15,340 for H. T. Harvey & Associates to complete the Phase 2 permitting. At that time it was assumed that the U.S. Fish and Wildlife Service (Service) would only require an update to the existing Biological Assessment (BA) and that permits for the U.S. Army Corps of Engineers (USACE), California Department of Fish and Game (CDFG), and the Regional Water Quality Control Board (RWQCB) would only require extensions. Following site visits in spring 2008 with BKF Engineers and a meeting with Duncan Jones of the Town of Atherton, it was decided that the original design for channel stabilization would not be the best approach to address current site conditions. Therefore, it will be necessary for the original project description and design to be changed. H. T. Harvey & Associates' previous work towards permitting Phase 2 will be utilized in preparing the new permit applications. However, due to the substantial changes to the design approach it will be necessary to prepare new permit applications for all the regulatory agencies, including preparation of a new Mitigation and Monitoring Plan (MMP). The existing BA, prepared for Phase 1 of the project, will be revised and submitted to the USACE along with the MMP. The USACE will then submit the BA to the Service and request initiation of a Section 7 Consultation. Our scope assumes that the project will qualify for a USACE nationwide permit and that the remaining permit applications will be assembled using the Joint Aquatic Resource Permit Application (JARPA) process. If the project will require an individual permit from the USACE, then it will also be necessary to apply individually to the RWQCB and the CDFG. Additional budget would be required, if it is necessary to go through the individual permitting process because this process involves a detailed alternatives analysis for the USACE individual permit.





**H. T. HARVEY & ASSOCIATES**  
**ECOLOGICAL CONSULTANTS**

We will structure the permit applications to request regulatory agency approval for all work to be completed as part of Phase 2, which will cover all remaining work proposed through the entire project reach. However, it may be necessary to complete the work in sub-phases to allow for sufficient areas of the channel to be available for relocation of California red-legged frogs. The project description developed for the permit applications will prioritize and outline a timeline for these sub-phases of work. For example, we will structure the order of work to first address the slope failure at the Gupta property to eliminate safety concerns as soon as possible.

Attached is a fee estimate; we will bill our labor and expenses as time and charges and will not exceed the total fee estimate. This scope and fee estimate is valid for a period of 60 days from the time of submittal. This fee estimate includes preparation of Plans, Specifications and Estimates (PSE) for the biological aspects of project implementation.

If it is necessary to phase the funding and authorization of the work in our proposal, we would recommend the following phasing:

<b>Phasing of Scope Items</b>	<b>Tasks</b>	<b>Fee Estimate</b>
PHASE 1- PERMITTING SUPPORT	Task 1. Replanting of Phase 1 Mitigation Trees	\$41,850
	Task 2. Coordination with U.S. Fish and Wildlife Service	
	Task 3. Coordination with BKF Engineers on Project Design	
	Task 4. Permit Applications	
PHASE II- CONSTRUCTION DOCUMENTS	Task 5. Plans, Specifications, and Estimates	\$27,035
<b>Total</b>		<b>\$68,885</b>



The tasks associated with this scope of services are as follows:

**Task 1. Replanting of Phase 1 Mitigation Trees**

Per the request of the Town of Atherton, we will replant all dead riparian mitigation plantings, installed as part of Phase 1. This work will include planting arroyo willow from cuttings and California buckeye from seed.

**Task 2. Coordination with U.S. Fish and Wildlife Service**

H. T. Harvey & Associates will contact the U.S. Fish and Wildlife Service (Service) to discuss the history of the project and proposed approach to confirm that they will support Phase 2. This task assumes one conference call or one in-person meeting with the Service.

**Task 3. Coordination with BKF Engineers on Project Design**

H. T. Harvey & Associates will review and provide comments on the engineer's plans in regards to the biological aspects of the design. We will provide up to 2 rounds of comments on the engineer's plans. This task also includes 1 meeting with BKF. The final project design will then be used in revising the BA (Task 4a).

**Task 4. Permit Applications**

H. T. Harvey & Associates will complete the following permit application materials and submit to all pertinent regulatory agencies for approval.

**Task 4a. Revise Biological Assessment and Formal Section 7 Consultation**

H. T. Harvey & Associates will revise the project's BA to be consistent with the new project design. We will assist the Town of Atherton in communications with the USACE and Service to initiate a Formal Section 7 Consultation regarding the effects of Phase 2 on the California red-legged frog. The revised BA will include our results from the ongoing California red-legged frog monitoring, as well as our opinion on the suitability of habitat on-site for relocating frogs during Phase 2 construction. The BA will also prioritize work areas and provide a timeline for the work to be completed. This task includes 1 round of revisions based on review by the Town of Atherton. We will also work with the USACE to request a draft of the Biological Opinion (i.e. the Section 7 permit) so that the design team has an opportunity to review the Biological Opinion prior to final issuance. This task also includes 1 round of revisions based on comments from the Service.

**Task 4b. Phase 2 Permitting for USACE, RWQCB and CDFG**

Assuming the project will be eligible for an existing USACE Nationwide permit, H. T. Harvey & Associates will prepare and process the permit applications for the USACE,

RWQCB, and CDFG through the JARPA process. This task also includes time for 2 site visits with the regulatory agencies and we have allotted a modest amount of time for agency communications. The budget assumes that the agencies will readily approve the project and meetings are simply required to ensure they understand the project description.

#### **Task 4c. Habitat Mitigation and Monitoring Plan**

A Habitat Mitigation and Monitoring Plan will be developed as part of the permit application package in accordance with the *USACE San Francisco and Sacramento Districts Mitigation and Monitoring Proposal Guidelines* (2004). This plan will describe the project's impacts to regulated habitats and species and outline the proposed habitat mitigation. Mitigation will likely include the creation of new California red-legged frog breeding pools within the channel and planting riparian trees from container stock in the area where the peninsula on Dr. Beekley's land, across from the Gupta's, may be graded back. In addition, the plan will address willow plantings along the creek that will serve as a bioengineering component of the bank stabilization design. The plan will also include an erosion control section that will cover seeding the disturbed areas with a native grass seed mix and placement of erosion control blankets. Figures for the Mitigation and Monitoring Plan will be the 50% Plans (Task 5A below). These design figures will then be included as part of both the Mitigation and Monitoring Plan and the 50% Plans and Specifications.

#### **Task 5. Plans, Specifications, and Estimate**

**Task 5a. 50% Plans, Specifications, and Estimate.** We will develop a 50% Plans, Specifications, and Estimate (PSE) package covering the biological aspects of the project. We assume that our plans and specification will be included in the larger project PSE package and up front boiler plate plans and specification to be produced by BKF and the Town of Atherton. H. T. Harvey & Associates will produce plan sheets for site preparation (1 sheet), planting/seeding (1 sheet), and wildlife exclusion fencing (2 sheets). In addition, outline specifications will be written to cover site preparation, planting/seeding, wildlife exclusion fencing, and long-term maintenance. This task will also include the preparation of cost estimates for each of the biddable items. As noted in Task 5, the designs produced for this task will be included in the submittal of the Mitigation and Monitoring Plan. This task includes time for coordination with BKF and the Town of Atherton.

**Task 5b. 90% Plans, Specifications, and Estimate.** Following issuance of the project's permits, the PSE will be further developed based on comments from the permitting agencies, BKF and the Town of Atherton. At this stage the outline specification will be developed as full written specifications. The PSE will be circulated to BKF and the Town of Atherton for design coordination and review.

**Task 5c. 100% Plans, Specifications and Estimate (Final Bid Set).** Upon receipt of review/coordination comment by BKF and the Town of Atherton, H. T. Harvey &

Associates will prepare a final 100% PSE with sufficient information required to solicit bids from qualified restoration contractors. It is anticipated that the level of detail and nature of the review comments will allow the plans and specifications to be completed within these 3 submittals. If additional design coordination, changes to the restoration approach, or other factors required additional submittals, H. T. Harvey & Associates can provide this as additional services.

**Assumptions:**

1. The regulatory agencies will not require major design revisions to the BA, MMP, or PSE.
2. Mitigation planning work does not include assessment of off-site mitigation opportunities.





**H. T. HARVEY & ASSOCIATES**  
**ECOLOGICAL CONSULTANTS**

**Project Name: Atherton Channel Phase 2 Permitting and Design**

**Proposal Number:**

**Project Number: 2190-10**

**Date: 20 June 2008**

**PROJECT BUDGET**

<b>I. Personnel Costs</b>			
<b>Professional Staff*</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Dan Stephens	15	\$ 205.00	\$ 3,075
Max Busnardo	36	\$ 170.00	\$ 6,120
Matt Quinn	108	\$ 140.00	\$ 15,120
Brian Cleary	30	\$ 125.00	\$ 3,750
Julie Klingmann	81	\$ 155.00	\$ 12,555
Joe Howard	54	\$ 170.00	\$ 9,180
Susan Infalt	142	\$ 110.00	\$ 15,620
Graphic/GIS	20	\$ 100.00	\$ 2,000
Support	14	\$ 80.00	\$ 1,120
		<b>Subtotal</b>	<b>\$ 68,540</b>

<b>II. Direct Costs</b>	<b>Units</b>	<b>Rate</b>	
Travel (\$0.505/mile) (4 round trips at 55 miles)	225	\$ 0.505	\$ 114
Per Diem (days x rate)		\$ 178	\$ -
GIS (per hour surcharge)	20	\$ 10	\$ 200
Equipment			\$ -
Expendable Supplies			\$ -
Other			\$ -
Service Fees (10%)			\$ 31
		<b>Subtotal</b>	<b>\$ 345</b>

**III. Total Budget** **\$ 68,885**

\* Please note: Substitutions of other similarly-qualified individuals may be made when necessary



**EXHIBIT B-1**  
**PROFESSIONAL PERSONNEL SERVICE FEES**  
 JANUARY 1, 2008 - DECEMBER 31, 2008

**PERSONNEL**

**HOURLY RATES**

**ENGINEERING**

Associate	\$162.00
Project Manager	\$153.00- \$158.00
Engineer IV	\$142.00
Engineer I, II, III	\$101.00 - \$116.00- \$132.00

**PLANNING**

Planner I, II, III	\$101.00-\$116.00-\$132.00
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**SURVEYING**

Project Manager	\$153.00
Surveyor I, II, III, IV	\$101.00 -\$116.00- \$ 132.00 -\$142.00
Survey Party Chief	\$127.00
Survey Chainman	\$100.00
Apprentice I, II, III, IV	\$53.00- \$73.00- \$83.00- \$93.00

**DESIGN AND DRAFTING**

Technician I, II, III	\$96.00 - \$104.00 - \$113.00
Drafter I, II, III, IV	\$75.00 - \$83.00 - \$91.00 - \$100.00
Student Engineer/Surveyor	\$53.00

**CONSTRUCTION ADMINISTRATION**

Senior Construction Administrator	\$150.00
Resident Engineer	\$110.00
Field Engineer I, II, III	\$101.00 - \$116.00 - \$132.00

**SERVICES AND EXPENSES**

Project Assistant	\$65.00
Clerical/Administrative Assistant	\$56.00

Principals' time on projects is chargeable at \$188.00- \$210.00 per hour.

Charges for outside services, equipment, and facilities not furnished directly by BKF Engineers will be billed at cost plus 10%. Such charges may include, but shall not be limited to printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; special fees, permits, and insurance; transportation on public carriers, meals, and lodging; and consumable materials. Mileage will be charged at the prevailing IRS rate per mile.

Monthly invoices are due within 30 days from invoice date. Interest will be charged at 0.833% per month on past due accounts.

Expert witness/litigation rates are available upon request.

## EXHIBIT B

### *BKF Engineers*

*Project Name: Upper Atherton Channel Stabilization Project - Phase 2*

*Project Number:*

*Proposal Number: 20020170*

*12-Aug-08*

### PROJECT BUDGET

<b>I. Personnel Costs</b>			
<b>Professional Staff</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Jan O'Flaherty	4	\$ 200.00	\$ 800
Ed Boscacci	23	\$ 153.00	\$ 3,519
Eric Biland	116	\$ 132.00	\$ 15,251
Survey Crew	16	\$ 243.00	\$ 3,888
Office Survey	12	\$ 132.00	\$ 1,648
Kristine Lai	244	\$ 101.00	\$ 24,594
		<b>Subtotal</b>	<b>\$ 49,700</b>
<b>Subconsultant Services</b>			
HT Harvey & Associates			\$ 68,885
Parikh Consultants			\$ 23,800
General Administrative Expense Percentage		10%	\$ 9,269
Reimbursable - BKF			\$ 1,250
		<b>Subtotal</b>	<b>\$ 101,954</b>

<b>III. Total Budget, Including Subconsultants</b>	<b>\$ 151,653</b>
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ENGINEERS  
SURVEYORS  
PLANNERS

August 12, 2008

**EXHIBIT A**

Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027  
Attn.: Duncan Jones

**ATHERTON CHANNEL STABILIZATION PROJECT – PHASE 2  
ADDITIONAL SERVICES FOR PERMITTING AND DESIGN**

**BKF #20020170**

**INTRODUCTION**

As a part of the Atherton Channel Stabilization Phase 1 work, improvements were identified for improving the Atherton Channel (Creek) stability, including installation of a retaining wall near Reservoir Road, Creek bank stability near a barn, and drop structure improvements to dissipate Creek energy.

Subsequent field observations and Creek geomorphology have made necessary additional mitigation as part of compliance with the original Biological Assessment (BA). Site visits in the spring of 2008 with H.T. Harvey & Associates (Harvey) and the Town Staff have evidenced the need for revisions to the BA prepared for Phase 1 in the form of a new Mitigation and Monitoring Plan (MMP). The new MMP will allow interested regulatory agencies to provide guidance on the proposed mitigation measures and permit any work in the Creek.

BKF Engineers (BKF) proposes to provide engineering support for mitigation measures developed by Harvey, the Town, and any regulatory comments and conditions. Engineering support, including site observations, survey, plans, specifications, construction documents, and bid document preparation are outlined in the Scope of Services Tasks below and based on conditions observed during site visits. If the Phase 2 work is to be completed in sub-phases or if site conditions warrant design measures outside the parameters observed during site visits, adjustments within the Task scopes, deliverables, and fees may be necessary to accommodate this work.

BKF proposes to coordinate any geotechnical assistance through a geotechnical sub-consultant as needed for the completion of plans and specifications required by the MMP. Geotechnical costs will be billed as a separate line item within the Task associated with the work.

255 Shoreline Drive  
Suite 200  
Redwood City  
California 94065  
phone 650.482.6300  
fax 650.482.6399  
www.bkf.com

## **SCOPE OF SERVICES**

### **Task 1. Site Meeting and Regulatory Exhibits**

BKF will attend one site meeting with Harvey and any regulatory agency representative to discuss potential mitigation measures and feasibility. BKF will create up to 6 standard or tabloid sheet exhibits as required by Harvey in support of their coordination with the regulatory agencies.

Deliverables: 8.5x11 or 11x17 Sheet Exhibits

### **Task 2. Supplemental Survey**

BKF will survey areas of interest to the MMP to support design development and construction documents. BKF anticipates 3 days of supplemental survey to record changes to the channel morphology that are of interest for this phase of the work.

Deliverables: Supplemental Survey Points in AutoCAD

### **Task 3. Civil and Permitting Support**

BKF will provide civil commentary on the hydraulic impact of proposed mitigation measures in a technical memorandum. Memorandum will include customary comments and discuss pre- and post-construction conditions. Software modeling, calculations, and precise mitigation characterization of the MMP elements can be included in the Technical Memorandum as required by the Town or the regulatory agencies as an additional Task.

BKF will create up to 4 standard or tabloid sheet exhibits as required by Harvey in support of their coordination with the regulatory agencies.

Deliverables: Technical Memorandum with Hydraulic Comments

8.5x11 or 11x17 Sheet Exhibits

**Task 4. Design Development and Construction Documents**

BKF will coordinate mitigation improvements with Harvey in accordance with the comments and intent of the MMP, BA, and Permitting requirements. BKF will generate Construction Documents in standard plan sheets (24" x 36" prints) that include a Plan view of the mitigation improvements, supporting details, and specifications. BKF will generate an Erosion Control Plan for Phase 2 construction activities and incorporate selected geotechnical recommendations into the design elements.

BKF will develop 50% Construction Documents (CDs) for comments as part of the MMP. Upon receipt of comments, BKF will develop 90% CDs for coordination with Harvey and the Town. Upon receipt of review and coordination comments with Harvey and the Town, BKF will prepare 100% CDs for bidding and construction. BKF assist the Town in compiling documents for bidding the construction work.

BKF will attach four (4) plan sheets from Harvey to the BKF Construction Documents.

Deliverables: 50% Construction Documents.  
12-Sheet Plan Set – Plans, Details, and Specifications including construction Erosion Control Plan and limits of construction. 8 Sheets BKF, 4 Sheets Harvey.

90% Construction Documents.  
12-Sheet Plan Set – Plans, Details, and Specifications including construction Erosion Control Plan and limits of construction. 8 Sheets BKF, 4 Sheets Harvey.

100% Construction Documents.  
12-Sheet Plan Set – Plans, Details, and Specifications including construction Erosion Control Plan and limits of construction. 8 Sheets BKF, 4 Sheets Harvey.

Photographic prints, JPEG files, and a memorandum summarizing site observations.

## EXCLUSIONS

Additional work that does not fall within this Scope of Services includes:

1. Boundary and underground locating surveys are excluded from the Scope of Services, but can be provided as additional services.
2. Potholing is excluded from the Scope of Services.
3. Major revisions to work or drawings that are substantially complete, provided such revisions are not caused by the actions of BKF.
4. Retention of outside consultants for landscaping, electrical, biological, structural, EIR preparation, water quality sampling, flow monitoring and other services not performed by BKF Engineers. We assume that these specialty services, if required, will be coordinated as a supplement to the Tasks listed in this Scope of Services.
5. Any fees by the Town or other Agencies for review of the deliverables are excluded from this Scope of Services. Any fees shall be paid by Others.
6. Site characterizations including water quality analysis, soil assessment, or capacity studies are excluded.
7. Any modeling of hydrologic or hydraulic conditions on the site are excluded from this Scope of Services, but can be provided as an additional service.
8. Meetings with the Town or reviewing agencies other than those mentioned are excluded, but can be provided as an additional service. Meetings other than those that take place at BKF offices in Redwood City, CA, shall be billed on a time and expense basis portal to portal.
9. Construction administration is outside this Scope of Services, but can be provided as an additional service.
10. Construction assistance, staking, and record drawings are outside this Scope of Services, but can be provided as an additional service.

Additional work, if required, will be billed as additional service on a time and expense basis in accordance with the attached fee schedule.

This Scope of Service is complete with a bid package ready for bidding.

**SCOPE OF SERVICES FEES**

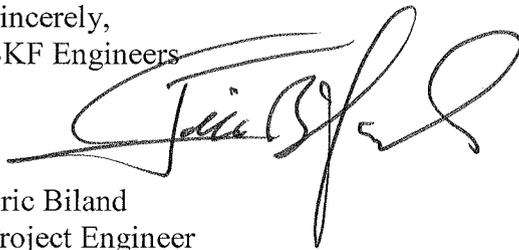
**BKF Engineers:**

<u>TASK</u>	<u>DESCRIPTION</u>	<u>FEE</u>
1.	Site Meeting and Regulatory Exhibits	\$ 2,500
2.	Supplemental Survey	\$ 5,800
3.	Civil and Permitting Support	\$ 4,600
4.	<u>Design Development and Construction Documents</u>	<u>\$36,800</u>
	Total Engineering Fee	\$49,700
	Reimbursable Allowance	\$ 1,250
	<u>BKF Total Fee</u>	<u>\$50,950</u>

These Engineering Fees are based on January 1, 2008, to December 31, 2008, billing rates and may be escalated on January 1, 2009, for any uncompleted portion of the work. Rate escalation will be in general conformance with the cost of living index for the Bay Area. Approximate reimbursable expenses (i.e. base Mylar reproduction, photographic/printing work, express or messenger deliveries, computer fees, plotting fees, etc.) are included in the above totals and will be billed at cost plus 10 percent. We propose to bill you on a time and expense basis in accordance with our standard charge rates (see attached Professional Fees), not to exceed \$50,950. We will notify you in advance of work on issues that are outside the scope of work, thus not covered by this agreement.

Please contact Eric Biland at (650) 482-6474 if you have any questions.

Sincerely,  
BKF Engineers



Eric Biland  
Project Engineer



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH BIGGS  
CARDOSA ASSOCIATES, INC. FOR STRUCTURAL AND CIVIL  
ENGINEERING DESIGN SERVICES FOR THE HOLBROOK-PALMER  
PARK TRAIL AND BRIDGE PROJECT, IN AN AMOUNT NOT TO  
EXCEED \$33,500 PLUS A TEN PERCENT CONTINGENCY, FOR A  
TOTAL AUTHORIZATION OF \$36,850.**

### **RECOMMENDATION:**

Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Biggs Cardosa Associates, Inc. (BCA) to provide Structural and Civil Engineering Design services for the Holbrook-Palmer Park Trails and Bridge Project in an amount not exceed \$33,500, plus a 10% contingency, for a total authorization of \$36,850.

### **BACKGROUND:**

The Town was successful in obtaining a grant for the construction of the pedestrian bridge into Holbrook-Palmer Park from Watkins Avenue near the Caltrain tracks. Because staff did not have the structural design capability to design the foundations for the bridge, BCA was hired in April 2006 to prepare structural plans. BAS is the structural engineer for the Upper Atherton Channel project, where they were part of the team selected by Qualifications Based Selection. This first proposal was for \$14,000, which is below the threshold requiring Council Approval.

Due to increased workload in the engineering department, and in order to continue the project in anticipation of being able to quickly bid the project, BCA was hired in March 2007 to prepare the civil design portion of the project as well. Most of the work was prepared by their

subconsultant, Kier & Wright. The second proposal was for \$12,500, also below the threshold, but the combination of the two was over the \$15,000 threshold and should have been brought to Council at that time.

In May of 2007 Caltrain advised the Town that the pedestrian crossing at Watkins would be upgraded and modified, with substantial overlap with the design of our project. The project was placed on hold until the plans for the Caltrain project could be incorporated. The change would save the Town construction costs by cutting back the limits of our project to outside the Caltrain right-of-way.

The Caltrain plans were finally received On July 29, 2008. The most recent proposal from BCA is for \$7,000 to update the plans to match the Caltrain plans.

**ANALYSIS:**

The combined total of \$33,500 is a reasonable cost for a small complex project, including structural design and the most recent modifications to conform to the Caltrain plans.

**FISCAL IMPACT:**

General funds in the amount of \$30,000 are budgeted for CIP support engineering in FY 2008-09. Only the \$7,000 additional is from the 2008-09 budget. In 2007-08 the \$12,500 came from a \$25,000 CIP support budget, and in 2006 the \$14,000 came from a \$15,000 CIP Parcel Tax budget reallocated from the Carriage House Courtyard design to this project.

The Scope of Services and Fee Estimate were negotiated with the selected firm. The final negotiated fee estimate is \$33,500. A 10% contingency of \$3,350 would bring the total authorization to \$36,850.

Prepared By:

Approved:

---

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

---

Jerome D. Gruber  
City Manager

Attachments: Professional Services Agreement  
Proposals (3)

PROFESSIONAL SERVICES AGREEMENT FOR  
(type-in name of service or project)

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and Biggs Cardosa Associates, Inc., 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 Structural and Civil Engineering Design services in connection with the project designated as Holbrook-Palmer Park Trail and Bridge.
2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment and supplies.
3. Time for Performance. Work under this contract shall commence upon the giving of written notice by the City to the Consultant to proceed. Consultant receipt of a Purchase Order shall constitute said notice. Consultant shall perform all services and provide all work product required pursuant to this agreement within 60 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 \$33,500 without express written modification of the agreement signed by the City.
  - b. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
  - c. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.
  - d. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.
  - e. The Consultant's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the City and state for a period of three (3) years after final payments. Copies shall be made available upon request.

5. Ownership and Use of Documents. All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this agreement shall be the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Consultant's endeavors.
6. Compliance with laws. Consultant shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.
7. Indemnification. Consultant shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, including attorneys fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Consultant's own employees, or damage to property to the extent caused by a negligent act, omission or failure of the Consultant.
8. Insurance. The Consultant shall secure and maintain in force throughout the duration of this contract comprehensive general liability insurance with a minimum coverage of \$500,000 per occurrence and \$2,000,000 aggregate for personal injury, and \$500,000 per occurrence/aggregate for property damage. Said general liability policy shall name the Town of Atherton as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this section shall be delivered to the City within fifteen (15) days of execution of this agreement.
9. Independent Contractor. The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Consultant nor any employee of Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Consultant, or any employee of Consultant.
10. Covenant Against Contingent Fees. The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the City shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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

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

13. Termination.

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

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

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

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

Notices to Consultant shall be sent to the following address:

Mahvash M. Harms, Principal  
Biggs Cardosa Associates, Inc.  
1871 The Alameda, Suite 200  
San Jose, CA 95128-1752

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 \_\_\_\_\_, 2008.

Town of Atherton

Consultant

By \_\_\_\_\_  
City Manager

By \_\_\_\_\_

Approved as to Form

By \_\_\_\_\_

City Attorney

EXHIBIT "A"  
SCOPE OF SERVICES

EXHIBIT "B"  
PAYMENT

1. Consultant shall be paid up to \$33,500 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.

March 29, 2007  
Project No: 2006316

Town of Atherton  
Department of Public Works  
91 Ashfield Road  
Atherton, CA 94027

Attention: Duncan Jones

Subject: Holbrook-Palmer Park Pedestrian Bridge  
Design Fee for Revised Scope to Include Civil Engineering Services

Dear Duncan:

### **Revised Scope**

Our understanding of the revised scope for this project is as follows:

#### Project Management Services

- Coordination of Civil Engineering Services and Structural Engineering Services
- Coordination and attendance at Project Meetings

#### Civil Engineering Services

- Preparation of a grading and drainage plan for the bridge site
- Design of existing park walkway tie-in to bridge landing

#### Additional Structural Engineering Services

- Revision of General Plan sheet to incorporate existing park walkway tie-in into pedestrian bridge
- Addition of slope paving replacement details to structural plans
- Incorporation and coordination of civil engineering special provisions into the Technical Special Provisions document

## Revised Fee

Biggs Cardosa Associates, Inc. proposes to provide the above scope of services as follows:

Task	Fee	Fee Basis
<b>Original Design Fee</b>		
• Preliminary Structural Design	\$ 2,500	Fixed Fee
• Final Structural Design	\$ 10,000	Fixed Fee
<b>Original Total</b>	<b>\$ 12,500</b>	
<b>Additional Services</b>		
• Project Management & Structural Engineering Services	\$ 3,000	Fixed Fee
• Civil Engineering Services	\$ 11,000	Fixed Fee
<b>Additional Services Total</b>	<b>\$ 14,000</b>	
<b>Revised Design Fee Total</b>	<b>\$ 26,500</b>	

Please see sub-consultant fee proposal, attached.

## Assumptions and Exclusions

- Printing, plotting and delivery costs will be billed at cost plus 10%.
- Design of retaining walls is excluded.

Should you have any questions or comments, please do not hesitate to call me.

Sincerely,

BIGGS CARDOSA  
ASSOCIATES, INC.

  
Mahvash M. Harms  
Principal



**KIER & WRIGHT**  
Civil Engineers & Surveyors, Inc.

*Attn: Sarah Moyles*  
*296-8114*

March 1, 2007  
*UPDATED 3/29/07*

Mahvash M. Harms, SE  
Biggs Cardosa Associates, Inc  
1871 The Alameda, Suite 200  
San Jose, CA 95126-1752

**BIGGS CARDOSA  
ASSOCIATES INC.**

MAR - 6 2007

**RE: *Watkins Pedestrian Bridge Overcrossing  
Atherton, California***

**STRUCTURAL ENGINEERS**

Dear Ms. Harms.

We are pleased to present the following proposal for the pedestrian bridge overcrossing project in Atherton, California.

**Scope of Services**

**Proposed Fee**

**I. Construction Design**

- |  |                              |
|--|------------------------------|
| 1. Preparation of grading and drainage plan.                                     | \$ 9,000                     |
| 2. Review of site conditions and field visit.                                    | \$ 2,000 <i>1,000</i>        |
| <del>3. Preliminary draft versions of walkway tie in to<br/>bridge landing</del> | <del>\$ 2,000</del>          |
| 4. Meetings  | \$ <i>2,500</i> <i>1,000</i> |

**Total proposed fee for Planned Development Zoning Phase:** \$ ~~15,500~~ *11,000*

**II. Construction Support**

**NOT AUTHORIZED AT THIS TIME**

- |   |          |
|---|----------|
| 1. Review of shop drawings, response to RFI's, etc. | \$ 3,000 |
|---|----------|

~~Total proposed fee \$18,500~~

**Exclusions**

1. Printing, plotting and delivery costs (billed at cost plus 10%)
2. Design of detention/retention facilities (proposal assumes adequate utilities are available to the site and the detention will not be an NPDES requirement).
3. Design of retaining walls and pumps.
4. Geotechnical recommendations

Mahvesh M. Harms, SE  
Biggs Cardosa Associates, Inc  
March 1, 2007  
Page 2 of 2

We appreciate the opportunity to provide this proposal to you. Please call me if you have any questions about our services or this proposal. If this proposal meets with your approval, please sign below and return to me via mail or facsimile.

Sincerely,

**KIER & WRIGHT**

Richard C. Tso

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

April 11, 2006

1871 The Alameda, Suite 200  
San Jose, CA 95126-1752  
Telephone 408-296-5515  
Facsimile 408-296-8114

Town of Atherton  
Public Works Department  
91 Ashfield Road  
Atherton, CA 94027

Attention: Duncan Jones

Subject: Holbrook-Palmer Park Pedestrian Bridge  
Atherton, CA

Dear Mr. Jones:

Biggs Cardosa Associates, Inc. is pleased to submit the following proposal for engineering services for the subject project.

Scope of Work:

**Preparation of Construction Documents:**

This phase of the project consists of the preparation of plans, specifications, and cost estimate for the Holbrook-Palmer Park Pedestrian Bridge. The project also includes trail conforms from the proposed bridge to the existing trails on both banks of the creek. The location and design of the project will be based on the Concept Plan dated September 2004. We anticipate that the preliminary construction cost estimate for the bridge is approximately \$80,000.

Biggs Cardosa Associates, Inc. proposes the following scope of services:

Preliminary Design: Total requested fee= \$2,500

1. Review topographic drawing and channel cross sections to be provided by the Town of Atherton.
2. Review preliminary geotechnical engineering investigation report, including field exploration program (2 borings), laboratory testing, analysis, and report indicating bridge foundation recommendations.



3. Review prefabricated bridge type proposed by the Town of Atherton.
4. Prepare preliminary calculations for bridge foundations, spread footing or cast-in-drilled-hole pile sizing.
5. Prepare preliminary bridge general plan showing plan, elevation, and typical section of proposed bridge, including abutment locations and final span length.
6. Review the preliminary civil improvement plan to be prepared by the Town showing proposed grading, drainage, and paving limits.

Final Design: Total requested fee= \$7,000

1. Prepare structural calculations for bridge foundations.
2. Prepare construction drawings for bridge foundations.
3. Review the civil drawings for path conforms, including required grading, drainage, and paving details.
4. Prepare structural portion of the construction specifications in "book format" per Town of Atherton standards. Prepare special provisions for performance specification for the design and construction of prefabricated bridge.
5. Prepare Engineer's Estimate of probable construction costs.

**Construction Services:** Total requested fee= \$3,000

1. Review shop drawings and concrete mix designs for bridge foundations.
2. Review structural calculations and shop drawings from bridge supplier for prefabricated bridge.
3. Observe CIDH pile installations immediately prior to and during concrete placement.
4. Respond to telephone questions from the Town Engineer or Project Manager.
5. Provide additional construction site review per the Town's request. Consultant will not be responsible for the contractor's operations, methods, or safety procedures.

Biggs Cardosa Associates, Inc. proposes a total budget of \$12,500 for the above scope of services.

Assumptions

1. Town to provide topographic drawing of site in AutoCAD version 14. Contour interval to be 2 feet.
2. Town will provide the foundation report/geotechnical engineering investigation report, including field exploration program (2 borings), laboratory testing, analysis, and report indicating bridge foundation recommendations.
3. Environmental services are not included in this proposal. We assume that the Town, if required will prepare the Categorical Exemption (Cat Ex) for the Holbrook-Palmer Park Pedestrian Bridge. The Cat Ex will comply with CEQA and the requirements of the Town of Atherton. Based on the following assumptions, the Cat Ex will not require the completion of any technical studies:
  - The proposed structure will be a prefabricated, clear span structure.
  - The removal of riparian vegetation required to place the structure across the creek will be minimal.
  - The proposed bridge structure will be placed outside the 100-year floodplain of the creek with sufficient freeboard so that flows within the creek will not be impeded.
  - No construction will take place within a live stream channel.
4. Town to reproduce bid documents and advertise and award for construction.
5. Town to provide site access and all necessary permits required to drill exploratory borings on east and west banks of creek.

Should you have any questions concerning this proposal, please do not hesitate to call.

Sincerely,

BIGGS CARDOSA  
ASSOCIATES, INC.

AGREED TO BY: \_\_\_\_\_  
Town of Atherton



Daniel B. Devlin  
Principal

DATE: \_\_\_\_\_

cc: Mahvash Harms, Biggs Cardosa Associates, Inc.

August 12, 2008  
2006144

Town of Atherton  
Department of Public Works  
91 Ashfield Road  
Atherton, CA 94027

Attention: Duncan Jones

Subject: Holbrook-Palmer Park Pedestrian Bridge  
Design Fee for Modifying Plans per Caltrain Crossing Improvements  
2<sup>nd</sup> Additional Services Proposal

Dear Duncan:

Attached please find our proposal for additional services on the subject project. The revised scope and fees are outlined below.

### **Revised Scope**

Our understanding of the revised scope for this project is as follows:

#### Project Management Services

- Coordination of Civil Engineering Services and Structural Engineering Services
- Coordination and attendance at Project Meeting
- Coordination with HNTB to extend Caltrain improvements outside right of way
- Coordination with Parikh to reduce required pile depth and clarify project special provision requirements for CIDH piles

#### Civil Engineering Services

- Revision of the Civil Plans to accommodate Caltrain crossing improvements

#### Additional Structural Engineering Services

- Revision of General Plan sheet accommodate Caltrain crossing improvements
- Revision of Structural Calculations, General Plan sheet and project Special Provisions per revised geotechnical recommendations

### **Revised Fee**

Biggs Cardosa Associates, Inc. proposes to provide the above scope of services as follows:

<b>Task</b>	<b>Fee</b>	<b>Fee Basis</b>	<b>Status</b>
<b>Original Design Fee</b>			
• Preliminary Structural Design	\$2,500	Fixed Fee	
• Final Structural Design	\$10,000	Fixed Fee	
<b>Original Total</b>	<b>\$12,500</b>		Approved
<b>1<sup>st</sup> Additional Services</b>			
• Project Management & Structural Engineering Services	\$3,000	Fixed Fee	
• Civil Engineering Services	\$11,000	Fixed Fee	
<b>1<sup>st</sup> Additional Services Total</b>	<b>\$14,000</b>		Approved
<b>2<sup>nd</sup> Additional Services</b>			
• Project Management & Structural Engineering Services	\$5,500	Fixed Fee	
• Civil Engineering Services	\$1,500	Fixed Fee	
<b>2<sup>nd</sup> Additional Services Total</b>	<b>\$7,000</b>		
<b>Revised Design Fee Total</b>	<b>\$33,500</b>		

Please see sub-consultant fee proposal, attached.

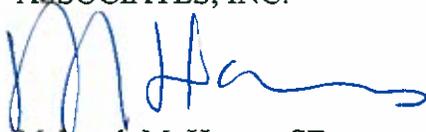
#### **Assumptions and Exclusions**

- Printing, plotting and delivery costs will be billed at cost plus 10%.
- Design of retaining walls is excluded.

Should you have any questions or comments, please do not hesitate to call me.

Sincerely,

BIGGS CARDOSA  
ASSOCIATES, INC.



Mahvash M. Harms, SE  
Principal



**KIER & WRIGHT**  
Civil Engineers & Surveyors, Inc.

August 8, 2008

Mahvash M. Harms, SE  
Biggs Cardosa Associates, Inc  
1871 The Alameda, Suite 200  
San Jose, CA 95126-1752

**Re: Addendum #1**  
**Watkins Pedestrian Bridge Overcrossing**  
**Atherton, California**

Dear Ms. Harms.

We are pleased to present the following addendum to the pedestrian bridge over-crossing project in Atherton, California.

**Scope of Services**

**Proposed Fee**

**I. Construction Design**

- |   |         |
|---|---------|
| 1. Coordinate with the Caltrain Improvements by HNTB.   | \$1,000 |
| 2. Coordination with town on comments due to revisions. | \$ 500  |

**Total proposed fee for Addendum #1: \$1,500**

**Total proposed fee: \$1,500**

**Exclusions**

1. Printing, plotting and delivery costs (billed at cost plus 10%)
2. Design of detention/retention facilities (proposal assumes adequate utilities are available to the site and the detention will not be an NPDES requirement).
3. Design of retaining walls and pumps.
4. Geotechnical recommendations

We appreciate the opportunity to provide this proposal to you. Please call me if you have any questions about our services or this proposal. If this proposal meets with your approval, please sign below and return to me via mail or facsimile.

Sincerely,

**KIER & WRIGHT**

Richard C. Tso

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

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

#### **RECOMMENDATION:**

Approve an amendment to revise the Professional Services Agreement (PSA) with CSG Consultants, Inc.

#### **INTRODUCTION:**

An amendment to the PSA with CAG was approved on June 18, 2008. When asked to sign the amendment, CSG requested some revisions to the language of the agreement as follows:

#### 4. Payment

At the end of the last sentence in subparagraph b insert: "within thirty days of the invoice date" add the following subparagraph:

- e. If the Agreement is extended in accordance with Paragraph 3, Consultant may substitute a revised Standard Engineering Fees schedule (Exhibit B-1) to reflect annual salary inflation.

### 13. Termination

Delete subparagraph a. and substitute:

Both the City and the Consultant 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.

#### **ANALYSIS:**

The City Attorney reviewed the revisions requested by CSG and determined that they were reasonable.

#### **FISCAL IMPACT:**

There is no fiscal impact to this action.

Prepared By:

Approved:

---

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

---

Jerome D. Gruber  
City Manager

Attachments: Professional Services Agreement Amendment

PROFESSIONAL SERVICES AGREEMENT AMENDMENT FOR  
MUNICIPAL ENGINEERING SERVICES

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and CSG Consultants, Inc., 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 Municipal Engineering Services in connection with the reviews of private development projects.

2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment, and supplies.

3. Time for Performance. Work under this contract shall commence upon the giving of written notice by the City to the Consultant to proceed. Consultant receipt of a Purchase Order shall constitute said notice. This agreement will expire on June 30, 2009, unless extended by the issuance of a new purchase order by the City. Each new purchase order issued will extend the termination of this agreement for one year.

Consultant shall perform all services and provide all work product required pursuant to this agreement within the calendar days designated on the written notice to proceed for each task assigned, 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 the amount shown on the purchase order without express written modification of the purchase order signed by the City. The initial purchase order for FY 2008-09 will be for \$100,000.

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. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved within thirty days of the invoice date.

c. 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.

d. 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.

e. If the Agreement is extended in accordance with Paragraph 3, Consultant may substitute a revised Standard Engineering Fees schedule (Exhibit B-1) to reflect annual salary inflation.

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

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

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

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

9. Independent Contractor.

(a) 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.

(b) The Consultant shall not perform any work whatsoever as an independent contractor for a client, public or private, in connection with any project located or to be located in whole or in part within the City. It is understood and agreed that neither Consultant, nor any of its principals, shall have any legal or equitable interests in sub-dividable land, nor engage in any speculative development located or operating within the City.

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

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

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

13. Termination.

a. Both the City and the Consultant 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.

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

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

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

Notices to Consultant shall be sent to the following address:

CSG Consultants, Inc.  
1700 South Amphlett Blvd., 3<sup>rd</sup> Floor  
San Mateo, CA 94402

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 18th day of June, 2008.

Town of Atherton

Consultant

By \_\_\_\_\_  
City Manager

By \_\_\_\_\_

ATTEST

Approved as to Form:

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

\_\_\_\_\_  
Marc Hynes, City Attorney

**EXHIBIT "A"**  
**SCOPE OF SERVICES**  
**MUNICIPAL ENGINEERING SERVICES**

- Review of Tentative Maps and similar private subdivision and/or development applications
- Preparation of Engineering-specific Conditions of Approval related to Tentative Maps and similar private subdivision and/or development applications
- Review of final Subdivision Maps, Lot Line Adjustments, or Lot Merger applications for conformance with the Subdivision Map Act
- Review of private subdivision and/or development improvement plans for both on-site improvements and public right-of-way improvements for compliance with grading, drainage, NPDES, and encroachment standards
- Review of hydrology maps and hydraulic calculations for private and public storm drain systems for compliance with Town standards and State water laws
- Review of Engineer's Estimates for public and private improvements that are subject to bonding requirements, verification of quantities and preparation of fee calculations
- Proactively communicating with private developers and associated design professionals by telephone, e-mail, written correspondence, and face-to-face meetings at the Town or consultant offices, whichever is requested by the applicant, to discuss plan check review comments
- Review of CEQA documents, geotechnical investigations, traffic studies, and similar engineering reports to understand issues that may impact the design of private subdivision or development improvements, and/or public streets or utility infrastructure.
- Preparation of reports to the City Council recommending approval of final subdivision maps and improvement agreements
- Other assignments not specifically listed above, but required during the engineering review of development applications
- The selected consultant may be asked to have a representative present at the Town Offices for up to two days per week for up to four hours per day, to perform said services. If an assignment cannot be completed while the representative is present at the Town Offices, said assignment shall be completed at the consultant's office such that deadlines for deliverable are met. Firms and individuals shall demonstrate sufficient depth of resources to assure timely service delivery and redundant capability.

EXHIBIT "B"  
PAYMENT

1. Consultant shall be paid up to \$100,000 as per Exhibit B-1 to complete the scope of work as outlined in Exhibit "A" for services during FY 2008-09. Compensation for future years under this agreement shall be as shown on the annual purchase order and any amendments thereto.
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. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
3. Compensation shall be paid at the rates shown on Exhibit "B-1".



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

**FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR  
GLENN NIELSEN, CHIEF OF POLICE**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVAL OF LEASE AGREEMENT TO WILLIAMS  
SCOTSMAN, INC. FOR THE POLICE DEPARTMENT TRAILER  
REPLACEMENT PROJECT NUMBER 08-016 IN AN AMOUNT  
NOT TO EXCEED \$37,616 PLUS DEMOLITION OF THE  
EXISTING TRAILER IN AN AMOUNT NOT TO EXCEED \$4,856,  
FOR A TOTAL AUTHORIZATION OF \$42,472.**

#### **RECOMMENDATION:**

Approve a lease for the Police Department Trailer Replacement, project number 08-016, to Williams Scotsman, the low bidder for \$37,616, with a demolition cost of \$4,856, for a total authorization of \$42,472; and to authorize the City Manager to sign the contract on behalf of the Town.

#### **INTRODUCTION:**

This project replaces the trailer at the rear of the Police Department, that everyone agrees is badly in need of replacement, and is likely not to survive another winter. This is a lease because it is anticipated that a new Town center building will be constructed and the lease can be closed out and the trailer returned to the vendor.

The current trailer is 24 feet wide and 48 feet in length, and the new trailer will be 24 feet wide and 60 feet long.

#### **ANALYSIS:**

Informal bids were solicited by staff for lease bids. There are two parts to the bid, Delivery/Installation/Knockdown and lease rates. Lease rates vary based on the length of

term. A term of 36 months was chosen as the earliest a new building could be constructed. The lease can be extended if needed.

Three (3) bids were received for the Police Department Trailer Project as follows:

<u>CONTRACTOR</u>	<u>LEASE BID</u>	<u>INSTALL BID</u>	<u>TOTAL</u>
Williams Scotsman	\$895/month	\$5396	\$37,616
Pacific Mobile Structures	\$939/month	\$4460	\$38,264
Mobile Mini	\$875.40/month*	\$4620	\$36,124.40

\*Mobile Mini's bid was only for a 44' trailer, which is the largest they carry. It also does not include many items (shown as optional) that are included with the other bids.

In addition, the low bidder will remove the existing trailer for \$4,856.00.

**FISCAL IMPACT:**

\$21,968 in General funds are budgeted for this project in FY 2008-09. The bids received for the project are based on a 36 month lease, and include the knockdown at the end of the lease. The FY 2008-09 cost for the low bidder will be \$15,709 (\$895 x 9 = \$8,055 lease payments + \$2,798 installation + \$4,856 removal of existing trailer). This bid was 28.5% below the FY 2008-09 budget estimate prepared by staff.

This approval will also commit the Town to fund the lease for FYs 2009-10 and 2010-11 in the amount of \$10,740 per year for lease payments, and for FY 2011-12 in the amount of \$5,283 for lease payments and removal of the leased trailer.

The total authorization is therefore \$42,472.

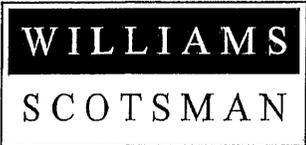
Prepared By:

Approved:

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

\_\_\_\_\_  
Jerome D. Gruber  
City Manager

Attachments: Bid Results



Mobile Offices • Storage Products  
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**WILLIAMS SCOTSMAN, INC.**

12705 Monterey Highway  
San Martin, CA 95046-9503  
Phone: 408-683-2794  
Fax: 408-683-2792

**Toll free: 800-782-1500**

**Omri Franco, Sales Representative**  
oifranco@willscot.com

**QUOTATION NO. 1294590-2**

<b>CUSTOMER</b> p ortiz Atherton Police Department  Atherton, CA 94027	<b>SHIP TO</b> Atherton Police Department  Atherton, CA 94027	<b>QUOTE DATE</b> April 08, 2008 <b>QUOTE EXPIRATION</b> July 31, 2008
<b>PHONE: (650)752-0508</b>	<b>FAX:</b>	<b>E-MAIL:</b> spardorla@ci.atherton.ca.us

**UNIT DESCRIPTION & PRICING**

*64 x 24 Section Modular (60 x 24 box size) per the enclosed floorplan.*

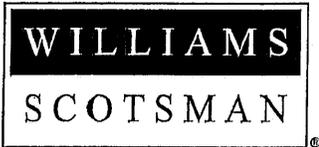
INSURANCE VALUATION:	DELIVERY FREIGHT:	\$998.00 (C)
MONTHLY LEASE RATES:	BLOCK AND LEVEL:	\$1,800.00 (U)
<input type="checkbox"/> 24 months <del>\$901.00</del>	KNOCKDOWN:	\$1,600.00 (F)
<input checked="" type="checkbox"/> 36 months \$895.00 (D) *2	RETURN FREIGHT:	\$998.00 (E)

**CHECK DESIRED OPTIONS**

<u>Initial Options</u> (U)	<u>Ext. Amt.</u>	<u>Monthly Options</u>	<u>Ext. Amt.</u>
<input checked="" type="checkbox"/> Skirting @ \$2,352.00	\$2,352.00	<input type="checkbox"/> <del>(2) Step Rental Per Month @ \$18.00 each</del>	<del>\$36.00</del>
<input checked="" type="checkbox"/> (12) Tiedowns @ \$93.00 each	\$1,116.00	<input type="checkbox"/> <del>Ramp Rental - &lt;30', Ext. Landing, Per Sq. Ft. @ \$672.00</del>	<del>\$672.00</del>
<input checked="" type="checkbox"/> ADA Ramp Installation @ \$756.00	\$756.00		
<input checked="" type="checkbox"/> (2) Dropset if required @ \$450.00 each	\$900.00		
		<u>Final Options</u> (F)	<u>Ext. Amt.</u>
		<input checked="" type="checkbox"/> Skirting Removal @ \$504.00	\$504.00
		<input checked="" type="checkbox"/> (12) Tie Down Removal (each) @ \$35.00 each	\$420.00
		<input checked="" type="checkbox"/> ADA Ramp Removal @ \$546.00	\$546.00

See Page 2 for more details regarding this quotation.

<b>CUSTOMER:</b> Atherton Police Department	<b>BY:</b>	<b>TITLE:</b>	<b>DATE:</b>
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**WILLIAMS SCOTSMAN, INC.**  
12705 Monterey Highway  
San Martin, CA 95046-9503  
Phone: 408-683-2794  
Fax: 408-683-2792  
**Toll free: 800-782-1500**  
*Omri Franco, Sales Representative*  
oifranco@willscot.com

**QUOTATION NO. 1294590-2**

**CLARIFICATION(S):**

1. At takedown, skirting, tiedown, deck and ramp material disposal in customer provided receptical or consolidated at site
2. Prefab Metal Ramp - Size and price are based on a less than 30" threshold height, less than 50 occupancy, and a level site.
3. Ramp ends at 1.5" above finish grade. Metal ramp nosing is optional and requires a level asphalt or concrete surface. Other surfaces like gravel, dirt, sod or wood require a site constructed nosing/ landing. This additional site work is not included.
4. Ramp pricing is based upon standard ramp configuration and is priced per square foot. Actual site conditions and final ramp configuration may change the total square foot used. Pricing will be adjusted, up or down, to the actual square foot used.
5. Any modification to ramp will result in a restoration charge. This includes but is not limited to paint, deck covering, carpeting, attachments, and modifications
6. Ramp is constructed to meet code requirements of DSA and The State of California. Additional cost may be incurred as a result of local building inspector requirements.

**COMMENT(S):**

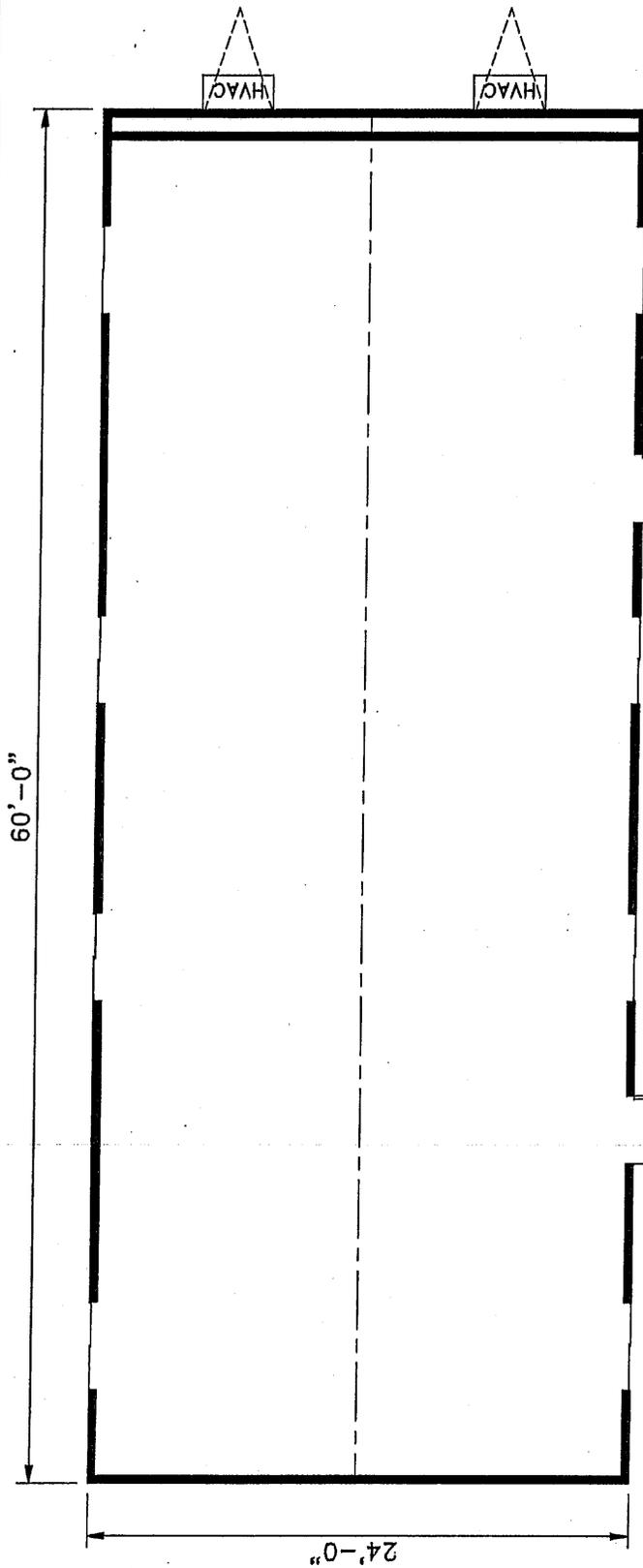
- Tax, state license fee, permits, and utility hook up are not included.
- Delivery and set up pricing are based on a level and accessible site.
- Wide load escorts and permits are additional cost, if required.
- Floor plans vary and units are limited to availability at the time of order.

**ESTIMATED TAX ON INITIAL INVOICE:**    **Monthly Personal Property Tax:** \$ .00    **Sales Tax:** \$ 243.62

Customer hereby agrees to the above quoted prices and specifications. Customer further authorizes Williams Scotsman to make appropriate arrangements for the delivery of the above described Equipment. Upon delivery, and until a subsequent Lease Agreement is executed by Williams Scotsman (as Lessor) and Customer (as Lessee), the Standard Williams Scotsman Leasing Terms and Conditions, which are incorporated by reference herein, will govern this transaction.

<b>CUSTOMER:</b>	<b>BY:</b>	<b>TITLE:</b>	<b>DATE:</b>
Atherton Police Department			

The items described above comprise the Equipment, which the Customer desires to lease from Williams Scotsman. All equipment is subject to availability. Physical Damage and Commercial Liability Insurance coverage are required beginning on the date of the Equipment's Delivery. **In addition to the above quoted prices, customer shall also pay to Williams Scotsman any local, state or provincial, federal and/or personal property tax or fees related to the equipment or its use. (If taxes and/or fees are quoted above, they are subject to change.)** Permits, footings, steps, site preparation, electrical, and plumbing connections are not included in the quoted price unless specifically stated.



### Specifications

#### Size(s)

- 64' Long (including hitch)
- 60' Box size
- 24' Wide (nominal)
- 8' Ceiling height (nominal)
- Other double wide sizes are available

#### Interior Finish

- Paneled or vinyl gypsum walls
- Carpet floors
- T-grid ceiling

#### Electric

- Fluorescent ceiling lights
  - 120/240 volt single phase electric
- #### Windows/Door
- Horizontal sliding windows
  - Steel doors with commercial grade locksets

#### Heating and Cooling

- Central HVAC
  - Supply & return ducting
- #### Exterior Finish/Frame
- Wood siding
  - I-beam or perimeter frame
  - Standard drip rail gutters

Additional floor plans available. Floor plans and specifications may vary from those shown and are subject to in-stock availability.

**WILLIAMS  
SCOTSMAN**

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© 2008 Williams Scotsman, Inc.

## Section Modular 64x24

**WILLIAMS SCOTSMAN, INC.**  
12705 Monterey Highway  
San Martin, CA 95046-9503  
Phone: 408-683-2794  
Fax: 408-683-2792  
Toll free: 800-782-1500  
[www.willscot.com](http://www.willscot.com)



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12705 Monterey Highway  
San Martin, CA 95046-9503  
Phone: 408-683-2794  
Fax: 408-683-2792  
Toll free: 800-782-1500  
*Roxanne Gutierrez, Sales Representative*  
rggutier@willscot.com

**QUOTATION NO. 1526242-1**

<b>CUSTOMER</b> Samone Pardorla Atherton Police Department 83 Ashfield Road Atherton, CA 94027	<b>SHIP TO</b> Atherton Police Department TBD Atherton, CA 94027	<b>QUOTE DATE</b> July 22, 2008 <b>QUOTE EXPIRATION</b> August 21, 2008
<b>PHONE:</b> (650)752-0508	<b>FAX:</b>	<b>E-MAIL:</b> SPARDORLA@ci.atherton.ca.us

**UNIT DESCRIPTION & PRICING**

SALES PRICE: \$0.00 (New equipment)      DELIVERY FREIGHT: \$0.00  
BLOCK AND LEVEL: \$0.00

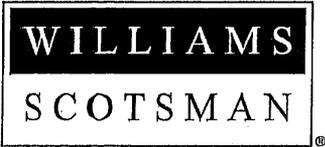
**OPTIONS**

<u>OPTION DESCRIPTION</u>	<u>EXT. AMT.</u>	<u>OPTION DESCRIPTION</u>	<u>EXT. AMT.</u>
<input type="checkbox"/> Knockdown - double wide	\$2,800.00		
<input type="checkbox"/> (2) Delivery Freight - 12' wide @ \$778.00 each	\$1,556.00		
<input type="checkbox"/> (2) Trailer Relocation (Customer Owned Unit) @ \$250.00 each	\$500.00		
<input type="checkbox"/> Delivery Truck Waiting Time (per hour) If Needed	\$150.00 x		

4856.00

See Page 2 for more details regarding this quotation

<b>CUSTOMER:</b> Atherton Police Department	<b>BY:</b>	<b>TITLE:</b>	<b>DATE:</b>
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**WILLIAMS SCOTSMAN, INC.**  
12705 Monterey Highway  
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Phone: 408-683-2794  
Fax: 408-683-2792  
**Toll free: 800-782-1500**  
*Roxanne Gutierrez, Sales Representative*  
*rggutier@willscot.com*

**QUOTATION NO. 1526242-1**

**CLARIFICATION(S):**

**COMMENT(S):**

- Tax, state license fee, permits, and utility hook up are not included.
- Delivery and set up pricing are based on a level and accessible site.
- Wide load escorts and permits are additional cost, if required.
- Floor plans vary and units are limited to availability at the time of order.

**\*!\* PRICE INCLUDES SHIPPING MATERIAL/ WILL PLACE UNIT ON SKIDS \*!\***

**ESTIMATED TAX ON INITIAL INVOICE:**    **Personal Property Tax:** \$ .00    **Sales Tax:** \$ .00

Customer hereby agrees to the above quoted prices and specifications. Customer further authorized Williams Scotsman to make appropriate arrangements for the delivery of the above described Equipment. Upon delivery, and until a subsequent Sales Agreement is executed by Williams Scotsman (as Seller) and Customer (as Buyer), the Standard Williams Scotsman Sales Terms and Conditions, which are incorporated by reference herein, will govern this transaction. A deposit may be required based upon customer's credit rating and history with Williams Scotsman, Inc.

<b>CUSTOMER:</b>	<b>BY:</b>	<b>TITLE:</b>	<b>DATE:</b>
Atherton Police Department			

The items described above comprise the Equipment which the Customer desires to buy from Williams Scotsman. All equipment is subject to availability. Physical Damage and Commercial Liability Insurance coverage are required beginning on the date of the Equipment's Delivery. **In addition to the above quoted prices, customer shall also pay to Williams Scotsman any local, state or provincial, federal and/or personal property tax or fees related to the equipment or its use. (If taxes and/or fees are quoted above, they are subject to change.)** Payment terms are pending credit approval. Permits, footings, steps, site preparation, electrical, and plumbing connections are not included in the quoted price unless specifically stated.

# Pacific Mobile Structures, Inc.

1136 North 9th Street  
 Modesto, CA 95350  
 800-441-8603, 209-524-9128, 209-524-3413

**Atherton Police Department**  
**Attn: Pilar Ortiz**

Date: 4/8/2008

	<b>Purchase</b>	<b>Quote</b>	<b>Purchase Option</b>
Yr. Built/Cond.	1988		
Unit#	<b>#2463</b>	<b>#2463</b>	<b>#2463</b>
Size	<b>24'x60'</b>	<b>24'x60'</b>	<b>24'x60'</b>
Building	\$29,995.00	Monthly rental 939.00 (1)	Purch. Cost \$ 37,510.77
Piers/Pads	\$ 845.00	35 Months of rent 32,865.00	Rate Factor 0.0244
Delivery	\$ 990.00	<b>Set up costs</b>	Monthly payment \$ 915.26
Set-up	\$ 1,790.00	Delivery freight 990.00 (1)	Start up \$ 1,830.53 * First & Last
Steel Steps	\$ 559.00	Set-up 1,790.00 (1)	58 months \$ 53,085.24
License	\$ 300.00	<b>Removal Costs</b>	
Reg./Transfer	\$ 212.00	Return freight 990.00 (F)	
Tax	\$ 2,819.77	Tear down 1,690.00 (F)	
<b>Purchase Total</b>	<b>\$ 37,510.77</b>	<b>Lease Total 39,264.00</b>	<b>Pur.Opt. Total \$ 54,915.76</b>
Foundation Eng.	\$ 465.00		
Handicap ramp	\$ 4,350.00	* 5'x6'6" w/ 30' run	
Ramp install	\$ 850.00		
Skirting	\$ 2,352.00		
Tie downs (14)	\$ 1,050.00		
Tax 8.25%	\$ 748.03		

Location: Atherton, CA

Quoted by: Lynn Warsing  
 Leasing Agent

NOTE: Purchaser will provide firm, level site with unimpaired access there to. Purchase is responsible for all permits, building fees, utility / electrical hook ups, and site plans.  
 Handicap ramps and seismic engineering is available at an additional charge. Quote subject to units on lot.

**Mobile Office Quotation**

Attn: Officer Ortiz  
Atherton Police Dept.  
650-454-0656  
tortiz@ci.atherton.ca.us

18088.80

15757.20

- 31514.40

Project location: Atherton

2310

**HIGH SECURITY  
MOBILE OFFICE**  
12' x 44'

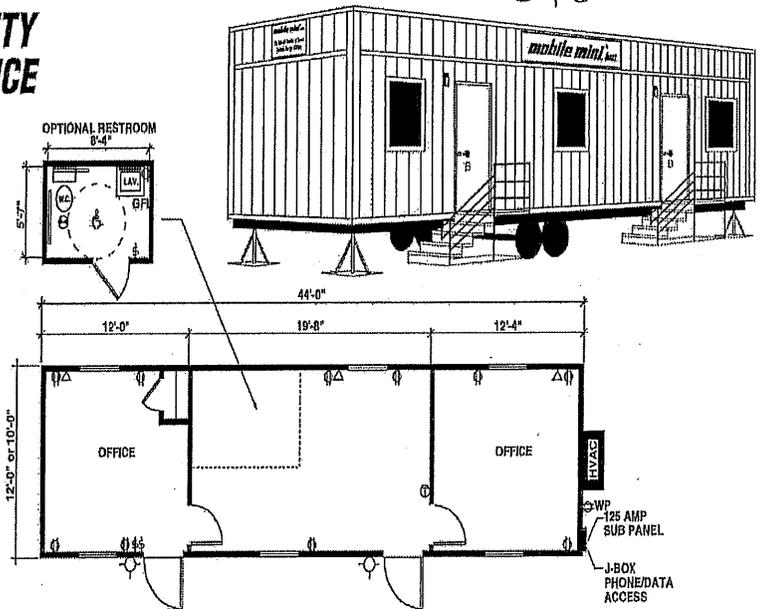
Purchase price: \$30,000.00

Rental Rate: \$437.70 x 2 = 875.40

Rent \$ 335.00  
Restroom \$ na  
Stairs (2) \$ 50.00  
LLW: (insurance) \$ 40.20  
PP&E: (state fee) \$ 12.50

**One Time Fees: 2310**

Security Deposit \$ 200.00  
Delivery & set \$ 425.00  
Anchor down \$ 550.00  
Anchor removal \$ 220.00  
Tear down/return \$ 425.00  
Pilot car (to/back) \$ 245.00 ea. way



**Options**

Handicap ramps  
Skirting  
Additional Blocks, Anchors & Tie-downs

**Standard Features**

Security Bars	No Charge
Mini Blinds	No Charge
Extra Large A/C	No Charge
Steel Exterior Doors	No Charge
Exterior Power Outlet	No Charge
Removable Hitch	No Charge
Ext. J Box - Phone & Data	No Charge
Hydraulic Door Closures	No Charge
Vandal Resistant Exterior Lights	No Charge
Quality Construction	Standard

**Clarifications**

Block, Level and Tie downs is based construction set, in dirt using dry stack piers. Soil conditions are clients responsibility. Does not include local, state or personal property tax. Does not include Electrical hookup or plumbing tie ins. All Mobile Mini leased equipment must be insured. Mobile Mini will provide insurance waiver for 12% of the rental rate with 1,000 deductible on mobile offices.

Dave Bonal (510)784-1100 x230



## EXHIBIT A

**To:** Lisa Costa Sanders, Deputy Town Planner  
TOWN OF ATHERTON

**From:** Christopher Jordan

**Date:** August 1, 2008

**Re:** Expanded Scope of Services/Budget for the Town of Atherton Zoning Code Update

### **Project Understanding and Approach**

It is our understanding that the General Plan Committee has asked for the draft Zoning Code to return to them for one final review, prior to recommendation to the Planning Commission and City Council. As part of this, the Committee has asked that PMC prepare another draft of the document, as well as a cover memo for the document.

The memo outlines our proposed revisions to the scope of services. The tasks identified below are all the steps necessary to complete this project. Because of the additional work necessary to address the General Plan Committee's concerns, a budget augmentation is necessary.

### **Scope of Work**

#### A. Draft Zoning Code #3

Based on comments and direction provided at the July 30 General Plan Committee meeting, PMC will prepare both a "track changes" and "final" version of the draft Zoning Code. PMC will also prepare a summary memo outlining the changes between this new draft and the previous July 2008 draft. Both products will be delivered in electronic PDF format to City staff as 1) a review copy and 2) a final set for distribution to the General Plan Committee.

#### B. General Plan Committee Meeting #5

PMC staff will attend one final General Plan Committee meeting in early October to present the revised draft and collect any final comments and changes from the Committee.

#### C. Summary Memo for Planning Commission

PMC staff will prepare a summary memo of the changes to the Draft Zoning Code #3 as made by the General Plan Committee at meeting #5. This memo will be used to identify these changes for the Planning Commission and will serve as a cover memo for the document when it is transmitted to the Commission. This product will be delivered in electronic PDF format to City staff as 1) a review copy and 2) a final for distribution to the Planning Commission. A revised draft Zoning Code will not be prepared.

#### D. Planning Commission Meeting





## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: JERRY GRUBER, CITY MANAGER**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVAL OF REVISED CITY COUNCIL COMMITTEE ASSIGNMENTS**

#### **RECOMMENDATION:**

Approve revised Council Committee assignments made by Mayor Janz.

#### **BACKGROUND/ANALYSIS:**

Council Member Jim Dobbie was elected to the City Council on June 3, 2008. Mayor Janz has revised the City Council Committee Assignments as follows:

1. Council Member Dobbie will replace Mayor Janz on the General Plan Committee.
2. Council Member Dobbie will be replaced by Vice Mayor Carlson as the alternate on the San Francisco Airport Community Roundtable.
3. Council Member Dobbie will be the 4<sup>th</sup> alternate to City/County Association of Governments (C/CAG).

Attachment: Revised Committee Assignments List

**REVISED**  
**ATHERTON CITY COUNCIL COMMITTEE ASSIGNMENTS**

ATHERTON RAIL COMMITTEE

J. Carlson  
J. Janz

TOWN CENTER COMMITTEE

C. Marsala  
J. Janz

ENVIRONMENTAL PROGRAMS COMMITTEE

C. Marsala  
Jim Janz

FINANCE COMMITTEE

J. Carlson  
K. McKeithen

GENERAL PLAN COMMITTEE

J. Carlson  
J. Dobbie  
K McKeithen (Alt.)

SCREENING COMMITTEE

C. Marsala  
J. Carlson

TRANSPORTATION/TRAFFIC COMMITTEE

K. McKeithen  
J. Carlson

## **OTHER GOVERNMENTAL COMMITTEE ASSIGNMENTS**

### **ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG)**

J. Carlson  
J. Janz (Alt.)

### **CITY/COUNTY ASSOCIATION OF GOVERNMENTS – C/CAG**

Janz  
J. Carlson (1<sup>st</sup> Alt.)  
K. McKeithen (2<sup>nd</sup> Alt)  
C. Marsala (3<sup>rd</sup> Alt)  
J. Dobbie (4<sup>th</sup> Alt)

### **HOLBROOK-PALMER PARK FOUNDATION**

C. Marsala  
J. Carlson (Alt.)

### **LEAGUE OF CALIFORNIA CITIES**

J. Carlson

### **LIBRARY JPA GOVERNING BOARD (SAN MATEO COUNTY)**

C. Marsala  
K. McKeithen (Alt.)

### **PENINSULA TRAFFIC CONGESTION RELIEF ALLIANCE**

K. McKeithen  
J. Carlson (Alt.)

### **SAN FRANCISCO AIRPORT/COMMUNITY ROUNDTABLE**

K. McKeithen  
J. Dobbie (Alt)

### **SAN MATEO COUNTY EMERGENCY SERVICES COUNCIL**

K. McKeithen  
C. Marsala (Alt.)

### **SAN MATEO COUNTY SUB-REGIONAL HOUSING – POLICY ADVISORY COM.**

J. Janz  
J. Carlson (Alt)

GRAND BOULEVARD TASK FORCE

C. Marsla

PARKS FOR THE FUTURE

C. Marsala



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

**FROM: BILL YEOMANS, CONTRACT FINANCE OFFICER**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVAL OF STATE TELECOMMUNICATIONS  
CONTRACT**

#### **RECOMMENDATION:**

Authorize the City Manager to sign State contracts with AT&T.

#### **INTRODUCTION:**

The State has recently re-bid its telecommunication contract "CALNET 2." Since the Town piggy-backed in 2000 on the prior State contract, the Town must now either join CALNET 2 or look at other options for its telephone services including access lines, Centrex, trunk lines, data lines, and long distance. Wireless, radio, and 911 services are not included.

Redwood City IT, which provides City network and computer services, has already gone to CALNET 2 and recommended that we sign the contracts, indicating that we will realize substantial reduction in costs and continuing quality service. These lower rates go into effect when the contracts are signed. All contracts must be completed by January 2009, or the service is not supported at the State rate. The Town would be required to stay in the contract for at least two years or pay a termination penalty.

**FISCAL IMPACT:**

The Town currently pays \$63,271 annually for all these services. The savings estimate is not available.

Prepared By:

Approved by:

---

Bill Yeomans  
Interim Finance Officer

---

Jerry Gruber  
City Manager

Attachments:  
Proposed Contract

STATE OF CALIFORNIA  
**TELECOMMUNICATIONS SERVICE REQUEST**  
 (Attach additional information as needed)

1. AGENCY REQUEST NO.

2. DATE

<b>3. REQUEST IS FOR:</b>	<input type="checkbox"/> SERVICE		<input type="checkbox"/> EQUIPMENT (needs a Form 65)		<input type="checkbox"/> OTHER		
<b>4. AGENCY INFORMATION</b>	DEPARTMENT Town of Atherton		DIVISION, BUREAU, ETC.		PERSON TO CONTACT FOR ACCESS Bill Yeomans		
	E-MAIL ADDRESS byeomans@ci.atherton.ca.us		TELEPHONE NO. (650) 752-0552		FAX NO. (650) 688-6528		
	ADDRESS OF PRESENT SERVICE (Include City, Zip Code, Room #s) 91 Ashfield Road Atherton, CA 94027		ADDRESS OF REQUESTED SERVICE (Include City, Zip Code, Room #s) same				
	BILLING ADDRESS (Include City, Zip Code, Room #s) 91 Ashfield Road Atherton, CA 94027				C60 Account Number		
	TELEPHONE NUMBER(S) INVOLVED all		UTILITY PRIMARY BILL NO.		REQUESTED DATE OF SERVICE		GENERAL SERVICES AGENCY CODE 14920020
<b>5. ELIGIBILITY</b>	<input type="checkbox"/> STATE AGENCY		Must complete <u>Authorization to Order (ATO)</u> to obtain eligibility prior to first Form 20 request				
	<input type="checkbox"/> NON-PROFIT & TAX -SUPPORTED		<input checked="" type="checkbox"/> LOCAL GOVERNMENT (i.e. city, county)				
		<input type="checkbox"/> FEDERAL		<input type="checkbox"/> JOINT POWERS AGREEMENT			
<b>6. CHECK TYPE OF REQUEST</b> (Describe in Section 7)	<input type="checkbox"/> BUSINESS SERVICE		<input type="checkbox"/> CENTREX SERVICE				
	<input type="checkbox"/> SINGLE LINE <input type="checkbox"/> KEY SYSTEM		<input type="checkbox"/> SINGLE LINE (s) <input type="checkbox"/> ISDN (Integrated Services Digital Network)				
	<input type="checkbox"/> PBX <input type="checkbox"/> TRUNKS		<input type="checkbox"/> ACD (Automatic Call Distribution)				
	<input type="checkbox"/> DATA SERVICE		<input type="checkbox"/> CALNET CALLING CARD (Include TD-907)		<input type="checkbox"/> LONG DISTANCE SERVICE		<input type="checkbox"/> LOCAL TOLL SERVICE
<input type="checkbox"/> CELLULAR TELEPHONE		<input type="checkbox"/> OTHER (Please Describe)					
<input type="checkbox"/> DGS-TD MASTER CONSULTING CONTRACT		Calnet 2 services per MSA					
<b>7. ADDITIONAL INFORMATION</b>	BRIEFLY DESCRIBE PRESENT SERVICE (Attach page as needed)		BRIEFLY DESCRIBE SERVICE REQUESTED (Attach page as needed.) Convert Services to Calnet 2 per attached MSA				
	SERVING UTILITY						
	TOTAL COST OF REQUESTED SERVICE		METHOD OF ACQUISITION				
	<input type="checkbox"/> RECURRING	<input type="checkbox"/> NON-RECURRING	<input type="checkbox"/> PURCHASE		<input type="checkbox"/> INSTALLMENT PURCHASE		
		<input type="checkbox"/> RENT		<input type="checkbox"/> OTHER (Describe)			
<b>8. CATR/ATR INFORMATION</b>	NAME (PLEASE PRINT) Bill Yeomans		E-MAIL ADDRESS byeomans@ci.atherton.ca.us		TELEPHONE NO.		
	ADDRESS 91 Ashfield Road		CITY Atherton	STATE CA	ZIPCODE 94027	CALNET:  PUBLIC: (650) 752-0552	
	TITLE Interim Finance Director		DATE				
	SIGNATURE "This request complies with SAM Chapter 4500, and state telecommunications policies."						

## EXHIBIT A-2

### AUTHORIZATION TO ORDER UNDER STATE CONTRACT

SBC Global Services, Inc., dba AT&T Global Services on behalf of Pacific Bell Telephone Company, dba AT&T California ("AT&T" or "Contractor") and the State of California ("State") have entered into a Contract for California Integrated Information Network (CALNET) 2 ("CALNET 2") MSA 1 Services dated January 30, 2007 ("Contract"), for a term of five (5) years. The State may, at its sole option, elect to extend the Contract term for up to two (2) additional periods of one (1) year each. Pursuant to the Contract, which is incorporated herein by reference, any public agency, as defined in Government Code section 11541, is allowed to order services and products ("Services") solely as set forth in the Contract.

A non-State public agency (herein "Non-State Agency") shall also be required to complete and submit this Authorization to Order Under State Contract (ATO) prior to ordering Services. A description of the Service(s), applicable rates and charges and the specific terms and conditions under which the Service(s) will be provided to a Non-State Agency are fully set forth in the Contract. Access to the Contract is available at [www.stnd.dts.ca.gov](http://www.stnd.dts.ca.gov).

**Town of Atherton** ("Non-State Agency") desires to order Service(s), and Contractor agrees to provide such Service(s), as identified in the State of California, Telecommunications Service Request (STD. 20), pursuant to the terms and conditions and rate tables contained in the Contract.

1. This ATO shall become effective upon execution by Non-State Agency, Contractor, and the Department of Technology Services, Statewide Telecommunications and Network Division (DTS/STND) ("Effective Date"). No Service(s) shall be ordered by Non-State Agency or provided by Contractor until this ATO has been executed by both parties and approved by DTS/STND.
2. With respect to Services ordered under this ATO, as authorized on Attachment 1, Non-State Agency hereby agrees to obtain such Services exclusively through the Contract and this ATO for a two (2) year commitment period, starting with the Effective Date of the ATO, provided that such commitment does not extend beyond the Term of the Contract, including any extension periods. Any new Services added to an existing ATO shall not extend the two (2) year commitment period previously agreed upon on the ATO.
3. Upon expiration of the two (2) year commitment period, this ATO shall continue in effect through the remainder of the Term of the Contract, unless terminated by Non-State Agency. The Non-State Agency will automatically continue to receive Services at Contract terms and conditions when the two year commitment period ends, and may add, delete or change Services without penalty or additional commitment periods (unless a specific Service requires a term per the Contract).
4. Non-State Agency may terminate this ATO, for specific Service(s) or in total, prior to termination of the Contract, by providing the Contractor with thirty (30) calendar days' written notice of cancellation.

If Non-State Agency elects to terminate Service prior to completion of the two (2) year commitment period, a termination charge may apply. The termination charge may not exceed sixty-five percent (65%) of the Non-State Agency's average monthly bill for the disconnected Service(s), multiplied by the number of full months remaining in the two (2) year commitment period. If

Service(s) are terminated after the two (2) year commitment period, no termination liability shall apply.

5. No termination charge will be assessed when Non-State Agency transfers Service(s) to a like Service offered under this Contract, or from one CALNET 2 MSA to another, if the Contractor is the same for both MSAs, or is affiliated with the Contractor for the other MSA.
6. By executing this ATO, Non-State Agency agrees to subscribe to, and Contractor agrees to provide Service(s), in accordance with the terms and conditions of this ATO and the Contract. Upon execution of this ATO by Non-State Agency and Contractor, Contractor shall deliver this ATO to DTS/STND for review and approval.
7. The DTS/STND will provide Contract management and oversight, and upon request by the Non-State Agency or Contractor, will advocate to resolve any Contract service issues. The ATO, and any resulting STD. 20, is a Contract between the Non-State Agency and the Contractor. The State will not represent the Non-State Agency in resolution of litigated disputes between the parties.
- 8.. Non-State Agency, upon execution of this ATO, certifies that Non-State Agency understands that Contractor and the State may, from time to time and without Non-State Agency's consent, amend the terms and conditions of the Contract thereby affecting the terms of service Non-State Agency receives from Contractor.
9. Non-State Agency, upon execution of this ATO, certifies that it has reviewed the terms and conditions, including the rates and charges, of the Contract.
10. Non-State Agency, upon execution of this ATO, certifies the Non-State Agency understands that billing invoices for Service(s) subscribed to under the Contract are subject to review and/or audit by the State, pursuant to provisions of the Contract.
11. All Service(s) ordered under this ATO will be submitted using the STD. 20, signed by the Non-State Agency's authorized signatory. Any additions or deletions to Service(s) shall likewise be accomplished by submission of a STD. 20, noting changes.
12. Non-State Agency may, by placing Service orders issued by its duly authorized representative with Contractor, order any of the Service(s) listed in the Contract. Contractor shall bill Non-State Agency, and Non-State Agency shall pay Contractor according to the terms and conditions and rate tables set forth in the Contract for such Service(s).
13. If, for any fiscal year during the term of this ATO, funds are not appropriated to enable the Non-State Agency to continue paying for services, or universal service discounts are not received, the Non-State Agency may terminate impacted Service(s) without penalty.
14. Whenever any notice or demand is given under this Contract to Contractor or Non-State Agency, the notice shall be in writing and addressed to the following:

Non-State Agency:

Contractor:

Town of Atherton

AT&T

91 Ashfield Road

610 Sequoia Pacific Blvd.

Atherton, CA 94027

Sacramento, CA 95814

Attn: Bill Yeomans, Interim Finance Director

Attn: Contract Program Manager

Notices delivered by overnight courier service shall be deemed delivered on the day following mailing. Notices mailed by U.S. Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) State business days after mailing. Notices delivered by any other method shall be deemed given upon receipt.

IN WITNESS WHEREOF, the parties hereto have caused this ATO to be executed on the date shown below by their respective duly authorized representatives:

<b>CONTRACTOR</b>	<b>NON-STATE AGENCY</b>
By: Authorized Signature	By: Authorized Signature
Printed Name and Title of Person Signing	Printed Name and Title of Person Signing
Date Signed:	Date Signed:

Approved By:  
Department of Technology Services,  
Statewide Telecommunications and Network Division

By: Authorized Signature
Printed Name and Title of Person Signing
Date Signed:

Selected Services	Voice Services - Core Services Products	Customer Initials
<input checked="" type="checkbox"/>	Bus Access Lines	
<input checked="" type="checkbox"/>	Central Office Exchange Basic Services (Centrex)	
<input checked="" type="checkbox"/>	Central Office Trunk Services (SuperTrunk/PBX/DID)	
<input type="checkbox"/>	Locally Based Automatic Call Distribution (ACD) (Available Option w/C2 Centrex)	
<input type="checkbox"/>	Interactive Voice Response (IVR)	
<input type="checkbox"/>	Specialized Call Routing (Call Router)	
<input type="checkbox"/>	Computer Telephone Integration (CTI) (Compucall)	
<input type="checkbox"/>	Voice Mail Services (Available Option w/C2 Exchange Svcs)	
Selected Services	Data Services - Core Services Products	Customer Initials
<input checked="" type="checkbox"/>	Data Transmission Services (Analog Service, Carrier DS0 (ADN), Carrier DS1 (Hicap/T1), Carrier DS3)	
Custom ATO Required	Gigabit Ethernet Metropolitan Area Network (MAN) (GigaMAN, MON, OPT-E-MAN, CSME, EPLS-WAN, ESS-MAN)	Custom ATO Required
<input type="checkbox"/>	Multi Protocol Label Switching (MPLS) (AVPN, Network Based Firewall, ANIRA)	
Custom ATO Required	Synchronous Optical Network (SONET) (Point-Point SONET, Ethernet-over SONET, SONET Ring ICB)	Custom ATO Required
<input type="checkbox"/>	ISDN (BRI)	
<input checked="" type="checkbox"/>	ISDN (PRI) (PBX/DID)	
<input type="checkbox"/>	Switched 56/Switched Digital Services (SDS)	
<input type="checkbox"/>	Frame Relay & ATM (Managed or Non Managed)	
<input type="checkbox"/>	Internet	
<input type="checkbox"/>	DSL Agency Hosted (DSL)	
<input type="checkbox"/>	DSL DSL Virtual Private Network (AVPN, Network Based Firewall, ANIRA)	
<input type="checkbox"/>	Enhanced Centrex VDNA	
Included Services	Other Services - Core Services Products	Automatic Coverage
	IntraLata Calling (Local Usage Zone 1 - 3) (Included on C2 Exchange Services)	
	Bldg. Wiring Services (Automatic Service Coverage on C2 Svcs) Jacks/Wiring Inside Wire Repair Plan(Voice)(If subscribed to) Inside Wire Repair Plan(Data)(If subscribed to)	

## EXHIBIT A-2

### AUTHORIZATION TO ORDER UNDER STATE CONTRACT

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multiplied by the number of full months remaining in the two (2) year commitment period. If Service(s) are terminated after the two (2) year commitment period, no termination liability shall apply.

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7. The DTS/STND will provide Contract management and oversight, and upon request by the Non-State Agency or Contractor, will advocate to resolve any Contract service issues. The ATO, and any resulting STD. 20, is a Contract between the Non-State Agency and the Contractor. The State will not represent the Non-State Agency in resolution of litigated disputes between the parties.
8. Non-State Agency, upon execution of this ATO, certifies that Non-State Agency understands that Contractor and the State may, from time to time and without Non-State Agency's consent, amend the terms and conditions of the Contract thereby affecting the terms of service Non-State Agency receives from Contractor.
9. Non-State Agency, upon execution of this ATO, certifies that it has reviewed the terms and conditions, including the rates and charges, of the Contract.
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12. Non-State Agency may, by placing Service orders issued by its duly authorized representative with Contractor, order any of the Service(s) listed in the Contract. Contractor shall bill Non-State Agency, and Non-State Agency shall pay Contractor according to the terms and conditions and rate tables set forth in the Contract for such Service(s).
13. If, for any fiscal year during the term of this ATO, funds are not appropriated to enable the Non-State Agency to continue paying for services, or universal service discounts are not received, the Non-State Agency may terminate impacted Service(s) without penalty.
14. Whenever any notice or demand is given under this Contract to Contractor or Non-State Agency, the notice shall be in writing and addressed to the following:

Non-State Agency:

Contractor:

Town of Atherton

AT&T

91 Ashfield Road

610 Sequoia Pacific Blvd.

Atherton, CA 94027

Sacramento, CA 95814

Attn: Bill Yeomans, Interim Finance Director

Attn: Contract Program Manager

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IN WITNESS WHEREOF, the parties hereto have caused this ATO to be executed on the date shown below by their respective duly authorized representatives:

<b>CONTRACTOR</b>	<b>NON-STATE AGENCY</b>
By: Authorized Signature	By: Authorized Signature
Printed Name and Title of Person Signing	Printed Name and Title of Person Signing
Date Signed:	Date Signed:

Approved By:  
Department of Technology Services,  
Statewide Telecommunications and Network Division

By: Authorized Signature
Printed Name and Title of Person Signing
Date Signed:

Selected Services	Long Distance - Voice Services	Customer Initials
<input checked="" type="checkbox"/>	Long Distance Calling Services (Includes Intralata Toll)	
<input type="checkbox"/>	900 Services	
<input type="checkbox"/>	Automatic Call Distributor (ACD) Services	
<input type="checkbox"/>	Network Based Interactive Voice Response (IVR) Services	
<input type="checkbox"/>	Computer Telephone Integration (CTI) for Network Based ACD	
<input type="checkbox"/>	Toll Free Services	
<input type="checkbox"/>	International Toll Free Services	
<input type="checkbox"/>	Calling Card Services	
<input type="checkbox"/>	Pre-Paid Calling Services	
<input checked="" type="checkbox"/>	Network Audio Conferencing Service	
<input type="checkbox"/>	Network Conferencing (Web Conferencing)	
Included Services	Other Services - Long Distance Voice Services	Automatic Coverage
	Bldg. Wiring Services (Automatic Service Coverage on C2 Svcs) Jacks/Wiring	



**LETTER OF AGENCY – SLAMMING PROTECTION  
AUTHORIZATION TO IMPLEMENT  
PREFERRED TELECOMMUNICATIONS UTILITY SLAMMING PROTECTION  
BUSINESS CUSTOMERS**

Customer Billing Name: Town of Atherton  
[Customer Billing Name]

Telephone No: 650-688-6500  
[Customer's Telephone Number]

Service Address: 91 Ashfield Road  
[Service Address Line 1]

Billing Address: 91 Ashfield Road  
[Billing Address Line 1]

[Service Address Line 2] \_\_\_\_\_

[Billing Address Line 2] \_\_\_\_\_

Atherton, CA 94027  
[City, State and Zip Code]

Atherton, CA 94027  
[City, State and Zip Code]

By signing this form, you are requesting that **AT&T** place Slamming protection on your local toll and/or long distance service(s). While this slamming protection is in place, no changes will be made to your telecommunications service providers(s). The purpose of slamming protection is to deter "slamming" (the switching of your telephone service to a carrier without your authorization). You may lift the slamming protection at any time by calling **AT&T** at 866-244-1854

[AT&T Business Office Telephone Number]

or by sending a written request to **AT&T** at 3475 N. 1<sup>st</sup> St. Rm 500 San Jose, CA 95134

[AT&T Sales personnel business address]

Your written request should be signed and dated and should include a statement that you wish the slamming protection to be lifted. It should also include your service address (and mailing address if different), a listing of the telephone numbers affected, and the services covered by the slamming protection (local toll and/or long distance service(s)). After the slamming protection is lifted, you may request a change to a new telecommunications service provider. Separate procedures for verification of your request to change your telecommunications service provider will apply at the time, in accordance with state or federal law.

You may add or lift slamming protection at any time at no charge.

Please complete the following for each service for which you are requesting slamming protection for:

- I authorize **AT&T** to implement slamming protection for the telephone number(s) listed below for **local toll service.**

AT&T \_\_\_\_\_  
Current Preferred Local Toll Company

**Authorized Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

- I authorize **AT&T** to implement slamming protection for the telephone number(s) listed below for **long distance service.**

AT&T \_\_\_\_\_  
Current Preferred Long Distance Company

**Authorized Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

The numbers listed below represent the billing telephone number(s) which will have Slamming Protection as specified above. This change applies to all working telephone numbers associated with the billing telephone numbers shown below, unless stated otherwise or unless you notify us otherwise. If more space is needed, please attach a separate list. The person signing below must initial each additional page.

Telephone numbers to be changed:

See Attached List

_____	_____	_____
_____	_____	_____
_____	_____	_____

I certify that I have read and understand this Protection Letter. I further certify that I am at least eighteen years of age, and that I am authorized to change companies for services to the telephone numbers listed above.

**Authorized Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Authorized Name (PRINT): \_\_\_\_\_

Company Billing Name (For businesses only): Town of Atherton

Company Billing Address: 91 Ashfield Rd Atherton, CA 94027

Telephone number of individual authorized to make this change(s): \_\_\_\_\_

<p><b>For Administrative Purposes Only:</b></p> <p>Mail to: _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Or FAX to: _____</p>
--



LETTER OF AGENCY FOR ACCESS TO CURRENT PROVIDER TELEPHONE RECORDS

Customer/Account Business Name Town of Atherton
Customer Billing Name Town of Atherton
Customer Billing Address 91 Ashfield Road Atherton, CA 94027
Customer/Account Number 650-688-6500

Attention: AT&T

I have on this date entered into an agreement with AT&T Telco1 and/or AT&T LD2, subsidiaries of AT&T Inc. to become our new telephone/circuit service provider. I understand and agree that AT&T Telco/and or AT&T LD is the carrier that will set the rates for our new telephone/circuit service.

Under the terms of this letter, I do hereby authorize AT&T Telco and/or AT&T LD to take the steps necessary to immediately access any and all records that are in AT&T Telco and/or AT&T LD possession, or that are provided by my current provider, or any other telephone/circuit service provider pertaining to my existing telephone and/or circuit service that are needed to discuss conversion to AT&T Telco and/or AT&T LD service. This Letter of Agency does not authorize AT&T Telco and/or AT&T LD to change my telephone/circuit service provider.

This authorization does not prevent our company from acting on its own behalf when it is necessary.

Customer indicates type of Migration by initialing in the applicable space below.

\_\_xx\_\_ Full Migration Partial Migration

I understand and agree that for Full Migration, this authorization applies to the working telephone numbers and/or circuit numbers, together with related features, listed below: (Each individual working telephone number must be listed for a Full Migration.) For Partial Migration, this authorization only applies to the individual working telephone and/or circuit numbers, together with related features, that are listed below:

See Attached
[Blank lines for listing features]

1 "AT&T Telco" means the applicable local telephone company subsidiary of AT&T Inc.: Southwestern Bell Telephone Company doing business as one of the following AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; Pacific Bell Telephone Company d/b/a AT&T California; Nevada Bell Telephone Company d/b/a AT&T Nevada; Illinois Bell Telephone Company d/b/a AT&T Illinois; Indiana Bell Telephone Company, Incorporated d/b/a AT&T Indiana; Michigan Bell Telephone Company d/b/a AT&T Michigan; The Ohio Bell Telephone Company d/b/a AT&T Ohio; Wisconsin Bell, Inc. d/b/a AT&T Wisconsin; The Southern New England Telephone Company d/b/a AT&T Connecticut; BellSouth Telecommunications, Inc. doing business as one of the following AT&T Southeast, AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee; AT&T Communications of the Southern States, LLC; TC Systems, Inc.; SBC Long Distance, LLC; or BellSouth Long Distance, Inc.

2 "AT&T LD" means: the applicable long distance company subsidiary of AT&T Inc.: SNET America, Inc. d/b/a AT&T Long Distance East, SBC Long Distance, LLC d/b/a AT&T Long Distance; or BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service, or TC Systems, Inc.



If additional space is needed to list telephone and/or circuit numbers, please attach a separate page. The person signing below must initial each additional page attached to this Letter of Agency.

Subscribers selecting the electronic signature option agree: an electronic Letter of Agency shall for all legal purposes be considered a "writing"; any name or symbol of Subscriber affixed to or contained in the electronic Letter of Agency shall be deemed to be the Subscriber's valid signature expressing its intent to be bound; any electronic Letter of Agency shall be deemed to comply with any applicable state law governing electronic signatures, electronic writings and/or electronic records; any electronic Letter of Agency printed from files or records (including electronic files) obtained in a normal course of business shall be deemed an original and the admissibility thereof shall not be contested under any applicable best evidence rule or otherwise. Subscriber is solely responsible for taking all proper security and other procedures necessary to ensure that all transmissions of the electronic Letter of Agency are authorized and correct. AT&T Telco and/or AT&T LD is not responsible for any incorrect information contained in an electronic Letter of Agency (including, without limitation, any failure to receive an electronic Letter of Agency), and Subscriber is bound by any electronic Letter of Agency received by AT&T Telco and/or AT&T LD unless Subscriber notifies AT&T Telco and/or AT&T LD, in writing within five (5) days of the date of the signature that the signature is in error.

Subscriber understands that the signature or electronic signature below on this Letter of Agency constitutes the Subscriber's agreement under this Letter of Agency and the applicable tariffs; the signatory must have authority to commit the Subscriber to the Letter of Agency.

I certify that I have read and understand the above Letter of Agency. I further certify that I am at least 18 years of age and authorized to grant access to the records on the telephone and/or circuit numbers listed above.

<b>SUBSCRIBER: (Full Legal Business Name)</b> Town of Atherton	<b>If mailing, mail to:</b>
<b>By: (Signature)</b> <i>(Customer completes)</i>	<b>If emailing, email form to:</b>
<b>Print Name</b> <i>(Customer completes)</i>	<b>Complete ONE of the following for identification.</b>
<b>Title:</b> <i>(Customer completes)</i>	<b>Customer Date of Birth (MM/DD/YYYY):</b>
<b>Telephone Number of individual authorized to act on behalf of customer:</b>	<b>Customer Federal Employment Identification Number (EIN):</b>
<b>If applicable, name of individual authorized to act for customer:</b>	<b>Last 4 digits of Customer Social Security Number:</b>
<b>Relationship to customer:</b>	<b>Customer Mother's Maiden Name:</b>
<b>Date</b> <i>(Customer completes)</i>	

For information regarding this change please contact:



LETTER OF AGENCY/AUTHORIZATION FOR CHANGE OF PROVIDERS

Customer/Account Business Name Town of Atherton
Customer Billing Name Town of Atherton
Customer Billing Address 91 Ashfield Road Atherton, CA 94027
Customer/Account Number 650-688-6500

- I understand that I can only pre-subscribe to one local dial tone provider, one intraLATA ("in-state", Connecticut) toll provider and one interLATA ("out-of-state", Connecticut) long distance provider for each working telephone number that is billed to me.
I also understand that the primary inter-LATA ("out-of-state", Connecticut) long distance carrier may be different from the primary intra-LATA ("in-state", Connecticut) long distance carrier or primary local exchange carrier and that the primary intra-LATA ("in-state", Connecticut) long distance carrier may be different from the primary local exchange carrier.
I understand that AT&T Telco1 and/or AT&T LD2 may have different calling areas, rates and charges than my current telephone company, and I am willing to be billed accordingly.
I authorize AT&T Telco and/or AT&T LD to act as our agent to take the steps necessary to switch providers.

Customer indicates type of Migration by initialing in the applicable space below.

xx Full Migration Partial Migration

I understand and agree that for Full Migration, this authorization applies to the working telephone numbers and/or circuit numbers, together with related features, listed below: (Each individual working telephone number must be listed for a Full Migration.) For Partial Migration, this authorization only applies to the individual working telephone and/or circuit numbers, together with related features, that are listed below:

See Attached list

If additional space is needed to list telephone and/or circuit numbers please attach a separate page. The person signing below must initial each additional page attached to this letter of agency/authorization.

(Required for Florida and Louisiana only: List Plan/Package Information)

Plan/Package/Service Name:

Plan/Package/Service Rate: (See Attached)

Terms and Conditions of Plan: (See Attached)

By initialing here and signing below, I authorize AT&T Telco to become my new local exchange carrier in place of my current telecommunications carrier. I authorize AT&T Telco to act as my agent to make this change happen and direct my current telecommunications carrier to work with AT&T Telco to make the change.

1 "AT&T Telco" means the applicable local telephone company subsidiary of AT&T Inc.: Southwestern Bell Telephone Company doing business as one of the following AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; Pacific Bell Telephone Company d/b/a AT&T California; Nevada Bell Telephone Company d/b/a AT&T Nevada; Illinois Bell Telephone Company d/b/a AT&T Illinois; Indiana Bell Telephone Company, Incorporated d/b/a AT&T Indiana; Michigan Bell Telephone Company d/b/a AT&T Michigan; The Ohio Bell Telephone Company d/b/a AT&T Ohio; Wisconsin Bell, Inc. d/b/a AT&T Wisconsin; The Southern New England Telephone Company d/b/a AT&T Connecticut; BellSouth Telecommunications, Inc. doing business as one of the following AT&T Southeast, AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee; AT&T Communications of the Southern States, LLC; TC Systems, Inc.; SBC Long Distance, LLC; or BellSouth Long Distance, Inc.

2 "AT&T LD" means the applicable long distance company subsidiary of AT&T Inc.: TC Systems, Inc; SNET America, Inc. d/b/a AT&T Long Distance East; SBC Long Distance, LLC d/b/a AT&T Long Distance; or BellSouth Long Distance, Inc. doing business as one of the following AT&T Long Distance Service or BellSouth Long Distance Service, Inc.



By initialing here and signing below, I authorize **AT&T LD and/or AT&T Telco** to become my new **intra-LATA ("in-state", Connecticut) long distance** carrier in place of my current telecommunications carrier. I authorize AT&T Telco

and/or AT&T LD to act as my agent to make this change happen and direct my current telecommunications carrier to work with AT&T Telco and/or AT&T LD to make the change.

By initialing here and signing below, I authorize **AT&T LD** to become my new **inter-LATA ("out-of-state", Connecticut) long distance** carrier in place of my current telecommunications carrier. I authorize AT&T Telco and/or AT&T LD to act as my agent to make this change happen and direct my current telecommunications carrier to work with AT&T Telco and/or AT&T LD to make the change.

Subscribers selecting the electronic signature option agree: an electronic Letter of Agency/Authorization shall for all legal purposes be considered a "writing;" any name or symbol of Subscriber affixed to or contained in the electronic Letter of Agency/Authorization shall be deemed to be the Subscriber's valid signature expressing its intent to be bound; any electronic Letter of Agency/Authorization shall be deemed to comply with any applicable state law governing electronic signatures, electronic writings and/or electronic records; any electronic Letter of Agency/Authorization printed from files or records (including electronic files) obtained in a normal course of business shall be deemed an original and the admissibility thereof shall not be contested under any applicable best evidence rule or otherwise. Subscriber is solely responsible for taking all proper security and other procedures necessary to ensure that all transmissions of the electronic Letter of Agency/Authorization are authorized and correct. AT&T Telco and/or AT&T LD is not responsible for any incorrect information contained in an electronic Letter of Agency/Authorization (including, without limitation, any failure to receive an electronic Letter of Agency/Authorization), and Subscriber is bound by any electronic Letter of Agency/Authorization received by AT&T Telco and/or AT&T LD unless Subscriber notifies AT&T Telco and/or AT&T LD, in writing within five (5) days of the date of the signature that the signature is in error.

Subscriber understands that the signature or electronic signature below on this Letter of Agency/Authorization constitutes the Subscriber's agreement under this Letter of Agency/Authorization and the applicable tariffs; the signatory must have authority to commit the Subscriber to the Letter of Agency/Authorization.

I certify that I have read and understand the above Letter of Agency/Authorization. I further certify that I am at least 18 years of age and authorized to change companies for services to the telephone numbers listed above.

**I understand that I may be required to pay a one time charge per line to switch providers. If I later wish to return to my current service provider, I may be required to pay a reconnection charge to that company. I understand that by signing this document I am authorizing a change in my current telecommunication provider.**

<b>SUBSCRIBER: (Full Legal Business Name)</b> Town of Atherton	<b>If mailing, mail to:</b>
<b>By: (Signature) (Customer completes)</b>	<b>If emailing, email form to:</b>
<b>Print Name (Customer completes)</b>	<b>Complete ONE of the following for identification.</b>
<b>Title (Customer completes)</b>	<b>Customer Date of Birth (MM/DD/YYYY):</b>
<b>Telephone Number of individual authorized to act on behalf of customer:</b>	<b>Customer Federal Employment Identification Number (EIN):</b>
<b>If applicable, name of individual authorized to act for customer:</b>	<b>Last 4 digits of Customer Social Security Number:</b>
<b>Relationship to customer:</b>	<b>Customer Mother's Maiden Name:</b>
<b>Date (Customer completes)</b>	



I understand that by signing this document I am authorizing a change in my current telecommunication provider.

For information regarding this change please contact:



**Indiana Customers Only:**

Indiana consumers have the right to file a complaint with the Consumer Affairs Division of the Indiana Utility Regulatory Commission if there is a dispute between parties.

Indiana Utility Regulatory Commission - Consumer Affairs Division  
National City Center 101 West Washington Street, Suite 1500E  
Indianapolis, IN 46204

Toll-Free Complaint Line 1.800.851.4268 (Instate only)  
1.317.232.2700 (local) 1.317.232.8556 (tty/tdd)



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

**FROM: KATHI HAMILTON, ACTING CITY CLERK  
MARC G. HYNES, CITY ATTORNEY**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: RECOMMENDATIONS FROM THE SCREENING COMMITTEE  
REGARDING A PROCESS FOR COMMITTEES/COMMISSIONS  
APPOINTMENTS/RECRUITMENT TO CONFORM TO  
RESOLUTION 08-24**

#### **RECOMMENDATION:**

Approve the recommendations of the Screening Committee on a process to fill those terms that have expired or have been extended and/or recruit for new members on Committees/Commissions.

#### **BACKGROUND:**

Council adopted Resolution No. 08-24 to govern Committees/Commissions at its June 18, 2008, meeting. While the resolution was under discussion, some Committee Members' terms were extended while Council determined the composition of the resolution, while others' terms expired. The next step is to develop a process to recruit for those vacancies and/or expiration of terms for some committees. Staff sent a memo to the Screening Committee outlining Alternatives one and two for each of the subject committees (attached) and asking for recommendations on how to proceed. The Screening Committee has made the following selection of the respective alternative (either one or two) as listed below.

#### **ANALYSIS:**

**Arts Committee:** Resolution No. 08-24 established that membership can be up to ten members, five members appointed to a four-year term commencing in 2008 and ending April 30, 2012, and the remaining members' terms shall be three years commencing in 2008 and ending on April 30, 2011. Thereafter, each term of office shall be four years. Currently, there are three members on the Arts Committee.

**Alternative one:** Extend the current members' terms for four years and recruit for two members for a four-year term and five members for a three-year term, to be interviewed by the Screening Committee and approved by Council.

**Atherton Rail Committee:** Resolution No. 08-24 established that membership consists of two Council Members and up to 10 residents of the Town. The term of office for appointed members shall be a four-year term commencing in 2007 and ending on April 30, 2011. Thereafter, each term of office shall be four-years. Currently, there are six appointed residents on the Rail Committee.

**Alternative one:** Since the four-year term commenced in 2007, the assumption is the current members' terms would be extended and expire in 2011. Recruit for new members.

**Audit Committee:** Resolution No. 08-24 established that the Audit Committee consists of five members, including two Council Members of the Finance Committee, and three members appointed by Council. The term of office for all members ended on April 30, 2008. Thereafter, one term shall be for two years ending April 2010. The remaining terms shall be for four years ending April 2012; thereafter, the term office shall be four years. Currently, there are five appointed members of the Audit Committee.

**Alternative two:** Ask current members to reapply, recruit for new members, with all going through the Screening Committee process and approved by Council.

**Environmental Programs Committee:** Resolution No. 08-24 established that the EPC consists of up to 12 members, including two Council Members and ten residents of the Town appointed by Council. Five of the appointed members shall be appointed to a two-year term commencing in 2007 and ending April 20, 2009. The remaining members' terms shall be four years commencing in 2007 and ending April 30, 2011. Thereafter, each term of office shall be four years. Currently, there are four appointed members on the EPC.

**Alternative one:** Since the two-year term commenced in 2007, the assumption is the current members' terms would be extended and expire in 2009. Recruit for new members, one term for two years ending in 2009, four terms for four years, ending in 2011.

**Transportation/Traffic Subcommittee:** The Transportation/Traffic Subcommittee consists of five members including two Council Members and three appointed members. The term of office is for four years. Currently, there are three appointed members on the Subcommittee. One member was appointed in May 2008. The other two terms expired in 2008.

**A New Alternative:** Ask current members to reapply, recruit for new members, with all going through the Screening Committee process and approved by Council.

If Council approves the Screening Committee's recommendations, staff will proceed with a recruitment process with publication of a notice in the Almanac, on the Town's website, in posting locations.

**FISCAL IMPACT:**

If Council approves the Screening Committee's recommendations, cost for advertising in the *Almanac* will be incurred, as well as staff's time to administer the process.

Prepared by:

Approved by:

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Kathi Hamilton  
Acting City Clerk

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Jerry Gruber  
City Manager

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Marc G. Hynes  
City Attorney



**Town of Atherton**  
**Office of the City Clerk**

91 Ashfield Road  
Atherton, California 94027  
650-752-0549  
Fax 650-688-6528

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DATE: July 29, 2008

TO: Vice Mayor Carlson  
Council Member Marsala

FROM: Kathi Hamilton, Acting City Clerk

SUBJECT: Commission/Committee Appointments and/or Recruitments

Council adopted Resolution 08-24 to govern Committees/Commissions. While the resolution was under discussion, some terms were extended until Council determined the composition of the resolution. The next step is to recruit for those vacancies and/or expiration of terms. I have outlined below what the resolution has set out and some alternatives to solve the issues. In am forwarding this to the Screening Committee for your recommendations, which will then be presented to the full Council at the August meeting. I welcome your thoughts and suggestions as we go forward.

**Arts Committee:** Resolution 08-24 established that membership can be up to ten members, five members appointed to a four-year term commencing in 2008 and ending April 30, 2012, and the remaining members' terms shall be three years commencing in 2008 and ending on April 30, 2011. Thereafter, each term of office shall be four years.

Currently, there are three members on the Arts Committee.

**Alternative one:** Extend the current members' terms for four years and recruit for additional members to go through the Screening Committee process and approved by Council; or

**Alternative two:** Ask the current members to reapply and recruit for new members to go through the Screening Committee process and approved by Council

**Atherton Rail Committee:** Resolution 08-24 established that membership consists of two Council Members and up to 10 residents of the Town. The term of office for appointed members shall be a four-year term commencing in 2007 and ending on April 30, 2011. Thereafter, each term of office shall be four-year.

Currently, there are six appointed residents on the Rail Committee.

**Alternative one:** Since the four-year term commenced in 2007, the assumption is the current members' terms would be extended and expire in 2011. Recruit for new members.

**Alternative two:** Ask current members to reapply and recruit for new members to go through the Screening Committee process and approved by Council

**Audit Committee:** Resolution No. 08-24 established that the Audit Committee consists of five members, including two Council Members of the Finance Committee, and three members appointed by Council. The term of office for all members ended on April 30, 2008. Thereafter, one term shall be for two years ending April 2010. The remaining terms shall be for four years ending April 2012; thereafter, the term office shall be four years.

Currently, there are five appointed members of the Audit Committee.

**Alternative one:** Since the Audit Committee's appointed members have been reduced to three, ask current members to reapply, go through the Screening Committee process, and recommend three to be approved by Council.

**Alternative two:** Ask current members to reapply and **recruit for new members** to go through the Screening Committee process and recommend three to be approved by Council.

**Environmental Programs Committee:** Resolution No. 08-24 established that the EPC consists of up to 12 members, including two Council Members and ten residents of the Town appointed by Council. Five of the appointed members shall be appointed to a two-year term commencing in 2007 and ending April 20, 2009. The remaining members' terms shall be four years commencing in 2007 and ending April 30, 2011. Thereafter, each term of office shall be four years.

Currently, there are four appointed members on the EPC.

**Alternative one:** Since the two-year term commenced in 2007, the assumption is the current members' terms would be extended and expire in 2009. Recruit for new members, one term for two years ending in 2009, four terms for four years, ending in 2011.

**Alternative two:** Ask current members to reapply and recruit for new members to go through the Screening Committee process and approved by Council with five terms expiring in 2009, and four terms expiring in 2011.

**General Plan Committee:** The General Plan Committee does not need recruitment at this time. Three members' terms will expire in 2010, and two members' terms will expire in 2011.

**Parks and Recreation Commission:** The Park and Recreation Commission does not need recruitment at this time. Two members were reappointed in June, the Atherton Dames and Holbrook-Palmer Park Foundation members' terms expire in 2009, three terms expire in 2011, and two terms expire in 2012.

**Transportation/Traffic Subcommittee:** The Transportation/Traffic Subcommittee consists of five members including two Council Members and three appointed members. The term of office is for four years.

Currently, there are three appointed members on the Subcommittee. One member was appointed in May 2008. The other two terms expired in 2008.

**Alternative one:** Extend the newly appointed member's term to April 30, 2012. Ask the other two members to reapply and recruit for new members.

**Alternative two:** Extend all current members' terms to April 30, 2008.

Once the Screening Committee makes its recommendation to Council I will begin a recruitment process by placing an ad in the Almanac and advertising on the website.

I look forward to your comments.

cc: Jerry Gruber, City Manager  
Marc Hynes, City Attorney



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

**FROM: GLENN NIELSEN, CHIEF OF POLICE**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVAL OF ZETRON CONTRACT**

#### **RECOMMENDATION:**

The City Council approves the contract with Zetron, Inc. for the 9-1-1 emergency phone system upgrade.

#### **INTRODUCTION:**

Every five years, the State 9-1-1 Office provides monies to upgrade and/or replace the current 9-1-1 emergency phone system. This is a required change to support the Voice-Over Internet Protocol (calling 9-1-1 via the computer) and the Cellular 9-1-1 system that will allow the caller to gain access to a specific police department rather than the current system of all calls being routed through the California Highway Patrol.

Zetron provides the only system that will currently integrate with the Town of Atherton's Police Department radio system. In addition, Zetron, Inc. 3300 is the only system that can integrate with the VOIP (Voice-Over Internet Protocol) that will become mandatory within the next 2 years.

#### **ANALYSIS:**

Every five years from the date of installation, the State of California 9-1-1 services provides funding to replace/or upgrade the current 9-1-1 system. It is necessary that the monies are spent at the five-year mark in order to avoid any loss of funds provided by the

State. The amount of money awarded is based on an analysis of the emergency call traffic received by our department.

Zetron Inc. is the only vendor that will integrate with our current 9-1-1 digital radio system. Zetron offers an upgrade which includes the mandated VOIP (Voice-Over Internet Protocol) that will be mandatory within the next 2 years. In addition, the maintenance provider is local, therefore, granting a guarantee of a better response than our current ATT product.

**FISCAL IMPACT:**

Funds in the amount of \$98,605.64 are needed; however, \$54,500.00 will be reimbursed by the State of California 9-1-1 Office. The expense has been approved in the 2008-2009 Budget.

Prepared by:

Approved:

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Glenn Nielsen  
Chief of Police

---

Jerry Gruber  
City Manager



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVAL OF THE PUBLIC WORKS DEPARTMENT  
PURCHASE OF A BACKHOE TRACTOR FOR FY 2008-09**

#### **RECOMMENDATION:**

Authorize the purchase of one John Deere Backhoe for a cost of \$97,742.68. The Town will “piggy back” on the State of California’s Multiple Award Schedule (CMAS) 4-08-23-0022A with Pape Machinery in lieu of receiving multiple bids.

#### **INTRODUCTION:**

The Public Works Department is currently running a 1983 Case backhoe as its sole piece of heavy duty equipment. This 25 year old piece of equipment is restrictive to the staff for many reasons, including the following;

- The engine type, due to its age, does not qualify for the latest CARB diesel emission standards making it a detriment to our fleet certification.
- The equipment is of a small stature, and cannot pick up a full bucket of construction materials due to engine size, undersized hydraulics and front end capacity.
- The lifting height of the front bucket does not allow the staff to reach (to dump) materials in most contracted/rented end dumps and transfer type dump trucks.
- The equipment does not have a closed cab, which makes emergency call work (especially at night in the rain) difficult and sometimes even hazardous.

**ANALYSIS:**

Our current backhoe is beginning to experience problems caused not so much by its engine hours, but just by its advanced age. Seals are beginning to leak, electrical problems are arising and it's older tier 1 engine type (CARB emission standards) all point to a good time for replacement. This move will enhance our fleet of compliant diesel vehicles to 50%, a plus for our environmental cleanliness status.

The backhoe we look to purchase has a larger stature (but still a medium duty machine by today's standards), heavier duty hydraulics, a higher reach, a closed cab, 4 wheel drive and very importantly a powerful turbocharged engine that meets CARB tier 3 requirements which will meet federal standards until at least 2020 or beyond.

The California CMAS process receives multiple bids from vendors for specific types of equipment. The bids on these mass purchase contracts are significantly better than the Town can get by bidding for a single piece of equipment.

**FISCAL IMPACT:**

\$125,000 in Vehicle Replacement funds are budgeted for this project in FY 2008-09. The cost of the backhoe with necessary options and attachments is \$97,742.68 including sales tax and shipping. The CMAS discount saves the town \$47,420 off MSRP. The price breaks down as follows:

<b>John Deere 310 SJ TMC backhoe:</b>	<b>\$ 133,202</b>
<b>Less 35.60% CMAS Discount:</b>	<b>( 47,420)</b>
<b>Total CMAS Items:</b>	<b>\$ 85,782</b>

**Non-CMAS Items:**

CTI Roll on Pallet Forks w/Welded Hooks:	<b>\$2,205</b>
Factory Freight:	<b>2,300</b>
<b>Total Non-CMAS Items:</b>	<b>\$4,505</b>

<b>Total:</b>	<b>\$90,287.00</b>
<b>Sales Tax:</b>	<b>7,448.68</b>
<b>Total:</b>	<b>\$97,735.68</b>
<b>CA Tire Fee:</b>	<b>7.00</b>
<b>Total Sell Price:</b>	<b>\$97,742.68</b>

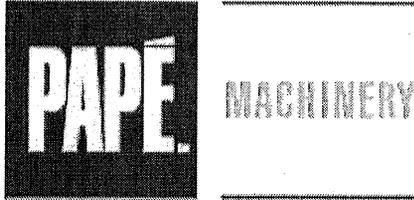
Prepared By:

Approved by:

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

\_\_\_\_\_  
Jerry Gruber  
City Manager

Attachments: State of California DGS Multiple Award Schedule  
Price quotation from Pape Machinery (Governmental Sales)



Steve Tyler  
 Town of Atherton  
 91 Ashfield Road  
 Atherton, CA 94027  
 Phone: (650)688-6544

REVISED: August 8, 2008

Dear Steve,

We are pleased to offer for your consideration a new **John Deere 310SJ TMC Backhoe Loader** equipped with the following:

<b>Code</b>	<b>Description</b>	<b>List Price</b>
7330T	310SJ TMC Backhoe, Tier III w/Turbocharged, 93 Net HP Wet-Sleeve Engine	\$ 120,876
2085	Cab/Heat & Air, Air Suspension Seat	00
3085	MFWD – 4 Wheel Drive with Powershift Transmission	00
4780	19.5LX24 R-4 12.5/80-18	00
5075	Extendible Dipperstick w/5 Function Hydraulics	00
5285	Pilot Controls – Electric over Hydraulic	00
5626	John Deere 18" Heavy Duty Backhoe Bucket	1,055
7075	Loader w/Return to Dig and 3 Function Hydraulics	1,040
8475	1000 Lb. Front Counterweight	1,109
7685	1.32 Cu. Yd. (92" wide) Multi-Purpose Bucket	5,819
8675	Dual Batteries	226
9132	Dual Battery Disconnect	137
9070	AM/FM Stereo, Weather Band Radio with Digital Clock for Cab	575
9110	Ride Control	1,174
9175	Front Windshield Washer	208
9225	3 In. Retractable Seat Belt	88
9515	Diagnostic Oil Sampling Ports	163
AT187707	License Plate Bracket and Light	178
AT313583	Strobe Light	292
AT334408	Engine Precleaner for Tier III Backhoes	137
AT334414	Environmental Oil Drain Kit	125
	Standard Warranty: 12 Months, Unlimited Hours, Full Machine	00
	<b>Total John Deere Items:</b>	<b>\$ 133,202</b>
	<b>Less 35.60% CMAS Discount:</b>	<b>( 47,420)</b>
	<b>Total CMAS Items:</b>	<b>\$ 85,782</b>

Steve Tyler  
 Town of Atherton  
 Page 2

**Non-CMAS Items:**

CTI Roll on Pallet Forks w/Welded Hooks:	\$2,205
Factory Freight:	<u>2,300</u>
<b>Total Non-CMAS Items:</b>	<b>\$4,505</b>

<b>Total CMAS Items:</b>	<b>\$85,782</b>
<b>Total Non-CMAS Items:</b>	<u><b>4,540</b></u>
<b>Total:</b>	<b>\$90,287.00</b>
<b>Sales Tax:</b>	<u><b>7,448.68</b></u>
<b>Total:</b>	<b>\$97,735.68</b>
<b>CA Tire Fee:</b>	<u><b>7.00</b></u>
<b>Total Sell Price:</b>	<b>\$97,742.68</b>

Powertrain & Hydraulic Extended Warranty:

1,500 Hour/60 Months = \$3,756

2,000 Hour/60 Months = \$3,955

\*\*This can be purchased within the year of the Standard Factory Warranty.

Thank you for your interest in John Deere and Pape Machinery. Please do not hesitate to call me with any questions.

Sincerely,

Bernie Barresi  
 Governmental Sales  
 Pape Machinery  
 38600 Cedar Blvd  
 Newark, CA 94560  
 (510)715-7631  
 bbarresi@papemachinery.com



Department of General Services  
 Procurement Division  
 707 Third Street, 2<sup>nd</sup> Floor, MS 202  
 West Sacramento, CA 95605-2811

State of California  
**MULTIPLE AWARD SCHEDULE**  
**Pape' Machinery, Inc**

4-08-23-0022A - Brand-John Deere  
 Construction Equip-Backhoe  
 Construction Equip-Bulldozer  
 Construction Equip-Excavator  
 Construction Equip-Grader  
 Construction Equip-Loader  
 Construction Equipment  
 Construction Equip-Scraper  
 Fire Fighting-Equipment  
 Lawn/Ag Equip-Backhoe  
 Lawn/Ag Equ-Skid Steer Loader

*(Above descriptions for marketing purposes only. Review contract for products/services available.)*

CONTRACT NUMBER:	4-08-23-0022A
CMAS TERM DATES:	5/30/2008 through 6/30/2013
DISTRIBUTION:	STATEWIDE

**NOTICE:** Products and/or services on this CMAS contract may be available on a mandatory Strategically Sourced (CSSI) Contract. If this is the case, the use of this CMAS contract is restricted unless the State agency has an approved exemption pursuant to MM 05-11, and as further explained in the CSSI Contract User Instructions. Information regarding CSSI contracts can be obtained at the website: [www.pd.dgs.ca.gov/stratsourcing](http://www.pd.dgs.ca.gov/stratsourcing). This requirement is not applicable to local government entities.

The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions, products and/or services and pricing are included herein. All purchase orders issued under this contract incorporate the following Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated July 2006.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.

*Walter W. Saborio*

Effective Date: **5/30/2008**

WALTER W. SABORIO, Program Analyst, California Multiple Award Schedules Unit

**JOHN DEERE CONSTRUCTION RETAIL SALES  
GS-30F-0013U**

DISCOUNT SUMMARY		
SPECIAL ITEM NUMBER	MACHINE MODEL	DISCOUNT FROM LIST
271-101	310J	35.20%
271-101	310SJ	35.60%
271-101	410J	35.69%
271-101	710J	33.80%
271-101	450J	23.58%
271-101	550J	23.31%
271-101	650J	23.50%
271-101	700J	23.59%
271-101	750J	24.52%
271-101	850J	24.54%
271-101	950J	25.38%
271-101	1050J	19.57%
271-101	244J	22.51%
271-101	304J	29.75%
271-101	344J	31.29%
271-101	444J	33.22%
271-101	544J	34.07%
271-101	624J	35.41%
271-101	644J	35.14%
271-101	724J	33.28%
271-101	744J	32.41%
271-101	824J	32.27%
271-101	844J	33.27%
271-101	670D	39.93%
271-101	672D	40.20%
271-101	770D	41.26%
271-101	772D	41.40%
271-101	870D	40.55%
271-101	872D	41.03%
271-101	17D	22.23%
271-101	27D	21.64%
271-101	35D	22.28%
271-101	50D	23.13%
271-101	120C	28.94%
271-101	160D LC	30.17%
271-101	200D LC	34.10%
271-101	75C	28.46%
271-101	80C	27.76%
271-101	240D LC	32.76%
271-101	270D LC	28.42%
271-101	135C RTS	29.12%
271-101	180C W	35.10%
271-101	225D LC	33.00%
271-101	210C W	34.94%
271-101	313	25.32%
271-101	315	25.32%
271-101	317	25.32%
271-101	320	25.65%
271-101	325	25.77%
271-101	328	26.02%
271-101	332	25.84%
271-101	CT322	21.91%
271-101	CT332	22.65%

A



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

**FROM: BILL YEOMANS, CONTRACT FINANCE OFFICER**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVAL OF AN EXTENSION OF THE CONTRACT  
FOR THE INDEPENDENT AUDITOR**

#### **RECOMMENDATION:**

Approve extension of contract with independent audit firm Caporicci & Larson with the scope to include updating the Appropriations Limit review.

#### **INTRODUCTION:**

Caporicci & Larson have served as the Town's independent audit firm since 2000. When the Audit Committee met to receive last year's Annual Financial Report, it decided to seek a new audit firm for the next complete process. Many organizations rotate auditors on a five-year basis in order to get a fresh view of their finances from a new set of eyes. The Town will be seeking a new Audit firm this winter.

Caporicci & Larson agreed to extend the contract for one final year, the fiscal year ended June 30, 2008, on the same basis as before. The proposal is attached. The only change recommended by staff is to update the Appropriations (Gann) Limit review.

#### **FISCAL IMPACT:**

The Town currently pays \$23,000 for normal annual audit services. The proposed contract includes no additional cost.

Prepared By:

Approved by:

---

Bill Yeomans  
Contract Finance Officer

---

Jerry Gruber  
City Manager

Attachments:  
Proposed Contract

June 27, 2008

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

Dear Mr. Gruber:

As you are aware, our current audit contract ends with the completion of the 2007 audit. I would like to take this opportunity to thank you for the confidence and support the Town has provided us over the years. I would also like to take this opportunity to present this letter for your consideration regarding extending the Caporicci & Larson audit contract with the Town for one year.

Over the past years, we have developed an understanding of the Town's operation that has aided us in providing quality audit services. With that knowledge, we've been able to expand our audit efforts and provide observations that we believe have assisted Town staff. We have also demonstrated our ability to respond to requests of the Town and our ability to deliver a quality product. We trust the Town has been satisfied with our efforts.

I would like to propose an extension of our audit contract for the following fiscal year ending June 30, 2008. The objective of our audit is to issue an opinion regarding the fairness of presentation of the Town's financial position for each year in accordance with generally accepted accounting principles. The audit to be performed will follow generally accepted auditing standards, U.S. Government Accountability Office's Government Auditing Standards, Single Audit Act, and OMB A-133.

Our proposed professional fee to perform the audit services to the Town for the year ending June 30, 2008 is \$23,000. We have increased the fees slightly to cover inflationary effects on our costs.

In addition, the following is a proposed timing schedule for the audit noting when we would perform and/or contact the Town's Management.

Toll Free Ph: (877) 862-2200

Toll Free Fax: (866) 436-0927

**Oakland**

180 Grand Ave., Suite 1365  
Oakland, California 94612

**Orange County**

9 Corporate Park, Suite 100  
Irvine, California 92606

**Sacramento**

777 Campus Commons Rd., Suite 200  
Sacramento, California 95825

**San Diego**

4858 Mercury, Suite 106  
San Diego, California 92111

<u>Audit Field Work and Communication with Management</u>	<u>Proposed Timing</u>
Meet with representatives from the Town Council or the Audit Committee.	End of July
Perform preliminary procedures on Internal Controls and progress on the year end accruals.	August
Perform year end validation procedures and review draft of the financials.	End of August
Meet with representatives from the Town Council or the Audit Committee.	End of August
Publishing of Financial Reports.	September

If the Town agrees with the foregoing, please sign the copy of this letter in the space provided and return it to us.

Jerry, we would very much like to continue our relationship with the Town and stand ready to provide the level of service and commitment to which the Town has become accustomed.

If you have any questions, please feel free to call me using our toll-free number (877) 862-2200, ext. 125.

Sincerely,



Stephen L. Larson  
Senior Partner

This letter correctly sets forth the understanding of the Town of Atherton as listed above.

Acknowledged by:

Town of Atherton

---

\_\_\_\_\_  
Date



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

**FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPEAL – 99 DEBELL DRIVE DRIVEWAY ENCROACHMENT  
PERMIT TO MADRONE ROAD**

### **RECOMMENDATION**

Staff recommends that the City Council conduct the public hearing, deny the appeal and uphold the decision of Staff for the reasons outlined in this Report.

### **INTRODUCTION**

The property owners of 73 Madrone Road, David & Leigh White, have filed an appeal of the decision of Staff regarding an encroachment permit for a driveway for 99 DeBell Drive to connect to Madrone Road.

The 99 DeBell Drive property has frontage on DeBell Drive, Oak Grove Avenue and Madrone Road. There is no restriction of access shown on the plat or any documents provided to Staff. In addition, the 99 DeBell Drive property was originally a lot in Ringwood Park, the subdivision that created Madrone Road, recorded at Plat Book 5 at page 38 on October 21, 1907. The right-of-way was accepted by San Mateo County, and subsequently became Town right-of-way upon incorporation of the Town in 1923. The street paving was never accepted for maintenance.

The owners of 99 DeBell Drive (permittee) applied for an encroachment permit to construct a driveway connecting to Madrone Road. The appellants asked Staff not to issue the permit. Staff had several conversations and meetings with appellants, including one with the City Manager and the City Attorney. Staff found no reason to deny issuance of the permit, and so advised appellant. The permit was issued on June 4, 2008.

The appellant filed an appeal of Staff's decision with their letter dated June 4, 2008, and a subsequent letter dated June 11, 2008 to clarify their reasons for the appeal (attached). A Stop Work Notice was issued for the 99 DeBell Drive driveway project by Staff.

The City Council received testimony at a Public Hearing on July 16, 2008. After some deliberation, it was determined that the item be continued to August 20, 2008 to allow staff to work with the applicant and the neighbors to find other possible solutions.

Planner Neal Martin and Director Jones met with the applicant, who proposed an alternative solution of installing a fence and gate with landscape screening. They then met with Appellant Mrs. White who did not accept applicant's proposal and proposed an alternative of access to connect to the existing driveway off of DeBell. Applicant did not accept appellant's proposal as it required a u-turn to enter the garage, and because he planned to have a boat which he would be unable to get into the garage using the DeBell driveway. Staff was unable to develop any solutions acceptable to both parties.

Staff has included pictures of the street, and of other properties and projects on the street, to show that: a) the project is as consistent as other projects on the street with the rural character of the street and of the Town; and b) that the properties across the street, namely 73 Madrone and 245 Oak Grove Avenue, will be virtually unable to see the project from their properties, and will see very little of it while driving on the street..

## **ANALYSIS**

Atherton Municipal Code 12.06 regulates encroachments, defined as construction in the public right-of-way. Section 12.06.060 provides that:

The City Manager ... shall issue an encroachment permit to the applicant when, in the opinion of the City Manager, the proposed encroachment would not interfere with any town facilities or the use thereof, and would not be detrimental to the best interests of the town.

The section also provides:

The city manager may delegate any of his functions hereunder to one or more designated deputies.

The function of issuing encroachments permits has been delegated to the Public Works Director. The Public Works Director determined that the proposed driveway at 99 DeBell Drive did not interfere with any town facilities or the use thereof, and would not be detrimental to the best interests of the town. The criteria to be used for this determination is set forth in Section 12.06.020

It is the intent of the encroachment regulations to preserve the rural nature of the town and to leave the lot frontage strip portion of the public right-of-way safe, clear of obstacles and impervious surfaces, for drainage, parking, access and other

similar uses. It is the intent of this chapter to clarify that it is the responsibility of adjoining property owners to maintain such areas. (Ord. 503 § 1 (part), 1999)

The Public Works Director determined that the permit area was safe and clear of obstacles, required that the driveway contain a drainage swale to carry drainage across the driveway, determined that the driveway was for the purpose of providing access to the adjacent lot and determined that the construction did not include any impervious surfaces not necessary for providing access.

Because Madrone Road was never accepted for maintenance, the street is a unique hybrid of a private street within a public right-of-way. This means that the residents of the street are responsible for maintenance of the street until such time as the street is constructed to Town standards and accepted for maintenance by the Town. In the past, residents have expressed an unwillingness to do this because it would require the street to be wider than it is now. For this reason, Staff required acknowledgement by the permittee that constructing the driveway connection would cause them to be subject to maintenance costs of the street pavement. The permittee agreed to this condition and placed a note to that effect on the permit plans.

### **CLAIM OF ERROR**

Appellant claims that Staff erred by not considering the project's impact on the rural nature of the town, by failing to consider the effect of the project on aesthetics, garbage cans, traffic, consistency with the General Plan and character of adjacent public and private property, as required by Section 12.06.080 of the municipal Code, and by not adequately considering policies underlying setback, landscape screening and zoning regulations.

Staff in their review of this permit referred to other appropriate staff member for review and comment. The encroachment was evaluated for compatibility with the General Plan, including the Land Use and Circulation Elements. Other elements are not applicable to the issue. The Land Use Element does not contain any provisions inconsistent with the proposed project. The Circulation Element states that local streets (the smallest street standard) are used to provide access to abutting property...and they should be designed to discourage through traffic. The project is compatible with the Circulation Element.

An aside related to the private nature of the street, the Circulation Element Section 2.373 states:

A public street shall be accepted by the Town only on condition that it has been improved in accordance with Town standards existing at the time of acceptance

With regard to consideration of policies underlying setbacks for buildings, the garage complies with the zoning setbacks applicable to such an accessory structure. The fact that a driveway accesses the garage from the rear lot line does not affect the applicability of the setback.

With regard to landscape screening, the residential building project related to this encroachment permit is subject to landscape screening requirements on the front, side and rear yards, however, landscape screening is never required across an access driveway or sidewalk, regardless of which lot line it crosses. This permit is consistent with the landscape screening policies.

With regard to zoning regulations, whether or not there is a driveway present does not change the difference in setbacks from one side of the street to the other. The DeBell Drive side of the street will be the rear yard regardless, and the garage would be permitted at its present location whether there was a driveway from Madrone Road or not. Also appellant is incorrect that the zoning setbacks would not allow conversion of the street to public maintenance. Zoning setbacks are from the rear property line, not the edge of the street. As such, the setback would not change if the street were constructed to a standard width.

Regarding appellants contention that the permittee can provide access to the garage by extending the existing driveway from DeBell Drive, staff is not in a position to choose between the three lot lines which all provide equally legal access and require use of one over the other. There are not provisions in the Municipal Code or General Plan that indicate that this should be required.

Regarding appellants contention that the 99 DeBell Drive property owner can provide access to the garage by constructing a driveway from Oak Grove Avenue, it should be noted that Oak Grove Avenue is a Collector Street, which has the function, according to the general plan, to transfer traffic from local traffic generators (homes, schools, etc.) and local streets to arterials. As such, it is desirable for access to be provided to the local street rather than the collector, if the choice is available. While this is not sufficient justification to require a change if the owner applied for a driveway to Oak Grove Avenue, in that other houses in the area have driveways to Oak Grove Avenue, it is sufficient justification to approve the permittee's desired location for the driveway as being consistent with the General Plan.

## **CONCLUSION**

It is Staff's professional opinion that the request to construct a driveway to provide access to 99 DeBell Drive from Madrone Road is consistent with the Atherton Municipal Code and the Atherton General Plan and that the appeal should be denied.

## **ALTERNATIVES**

- The Council could deny the appeal and uphold the decision of Staff. The permittee would be allowed to proceed with the project.
- If the Council determines the code interpretation of Staff is incorrect, in that issuance of the permit would be detrimental to the interests of the town, then the Council could

direct staff to require the permittee to redesign the project to obtain driveway access from another street.

**FISCAL IMPACT**

The cost of the appeal process is paid for by the appellant.

**FORMAL MOTION:**

I move that the City Council deny the appeal and uphold the decision of Staff.

Prepared by:

Approved by:

\_\_\_\_\_  
Duncan L. Jones, P.E.  
Public Works Director/City Engineer

\_\_\_\_\_  
Jerry Gruber  
City Manager

Attachments:

1. Letter of Appeal dated June 4, 2008
2. Letter providing supplemental information dated June 11, 2008
3. Atherton Municipal Code section 12.06
4. Encroachment Permit and attached plan
5. Pictures of project site, street and appellants project site

**Michael R. Gaulke**  
**Judith A. Gaulke**  
1 Madrone Road  
Atherton, California 94027  
(650) 322-8833

RECEIVED  
TOWN OF ATHERTON  
2008 JUN 13 A 11:39

June 12, 2008

City of Atherton  
Kathi Hamilton, City Clerk  
Atherton, California 94027

Re: Revocation of 99 Debell Encroachment Permit

Dear Ms. Hamilton:

This letter is being sent in support of the request made by David and Leigh White to revoke the encroachment permit issued to the developers of Atherton property known as 99 Debell Road. The White's request is contained in letters dated June 4<sup>th</sup> and June 11<sup>th</sup>, 2008 addressed to the City Clerk.

We have lived 1 Madrone Road since 1987. We were initially attracted to the property, in large part, because of its rural charm and feeling of privacy afforded by the single lane "country road" that provided access to it. The thought of allowing Madrone Road to become a back alley for the residents of Debell is chilling. If it were allowed to happen, the current rural character of the road would be lost and it would negatively impact the value of the three homes that front on Madrone Road.

We concur with the reasons and rationales put forth in the White's June 11<sup>th</sup> letter to the City and ask that the encroachment permit be revoked, that the landscape screening be restored, and that the damage to the Madrone Road pavement be repaired.

Sincerely yours,



Michael R. Gaulke



Judith A. Gaulke

cc: David and Leigh White





**David N. White**  
**Leigh A. White**  
73 Madrone Road  
Atherton, California 94027  
650.327.5355 home  
650.804.9220 mobile

June 4, 2008

City of Atherton  
Office of City Clerk  
Atherton, California 94027

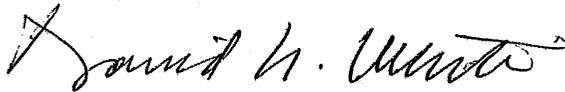
Re: 99 Debell encroachment permit

Dear Ma'am:

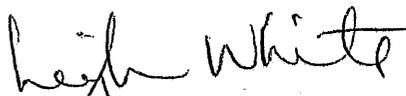
We understand that an encroachment permit was issued today for a driveway from 99 Debell onto Madrone Road in Atherton. This letter is intended to serve as a formal appeal to the permit.

Please contact us at your earliest convenience to instruct us as to the next steps in the appeal process. In the meantime, please inform the owner of 99 Debell that all work associated with the driveway must cease immediately.

Regards,



David White



Leigh White

cc: Duncan Jones  
Marc Hynes ✓  
Jerry Gruber

**David N. White**  
**Leigh A. White**  
73 Madrone Road  
Atherton, California 94027  
650.325.3707 phone  
650.327.5355 fax

June 11, 2008

City of Atherton  
Kathi Hamilton, City Clerk  
Atherton, CA 94027

Dear Ms. Hamilton:

In addendum to our letter of June 4, 2008 appealing the issuance of an encroachment permit to the developers of Atherton property known as 99 Debell Road, and, pursuant to **Municipal Code §17.64.010**, the following outlines the facts upon which we believe demonstrate that the issuance of such permit was made in error by the decision maker:

Madrone to this point has been a charming single lane country road - only first paved within the last decade (at the expense of the residents on Madrone Road) and in compliance with the General Plan of the Town of Atherton in maintaining the rural character of the Town (**Municipal Code §12.06.020**). Only three homes presently front on and are accessed from Madrone Road. These three homes are located along the North side of Madrone and all are sufficiently isolated from one another by placement and vegetation to make them inconspicuous to the surrounding homes and neighborhoods. Madrone Road has been lined by a verdant growth of mature trees, shrubs and brush which gives it high value as a quiet, pastoral setting. Houses fronting on Debell Road whose rear property lines are bounded by Madrone are screened from Madrone Road by this vegetation. All access to these Debell lots (being in a subdivision separate from that which contains Madrone) is and has always been solely from Debell Road. The destruction of this vegetation by the developers of 99 Debell in anticipation of access via Madrone Road has resulted in the erosion of the character of Madrone Road due to the exposure of the rear service area and garages of 99 Debell to all who now travel down Madrone Road. Having granted such encroachment to 99 Debell, the Town would be required to allow the same for the additional 4 properties on Debell which back onto Madrone should it be so requested. Such disruption would completely destroy the character of Madrone Road. We believe that granting the encroachment permit is contrary to the stated intent of the encroachment regulations of **Municipal Code §12.06.020** of preserving the rural nature of the town. Therefore, the city authority granting such encroachment permit issued the permit in error.

Madrone Road has been privately maintained since before the Town of Atherton was incorporated and continues to be so. It represents the southernmost boundary of a subdivision known as Ringwood Manor, established in approximately 1908. It abuts an adjacent subdivision known as Maple Manor in such a way as the Maple Manor homes fronting on Debell Road have the back of their lots on Madrone. Access to these Debell homes has always been and continues to be from Debell. This design has been effective, functional and purposeful for nearly a century.

99 Debell which is bordered by Debell, Oak Grove and Madrone was sold approximately 2 years ago and the developers purchasing the property have built a garage facing Madrone with the intent of having access to it via Madrone. This presents a number of problems.

99 Debell Road is one of five Debell properties backing on Madrone Road. All of these homes were originally built in the 1950's and 60's or earlier and it is not unlikely that the next decade will witness significant redevelopment of these properties. The precedent established in granting encroachment from 99 Debell for this purpose would quite possibly be carried through in further development of additional Debell properties, converting charming Madrone Road from a street (as defined in **Municipal Code §16.08.190**) to use primarily as an alley (as defined in **Municipal Code §16.08.010**) for homes on Debell, with accompanying aesthetics, garbage cans, and traffic. This is inconsistent with the design of the road and the Atherton General Plan and character of the adjacent public and private property (as required under **Municipal Code §12.06.080(A)**) and would devalue existing Madrone properties. We believe the city authorities granting this encroachment permit failed to consider these effects as required and therefore granted such permit in error.

Madrone Road, owing to its historical development in bordering an adjacent subdivision, is perhaps unique within Atherton in having a small number of homes fronting one side of the road while on the other side a larger number of lots backing on to the street. **This results in the unusual arrangement of setback and landscape screening requirements quite different from one side of the street to the other.** This difference is manifest in the narrow setback between the new garages at 99 Debell (consistent with an alley) and the standard front set back and landscape screening required in the construction of our newly built home at 73 Madrone Road (consistent with a street). We thus face the potential usurpation of our street to serve as an alley for Debell. The difference is prejudicial and becomes problematic not only with the ensuing aesthetic changes on the street, but, should the residents along Madrone ever wish to have the street converted to public maintenance, the inadequate setbacks along the Debell side would disallow the conversion. A similar problem presently exists on Spencer, a privately maintained street in West Atherton where setbacks are inadequate to allow conversion to public maintenance. We believe that city authorities issuing the encroachment permit for 99 Debell did not adequately consider policies underlying setback, landscape screening and zoning regulations and therefore failed to exercise adequate discretion in the issuance of the permit.

Revocation of the encroachment permit requested by the developers of 99 Debell is in no way detrimental to the property owner. Adequate access to the garages as built exists by

extending the previous driveway along the west side of the property to the new garage area (this would require removal of one non-heritage tree) or by extending the newly cleared service areas from the front of the garage doors across the back of the lot to the East for access from Oak Grove. Either of the solutions can be attractive and inexpensive and both avoid damage to Madrone Road and the existing properties on Madrone.

In view of these special circumstances, we respectfully request that the city authorities revoke the encroachment permit pursuant to **Municipal Code §12.06.090** and require the owners of 99 Debell to restore the landscape screening and repair the damage to the pavement on Madrone Road.

Further, we intend to request that the town planner create a zoning overlay to protect the historic characteristic of Madrone Road from future encroachment from Debell properties and the permanence of Madrone Road as a street (as it has always been) and not an alley (as this encroachment permit would make it). This request will be made according to established procedures in coming weeks.

We understand that pursuant to **Municipal Code §17.64.050** the city council will, at its next regular meeting on June 18, 2008, set a date for a public hearing on this matter to be held within forty days.

Very respectfully yours,



David N. White



Leigh White

cc: Duncan Jones ✓  
Marc Hynes  
Jerry Gruber

**David and Leigh White**

73 Madrone Road  
Atherton, CA 94027

RECEIVED  
TOWN OF ATHERTON  
650-327-5355 2008 JUL -9 P 2: 19

July 1, 2008

Atherton City Council  
Atherton, CA 94027

Re: Appeal of encroachment permit issued to 99 De Bell

Dear Ma'am and Sirs:

This letter and attachments are intended to supplement the letters of appeal submitted by the residents of Madrone Road. We assert that pursuant to stated purposes of the municipal codes of the Town of Atherton, the encroachment permit issued to 99 De Bell should be revoked and future encroachment to Madrone Road from properties fronting on streets other than Madrone Road should be similarly restricted.

Our objection to the encroachment permit for 99 De Bell is not related to the existence of the newly constructed garage, nor its location on the property. Rather, we assert that access to the garage located approximately 25 feet from the street and is clearly visible from the street (see Attachment A), is inconsistent with the intent of the municipal code of Atherton. **If access to this structure is allowed from Madrone Road, the result would be that on one side of the street, homes fronting on Madrone are subject to garage setbacks of 60 feet for attached garages, 120 feet for detached garages and on the other side of the street, homes backing on Madrone, garage setback requirements would be essentially waived. Landscape screening requirements would be similarly inconsistent.**

Destruction of our tree-lined lane, whether for one rear driveway entrance or five, would negatively impact property values of homes on Madrone Road and impair the quality of life of Madrone Road homeowners. Until construction began on 99 De Bell, Madrone Road was completely screened from the property, consistent with municipal code requirements. When construction began on the garage structure, a footpath was cut in the screening along Madrone for worker access. In recent months the screening has been steadily removed, resulting in the obvious view of the garage structure and service yard we see today.

Given the alternatives available for access to the garages on 99 De Bell, the Madrone homeowners stand to lose substantially more than the owners of 99 De Bell stand to gain by access from Madrone Road. Until the construction of the new garage, the property's driveway was located along the west boundary of the property. Despite protestations to the contrary, this alternative is still available. The garage structure is located more than 30 feet from the west property line, providing ample access to the back of the garage structure. In fact, this original

driveway still provides primary access to the property. Continued use of this driveway is certainly no detriment to the property owners. Its extension along the west side of the property would allow convenient access to the present garage as built.

As we understand it, the relevant provisions of the Town of Atherton municipal code are as follows:

- Title 16. Subdivision (various subsections) provides broad regulations regarding land use.
- Title 17. Zoning (various subsections) refines land use regulations, enhances regulations by including landscape screening requirements.
- Title 12. Streets, Sidewalks and Public Places, Subsection 12.06 Encroachments regulates access to land.
- Title 8. Health and Safety, Subsection 8.14 Historical Artifacts preserves aesthetic heritage (among other things), demonstrating the importance of visual characteristics of Atherton.

### **Title 16. Subdivisions**

The broadest of these regulations is Title 16 Subdivisions which begins by defining various aspects of land (for example, §16.08.100 Front lot line and §16.08.110 Rear lot line) providing a context for regulating use of such land. Significantly, included in the list are definitions of an **Alley** (§16.08.010: “a minor public way providing secondary access at the back or side of property”) and **Street** (§16.08.190: “an improved, traveled way providing the primary access to abutting property.”). In light of these definitions, if the majority of properties abutting Madrone Road use Madrone for secondary access, we are at risk of our street being converted into an alley.

There are an additional 4 homes on De Bell backing onto Madrone Road. Issuance of the permit in question would require that each of these properties have the same access, assuring the eventual conversion of Madrone Road from a street to an alley. This is problematic for many reasons, not the least of which is the impact on the property values of current Madrone Road homeowners and safety of those traveling daily on the narrow street.

### **Title 17. Zoning**

Title 17’s zoning regulations begin by describing the purpose of the title, which include “to establish...regulations **implementing the general plan...**” and stating that “[t]hese regulations are necessary for the **orderly use of land...**” The definitions of Title 17 provide a template for use of property which results in the beautiful neighborhood we enjoy today. Complimenting these use requirements are §17.50 Landscape Screening codes, whose purpose is to “**reduce the impact of structures on neighborhoods.**” Together, these regulations contemplate a typical homeowner’s desire to build structures that maximize the use of the property while protecting other homeowners from being forced to view such structures.

In the case of garages, it is clear that Title 17 **assumes homeowners will access to such accessory structures from the front of the property**. Hence, the regulation **minimizes the visual impact of such structures by requiring they be set back from the front**: detached garages set back 120 feet from the front, and attached garages set back 60 feet from the front. This distance is necessary to ensure that accessory structures are not visibly dominant from the street.

Should the encroachment permit in question be granted we are left with a circumstance in which setback requirements vary from one side of the street to the other. This is untenable and significantly degrades the value of homes fronting on Madrone Road.

Although side and rear lot line setbacks are considerably narrower for accessory structures, since the regulations contemplate access from the front of the property, the code provides **protection from visual impact by imposing stringent side and rear landscape screening requirements** (§17.50.030 General requirements). These are minimum requirements, §17.50.030(C) grants the building official discretion to apply additional requirements.

However, in the case of 99 De Bell, the developer has built a garage that faces the rear property line, which abuts Madrone Road. The structure is within approximately 25 feet from the rear property line (see Attachment A). The placement of the structure is not in itself contrary to code requirements. However, **when seeking access to the structure from the side or rear of the property, the landscape screening requirements of §17.50.030 cannot be satisfied**. This is adequate reason for city officials to deny access to the structure from the side or rear of the property. As noted in our letter dated June 11, 2008, the structure can easily be accessed from the front of 99 De Bell by a driveway along the west side of the property, which is how the structure has always been accessed.

### **§12.06 Encroachment**

Further protection for the visual character of Atherton is provided in §12.06 Encroachment provisions of Title 12. Specifically, §12.06.020 states that “It is the intent of the encroachment regulations to **preserve the rural nature of the town...**” *Nowhere in the town of Atherton is this rural nature more apparent than on Madrone Road* (see Attachment B). The value of this characteristic is strongly protected under this regulation, §12.06.080(A) grants the town staff broad discretion to determine whether the encroachment “is **compatible with the general plan and with the character of the adjacent public and private property.**” The city manager is then given the authority to deny or grant the permit (§12.06.080(B)), and to revoke the permit (§12.06.090).

The homeowners of Madrone Road assert that issuance of the encroachment permit for 99 De Bell, or any other property which does not front on Madrone Road, destroys the rural nature of the neighborhood and is inconsistent with the general plan and with the character of the adjacent public and private property.

ATTACHMENT A



99 De Bell garage view from Madrone Road

ATTACHMENT B



View of Madrone Road from Oak Grove looking west  
(note break in foliage wall on left)

ATTACHMENT B (continued)



View of Madrone Road from cul-de-sac looking east  
(note foliage wall on right)



Madrone Road looking North from Oak Grove Avenue



View of Garage from Oak Grove Avenue at Construction Entrance



View of Garage from Construction Entrance



View Approaching Driveway from South



View of Garage from Madrone Road



View of Madrone Road and 245 Oak Grove Avenue from Garage



View to North from Driveway



View Approaching Driveway from North



View of Driveway from 73 Madrone Road Driveway (the next driveway on the street)



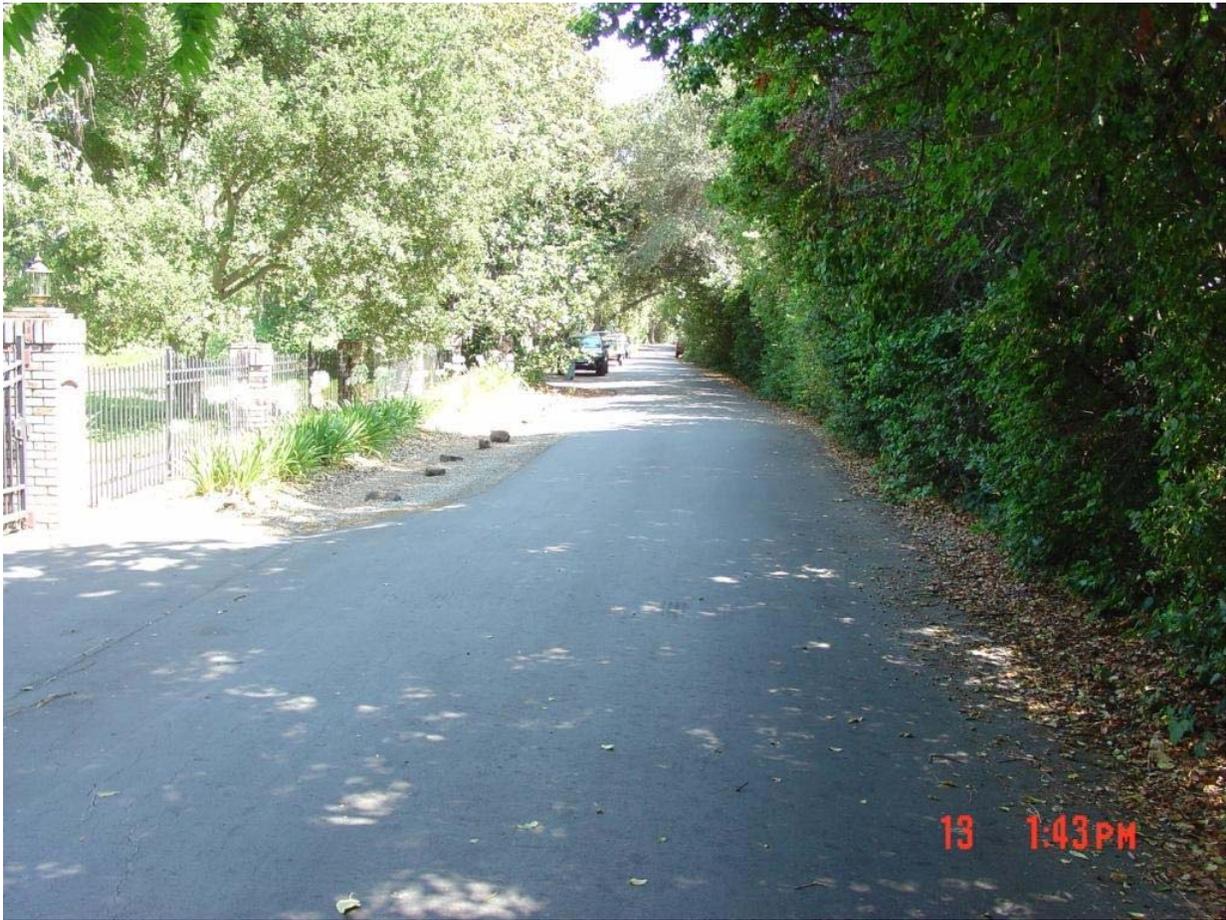
View of 73 Madrone Road from Madrone Road



View of 73 Madrone Road Approaching from North



View of 39 Madrone Road from Madrone Road



Madrone Road Looking South from 39 Madrone Road



Existing Driveway on DeBell Drive

Thom Bryant  
Susan Gellen  
99 De Bell Drive  
Atherton, California 94027

RECEIVED  
TOWN OF ATHERTON

2008 AUG 13 A 8:42

August 13, 2008

VIA Hand Delivery

Town of Atherton  
Town Council  
c/o Office of the City Clerk  
91 Ashfield Road  
Atherton, CA 94027

re: Appeal of Encroachment Permit for New Garage at 99 De Bell Drive

Honorable Mayor and Town Council:

We write in opposition to the appeal filed by David N. and Leigh A. White, which is scheduled to be heard at the Council's August 20, 2008 meeting. We respectfully request that this letter and the enclosures hereto be made a part of the administrative record of the appeal.

### **Background**

At its meeting of July 16, 2008 Council continued any decision on the appeal to its August 20, 2008 meeting. Council requested the Town Manager and Staff, in the interim, to examine whether there are workable alternative drive way approaches for the garage, as built. There was some questioning as well, over the various measurements for the Madrone public right-a-way, the location and width of paving and the location of our garage relative to the street.

We have enclosed a section of our site plan, marked up to show the various dimensions in question. Note that Madrone has a dedicated Public Right-a-Way of 45', which is wider than De Bell and the Town standard of 40'. As you can see on the attached plan, the face of our garage is setback 50' from the edge of the street paving at the closest point along the drive way opening. The street paving is nominally 14' in width and tends to fall on the north side of the right-a-way.

### **Accessing the Garage via De Bell or Oak Grove is not a viable option**

We built a 3 bay garage so that we would have the option of parking a boat/trailer or classic car/trailer in one bay. A typical boat/trailer and SUV is 37' long. As you can see on the second enclosed site plan, it is impossible to remove or to park a boat/trailer without using the Madrone public right-a-way. Blocking access to Madrone, would make the garage unusable for at least one of its allowed and intended uses.

### **Rebuilding the Garage in a new orientation or location is not a viable option**

Some have suggested that we can just tear down the garage and rebuild it in a different configuration. This mistakenly ignores the fact that we made decisions for our house construction that were dependent upon the garage location. When we acquired our property, we relied upon the Town's municipal code, plan review process and validly issued Building Permits. Based upon the approved location of the proposed new garage and driveway, we elected to completely renovate the existing structure. We have spent 2 years and considerable funds to complete this work. Changing the location or orientation of the garage would require changing the house as well.

### **Modify the planned landscape screening**

After talking with our neighbors across Madrone from us and in response to Council's suggestions, we are prepared, at considerable expense to us, to make the following changes to the planned landscape screening to minimize the visual impact on the street.

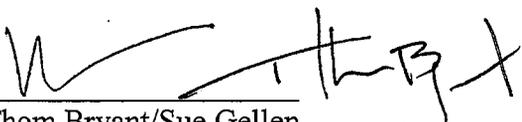
- Extend the fencing across the balance of our property fronting on Madrone, excluding the driveway opening.
- Install a gate at the driveway opening

### **Concluding thoughts**

We have explained why several suggested "fixes" will not work or would be prohibitively expensive. It's likely that there is no perfect solution that will satisfy everyone in this situation, but we have listened both to neighbors and the Council and we have made a good faith effort to respond to the concerns with additional fencing and a driveway gate. They say that a good fence makes for good neighbors. Let's hope that this is the case here.

Accordingly, we ask the Council to overrule the appeal and rescind the stop work notice. We appreciate the Council's attention to this matter and look forward to a successful conclusion.

Very truly yours,

  
Thom Bryant/Sue Gellen

Enclosures: Site Plan marked up with dimensions  
Site Plan showing boat/trailer and SUV

EDGE OF PAVEMENT

MADRONE ROAD

(N) UNDERGROUND  
ELECTRIC SERVICE

(N) UNDERGROUND  
GAS SERVICE

(E) 5" TREE

(E) TRIPLE 4" TREE

(E) 6" TREES

(N) AUTOMATIC GATE

16'-0" (R)  
6" TREE

(R) 10" PALM

S59°38'40" LBB

R10' LBB

155.00'

(E) 44" TREE

(E) TWIN 18" & 40" TREES

(N) GARAGE SETBACK

37'-10"

(N) ASPHALT  
DRIVEWAY

(R) 6" & 8" BAYS

(R) 6" CITRUS

(R) 6" PEAR

(N) SOUNDWALL

(E) 8" BAY  
31'-6 1/2"

(E)

(E) 8" TREE

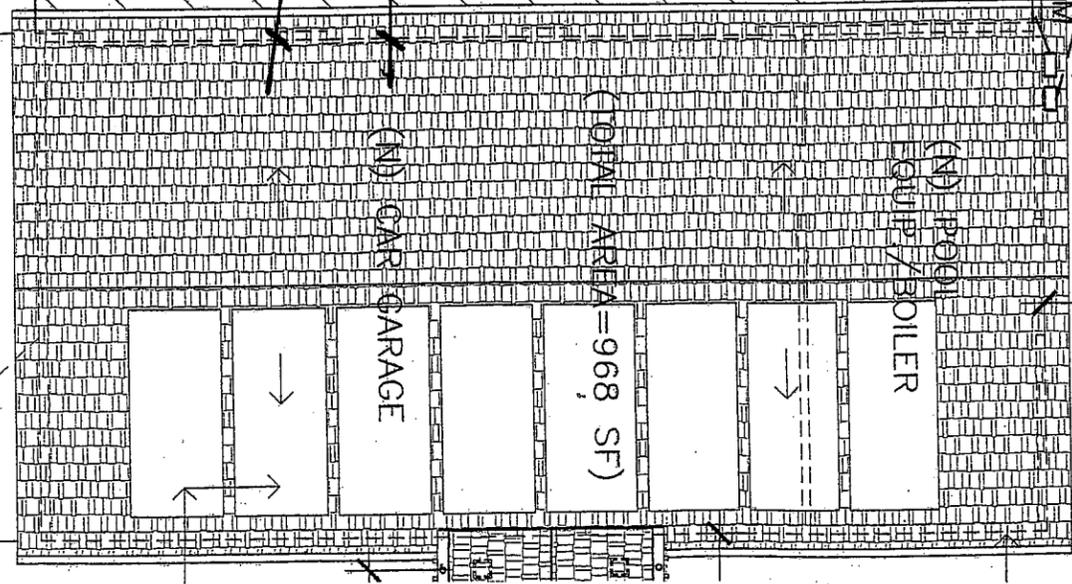
(E) 8" BAY

31'-1 1/2"

12" OAK

(N) GARAGE SIDE SETBACK

22'-0"



TOTAL AREA = 968 SF

(N) EQUIP./BOILER

(N) GARAGE

(REL) EM

(REL) GM

(E) REAR SETBACK

81'-9"

80'-0"

(N) GARAGE SIDE SETBACK

EDGE OF PAVEMENT

MADRONE ROAD

(E) 5" TREE

(E) TRIPLE 4" TREE

(E) 6" TREES

(N) UNDERGROUND ELECTRIC SERVICE

(N) UNDERGROUND GAS SERVICE

(E) 8" TREE

(E) 8" BAY

(E) TWIN 18" & 40" TREES

(N) GARAGE SETBACK

37'-10"

(N) AUTOMATIC GATE

(R) 10" PALM

(R) 6" TREE

S59°38'40" L.L.D. R10.0'

(R) 6" & 8" BAYS

(R) 6" CITRUS

(R) 6" PEAR

(N) SOUNDWALL

31'-6 1/2"

(N) GATE

28'-5"

(E) REAR SETBACK

81'-9"

80'-0"

(N) GARAGE SIDE

(N) GARAGE SIDE SETBACK

31'-1 1/2"

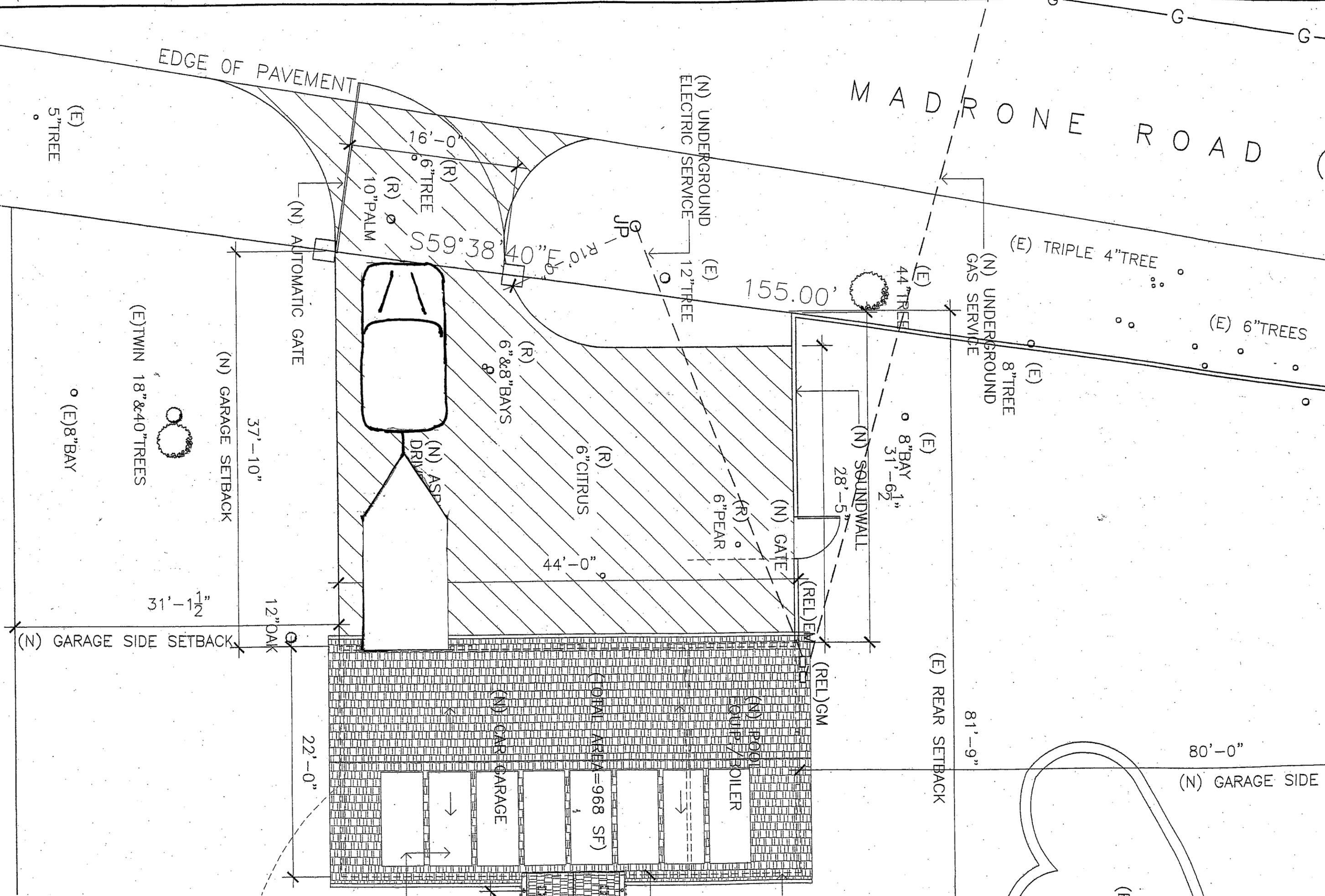
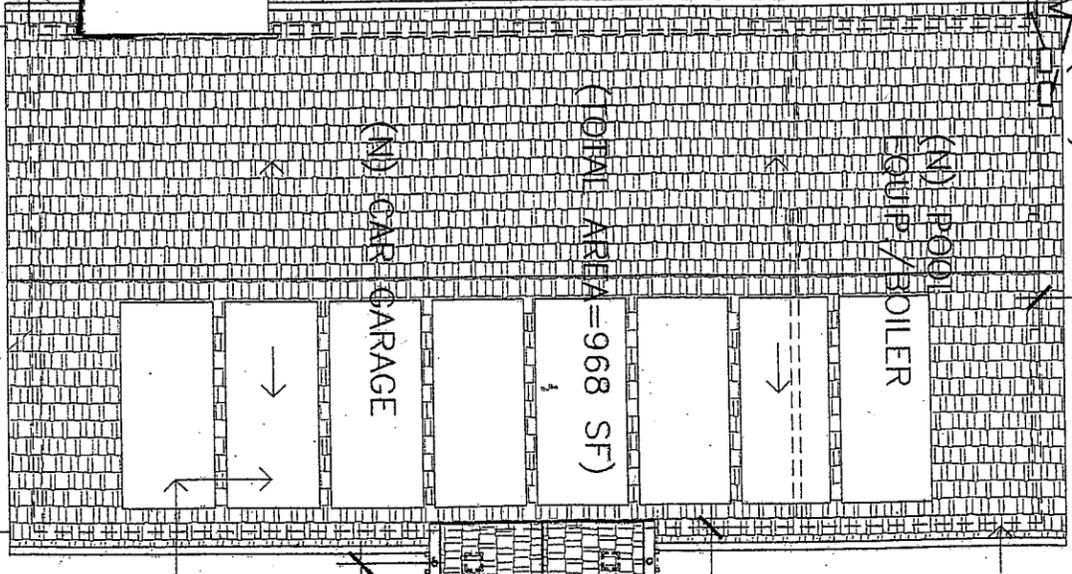
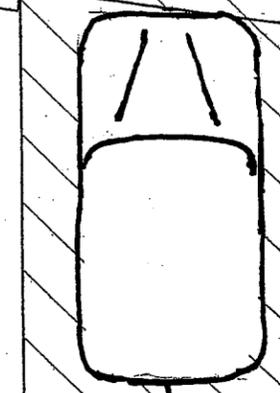
12" OAK

22'-0"

(N) CAR GARAGE

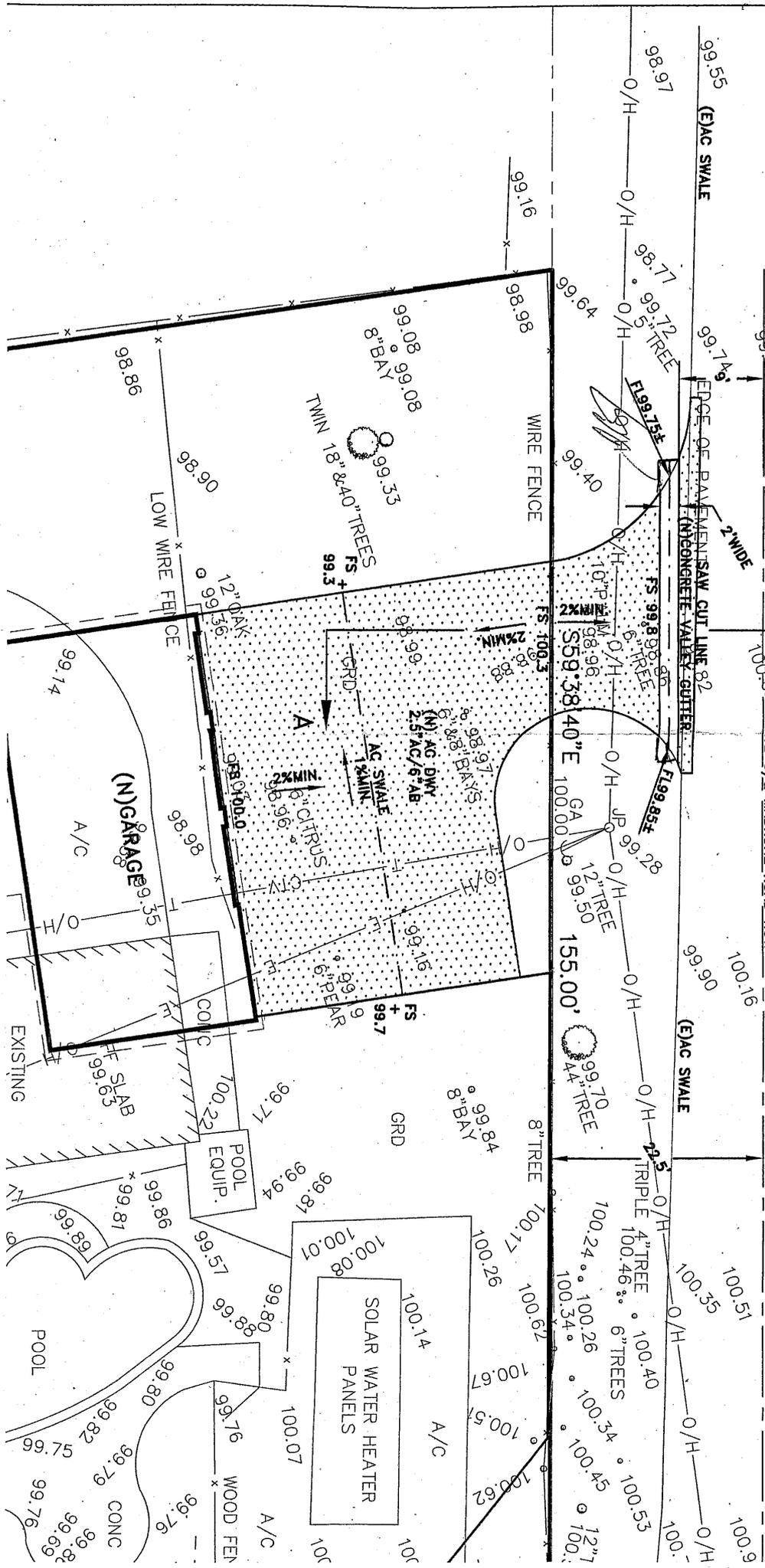
(N) POOL EQUIP./BOILER

(TOTAL AREA = 968 SF)



MADRONE ROAD (45' R/W)

MADRONE IS A PRIVATE STREET WITHIN THE PUBLIC R-0-W AND PROPERTY OWNER IS SUBJECT TO MAINTENANCE COSTS OF STREET PAVEMENT UPON CONNECTING NEW DRIVEWAY TO MADRONE ROAD. COST & MAINTENANCE IS A PRIVATE MATTER AMONG RESIDENTS OF THE STREET.



RECEIVED  
TOWN OF ATHERTON  
2008 AUG 13 A 8:41

August 11, 2008

Mayor Janz and City Council Members  
Atherton Town Hall  
91 Ashfield Road  
Atherton, CA 94027

Mayor Janz and Council members:

I am writing with regard to the issue of the completion of the driveway at 99 De Bell Drive. We would like to attend the August Council meeting to speak directly to you on this matter but regrettably will be out of town. The purpose of this letter is to communicate our outrage.

My cousin, Sue Gellen, and her husband Thom are the owners of 99 De Bell. That they have not been allowed to complete the driveway to their garage is ridiculous and unacceptable.

- Sue and Thom have completed their remodeling and built their garage consistent with all permitting and approval requirements; no use permits or variances were required. The City has approved all their plans. How is it possible that the Council would not allow them to complete the project as approved at this juncture?
- It appears that, should the Council not allow completion of their project, Sue and Thom are left with no alternative other than to pursue the matter in court. Yet again, the Council would be embarking on a lawsuit that the town unlikely to win ... particularly since Town staff has supported the completion of the project. As taxpayers, we are angry that the Council would consider such a position and once again waste our money on an issue that does not require a lawsuit to resolve.
- It is our understanding that the Council is relying on a desire to maintain the rural nature of the neighborhood in their decision process. It isn't clear to us how the 99 De Bell driveway, once completed, is contrary to this. We actually drove down Madrone to see what all the fuss was about and have to say that, in our opinion, the new home at 73 Madrone has a far larger negative impact on the rural nature of the neighborhood than Sue and Thom's driveway.
- Sue and Thom have told us about the accommodations they are prepared to make in finishing the driveway (additional fencing and a gate) to ensure that their driveway has the least impact on their neighbors. It is amazing to us that they

would be willing to spend the considerable amount of money associated with a gate ... but think that it shows the extent to which they are trying to accommodate the concerns raised by their neighbors.

We encourage to Council to bring quick resolution to this issue, let Sue and Thom finish their driveway, and stop wasting Atherton's resources, time, and money.

Please make sure our letter is included as part of the official record of the August 20<sup>th</sup> Council meeting.

Sincerely,

A handwritten signature in black ink, appearing to be 'David and Meg Fried', written in a cursive style.

David and Meg Fried  
98 Juniper Drive  
Atherton





ITEM 28

**REQUEST TO INITIATE REZONING OF PARKER  
AVENUE FROM R1-A TO R1-B ZONING DISTRICT**

*At the request of the applicant, this item has been continued to  
the City Council meeting of September 17, 2008.*

**Kathi Hamilton**

---

**From:** kevin kramer [fykramer@yahoo.com]  
**Sent:** Friday, August 15, 2008 1:02 PM  
**To:** Kathi Hamilton  
**Subject:** Parker ave. rezoning

Dear Atherton City Clerk,

I would like to request a continuance for the Parker Avenue Rezoning hearing scheduled for August 20th. If possible please reschedule for the September City Council meeting.

Best Regards,  
Kevin Kramer  
98 Parker Avenue  
Atherton, Ca 94027  
(650)520-3711

8/15/2008

ITEM 29

**AMENDMENTS TO CITY COUNCIL RULES OF  
PROCEDURE/TOWN CODE OF CONDUCT REGARDING  
STATEMENTS REPRESENTING TOWN POLICY**

THIS ITEM WAS CONTINUED FROM THE CITY COUNCIL  
MEETING OF JULY 16, 2008.



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: FOR THE MEETING OF JULY 16, 2008**

**SUBJECT: AMENDMENTS TO CITY COUNCIL RULES OF PROCEDURE/TOWN  
CODE OF CONDUCT REGARDING STATEMENTS REPRESENTING  
TOWN POLICY**

#### **RECOMMENDATION:**

Consider proposed revisions to paragraph 11 of "miscellaneous rules" of City Council Rules of Procedure. Alternatively, or in addition, consider revisions to the Town of Atherton Code of Conduct and Procedures.

#### **BACKGROUND - ANALYSIS:**

The City Council Rules of Procedure have been established under authority of California Government Code section 36813 for the conduct of meetings. Paragraph 11 contains several miscellaneous rules regarding conduct at City Council meetings.

In view of the Council's recent adoption of a resolution governing Town Committees and Commissions and its provisions set out in Section 2 regarding representation by committee or commission members speaking on behalf of the Town, similar provisions may be considered for inclusion in City Council Rules of Procedure. Alternatively, or in addition, these provisions may be added to the Town of Atherton Code of conduct and Procedures for members of the City Council, Commissions, Committees, and Staff (Exhibit A).

Attached as Exhibit B are proposed revisions to the miscellaneous rules of the Rules of Procedure upon this subject. Similar language as to Town Commissions and Committee Members as well as Town Staff could be added as Section 100.09.5 set out in Exhibit A. The Council may wish to consider these revisions in more detail at a separate workshop.

**FISCAL IMPACT: None.**

Prepared by:

Approved by:

/s/ Marc Hynes

Marc G. Hynes

City Attorney

\_\_\_\_\_  
Jerome Gruber

City Manager

Attachment: Exhibit A. Town of Atherton Code of Conduct and Procedures  
Exhibit B. (1) City Council Rules of Procedure Revisions  
(2) Town of Atherton Code of Conduct Revisions

## EXHIBIT B

1. City Council Rules of Procedure.

**11.7 Representations of Town and/or City Council policy**

Council members shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council policy may be made without additional City Council approval.

2. Town of Atherton Code of Conduct and Procedures

**100.09.05** City Council Members, Members of the Commissions, Committees and Staff shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council policy may be made without additional City Council approval.

# Exhibit A TOWN OF ATHERTON

## CODE OF CONDUCT AND PROCEDURES

for members of

### Atherton City Council, Commissions, Committees and City Staff

#### Preamble

The citizens of Atherton are entitled to have fair, ethical and accountable local government which has earned the public's full confidence for integrity. In keeping with the Town of Atherton's Commitment to Excellence, the effective functioning of democratic government therefore requires that:

- public officials, both elected and appointed, and city employees, comply with both the letter and spirit of the laws and policies affecting the operations of government;
  - public officials, both elected and appointed, and city employees, be independent, impartial and fair in their judgment and actions;
  - public office be used for the public good, not for personal gain; and
- public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Atherton City Council has adopted a Code of Conduct and Procedures for members of the City Council, City committees and commissions and City staff to assure public confidence in the integrity of local government and its effective and fair operation.

The Code of Conduct and Procedures shall be discussed at least annually, in either a regular meeting or a study session by the Council, Commissions, Committees and staff as an on-going means of developing a thorough understanding of the Code of Conduct and Procedures and the Brown Act.

## RELATIONSHIP BETWEEN CITY COUNCIL AND TOWN STAFF

Town staff members, except for the City Attorney, work for the City Manager, who in turn works for the City Council. Staff can be used by Council as a resource for routine information on ongoing projects and programs. Contacts should be channeled through the City Manager for continuity purposes. If the City Manager is absent, the request should be directed to the Acting City Manager for processing purposes. The Acting City Manager will inform the City Manager upon his/her return of the request and what action was taken.

A more formal procedure should be followed if Council needs staff support that requires more than thirty (30) minutes of a staff member's time. If a majority of the Council approves such a request, the City Manager will proceed with said request and report his/her findings back to the Council upon completion. The same procedure applies to Council requests of the City Attorney, except in instances involving personnel or sensitive issues.

# TOWN OF ATHERTON

## POLICY NO. 100 - CODE OF CONDUCT AND PROCEDURES

The City Council of the Town of Atherton is committed to providing excellence in legislative leadership. In order to assist in the governing of the behavior between and among members of the City Council, Committees, Commissions and City Staff. We will strive to observe the following Code of Conduct and Procedures.

- 100.01 The public good shall be the highest priority of the Council, Commissions, Committees, and staff of the Town of Atherton. Public office should be used for public good, not for personal gain.
- 100.02 The work of the City is a team effort. Council members, Commissions, Committees and staff shall work together in a collaborative process, assisting each other in conducting the affairs of the Town.
- 100.03 When responding to constituent requests and concerns, Council members, Commissions, Committees and staff shall be courteous, responding to individuals in a positive manner and routing their questions to the City Manager.
- 100.04 The City Council and members of the Commission~, Committees and staff shall develop a working relationship with the City Manager wherein current issues, concerns and Town projects are discussed comfortably and openly.
- 100.05 The City Council and members of the Commissions and Committees shall function as a part of the whole. Action issues shall be brought to the attention of the City Council as a whole rather than to individual members selectively.
- 100.06 The dignity, style, values and opinions of each member of the City Council, Commissions, Committees and staff shall be respected.
- 100.07 City Council members, Commissions, Committees and staff shall avoid double-talk, hidden agendas, gossip, backbiting, and other negative forms of interaction.
- 100.08 City Council members, Commissions, committees and staff shall commit to focusing on issues and not personalities.
- 100.09 Differing viewpoints are healthy in the decision-making process. Individuals have the right to disagree with ideas and opinions, but without being disagreeable. Once the City Council, Commissions and Committees take action, Council, Committees, Commission members, and staff shall commit to supporting said action of the majority and not create barriers to the implementation of said action.
- 100.10 Individual Councilmembers, Committees and Commission members shall not directly criticize any City employee or contract personnel publicly. Criticism of subordinates of the City Manager shall be given to the City Manager for his/her use as appropriate.
- 100.11 Councilmembers should not publicly criticize the City Manager or staff, but shall discuss any concerns about the City Manager and staff in a closed session of the City Council.
- 100.12 Councilmembers shall act within the spirit and intent of the Brown Act, including but not limited to, the provisions pertaining to inter-Council member communications.
- 100.13 Councilmembers shall maintain confidentiality on all information discussed in closed session Council meetings.

CODE OF CONDUCT AND PROCEDURES  
PAGE TWO OF THREE

- 100.14 The City Council, Commissions and Committees will distinguish between free speech and malicious innuendo or personal, insulting, slanderous attacks and will not tolerate verbal abuse of any Councilmembers, Commissions or Committee members, or staff, either from the floor or from each other. It is the responsibility of the Chair, and, if necessary, all the members of the Council, Commissions and Committees, to enforce and maintain decorum at meetings.
- 100.15 No public official, officer or employee of the Town shall solicit or accept any gift, gratuity, favor or anything of monetary value which might be perceived as consideration for, present or future preferential treatment or as unethical attempts to influence Town operation's. Public Officials and employees are not to accept any gift, gratuity, favor or anything of monetary value from any individual, company or organization doing business with the Town.

COUNCIL, COMMISSION, COMMITTEE, STAFF PROCEDURES

One of the primary responsibilities of the City Council is to monitor the City's progress in attaining its goals and objectives while pursuing the Town's Mission Statement. Council, Commissions, Committee members and City Staff shall practice the following procedures:

- 100.0t .a City staff members, except for the City Attorney, work for and are accountable to the City Manager, who, in turn, works for and is accountable to the City Council. City staff can be used by the City Council, Commissions and Committees as a valuable resource to provide routine information on ongoing projects and programs
- 100 01.b Council members, Commissions and Committee members shall request information needed to supplement, upgrade or enhance their knowledge about Town projects and programs directly through the City Manager. If the City Manager is absent, the request should be directed to the Acting City Manager who will inform the City Manager upon his/her return of the request and what action was taken.
- 100 01.c A more formal procedure shall be followed if staff, support requires more than thirty (30) minutes of a staff member's time. Requests for information requiring more than thirty (30) minutes of staff time shall be placed on a regular Council meeting or study session agenda for discussion and possible approval.
- 100.01.d - All complaints from residents and property owners of the Town -of Atherton shall be referred directly to the City Manager. The City Manager will keep the interested Council member apprised on the resolution of the complaint.
- 100.01.e Public safety and/or hazardous issues shall be reported to the City Manager and each on-site .Department Head. Emergency situations shall be dealt with immediately by staff, with notification to the City Council upon completion of the issue or with updated information as it becomes available.
- 100.01.f The City Council, Commissions, Committee members and Staff should refer all personnel issues directly to the City Manager. Clarification for policy related concerns, especially those involving personnel, legal matters, finances and programming, shall be referred directly to the City Manager.
- 100.01.g Council members, Commissions and Committee members shall direct inquiries to the City Manager when approached by Town personnel concerning specific Town policy, to ensure that the proper chain of command is followed at all times.
- 100.01 .h Council members, Commissions, Committee members and Staff shall not comment adversely on any Town employee with any constituent even in the event a constituent asks what he/she thinks of an employee.

APPROVED BY ATHERTON CITY COUNCIL ON: February 19, 1997  
Revised 09-09-99

**Exhibit C**



**TOWN OF ATHERTON**

**CITY COUNCIL**

**RULES OF PROCEDURE**

**As Amended:  
June 18, 2008  
October 19, 2005  
April 16, 2003  
First Adopted**

**June 19, 2002**

**RULES OF PROCEDURE**

**1. Authority**

As provided by California Government Code Section 36813, the City Council establishes these Rules of Procedure for the conduct of meetings. The following Rules shall be in effect upon their adoption by the City Council and until such time as they are amended or new rules adopted in the manner provided by these Rules.

**2. General Rules**

2.1 Public Meetings All meetings (except closed sessions as provided by State law) of the Council shall be open to the public.

2.2 Meeting Dates/Times Regular meetings will be held on the third Wednesday of each month. Adjourned regular or special meetings may be called by the Mayor or a majority of the Council. All regular meetings will convene at 7:00 p.m. unless noticed at a different time by publishing a notice and/or posting a notice as required by Section 5.3.

2.3 Quorum Three members of the Council shall constitute a quorum necessary to transact business. In the event a quorum is not in attendance, those attending will be named in the minutes, and they shall adjourn the meeting to a later set time. If no one is present, the Clerk shall adjourn the meeting to a later date and post notice of that fact pursuant to Government Code Section 36811.

2.4 Compelling Attendance Members must notify the Presiding Officer for the issuance of an "excused absence" when they are unable to attend, which shall be granted. The member may notify the City Manager or City Clerk if the Presiding Officer is not available and the City Manager or City Clerk will notify the Presiding Officer of the request; or it will be noted in the minutes as an unexcused absence. In the event of perpetual absence by members, the Council may adjourn from day to day to compel attendance under the penalties prescribed by law. The seat of a member with two or more consecutive unexcused absences from regular council meetings shall be vacated pursuant to Government Code Section 36513(b).

2.5 Minutes of Proceedings An account of all public proceedings of the City Council shall be recorded by the City Clerk and entered into official minute

books of the Council. These minutes shall be available to the public following approval by the Council.

2.6 Right of Floor Any member desiring to speak shall first be recognized by the Mayor and shall, with the exception of Public Comments, confine any remarks to the subject under consideration.

2.7 Rules of Order Except in cases of conflict with these Rules, Robert's Rules of Order shall be used as a non-binding guide to govern the proceedings of this Council.

2.8 City Manager The City Manager shall attend all meetings of the Council unless excused, and in the City Manager's absence, a designee shall substitute. The City Manager may make recommendations and shall have the right to take part in all discussions of the Council, but shall have no vote.

2.9 City Attorney The City Attorney shall attend all meetings of the Council unless excused, and in the City Attorney's absence, a designee shall substitute. The City Attorney, upon request of the City Council or authorized representatives, shall give opinions, either written or oral, on questions of law and shall act as the Council's parliamentarian.

2.10 City Clerk The City Clerk shall attend all meetings of the Council unless excused, and in the City Clerk's absence, the Deputy City Clerk shall substitute. The City Clerk shall record, prepare and maintain the official record of the Council and perform other related duties as prescribed by the Council and/or City Manager.

2.11 Department Heads/Employees Department Heads/Employees, as described by the City Manager or requested by the Council, shall attend Council meetings.

### **3. Types of Meetings**

3.1. Regular Meetings Unless otherwise designated by the Council, the Council shall meet in the City Council Chambers for all regular meetings. The regular meetings shall begin at 7:00 p.m. on the third Wednesday of each month, unless otherwise specified by posted notice. If the meeting date should fall on a legal holiday, the Council shall meet at a time and date so designated by the Council.

3.2 Adjourned Meetings Any meeting of the City Council may be adjourned to a later date, place, and time provided no adjournment is for a longer period than the next regularly scheduled meeting.

3.3 Special Meetings Special meetings may be called by the Mayor or by a majority of the Councilmembers. The call for a special meeting must specify

the day, hour, and place and shall specify the subject(s) to be considered. Twenty-four hours notice must be given prior to the meetings. Only matters specified in the notice may be discussed at special meetings. Notice shall be posted as required by law.

3.4 Closed Session Meetings Closed sessions, formerly referred to as Executive Sessions, may be held in accordance with the provisions of the Brown Act (Government Code Section 54954.5).

3.5 Study Session Meetings The Council may meet informally in Study Sessions called by the Mayor or the majority of Councilmembers. Study Sessions are open to the public and are meetings for purposes of the Brown Act. Council may not take any formal action at study session meetings. Meeting notice requirements are contained in Section 2.2.

3.6 Media Attendance All meetings (except Closed Sessions) of the City Council and Commissions shall be open to the media, and may be recorded by tape, radio, television, and photography, provided such recordings do not interfere with orderly conduct of the meetings.

#### **4. Mayor - Duties**

4.1 Mayor The Mayor is elected by members of the Council for a one-year period. No member shall serve as Mayor for consecutive terms. The City Council shall meet at least annually to choose one of its members as Mayor.

4.2 Vice Mayor The Vice Mayor shall be selected annually by a Council majority vote. No member shall serve as Vice-Mayor for consecutive terms.

4.3 Presiding Officer The Mayor, if present, shall preside. In the Mayor's absence, the Vice Mayor shall preside. In the absence of both, the Councilmembers present shall elect a temporary Presiding Officer.

4.4 Call to Order The Mayor or Vice Mayor shall call the meeting to order at the hour appointed. In the absence of both, the meeting shall be called to order by the City Clerk and those Councilmembers present shall proceed to elect a temporary Presiding Officer.

4.5 Preservation of Order The Presiding Officer shall preserve strict order and decorum, shall prevent verbal attacks on Councilmembers, staff, and/or citizens, and confine debate to the item under discussion.

4.6 Point of Order The Presiding Officer shall determine all points of order, subject to the right of any member to appeal to the entire Council. If an

appeal is taken, the question shall be, "Shall the decision of the Presiding Officer be sustained?"

4.7 Motion to be Stated The Presiding Officer shall state all motions submitted for a vote and announce the result. A roll call vote shall be taken upon ordinance, resolution, and at the request of any member.

4.8 Mayor Proclamations Mayor Proclamations will be issued at the discretion of the Mayor for various purposes including:

- A. Recognizing individuals and organizations whose contributions and achievements have community-wide significance;
- B. Calling public attention to a significant community event, service or program;
- C. Highlighting a special period of observance, celebration, or recognition for community, regional, state, or national occasions.

Mayor Proclamations do not need formal Council action or approval and individual Councilmembers can request through the Mayor that proclamations be issued. All public requests for proclamations should be directed to the City Manager or Mayor for review.

It will be at the discretion of the Mayor to determine whether it is appropriate to present the proclamation at a Council meeting.

Proclamations will be issued to recognize legitimate and significant community achievements, contributions, and occasions. These forms of recognition are not intended for partisan, commercial or narrow individual purposes which are inconsistent with the overall policies of the City Council.

## **5. Order/Preparation of Agenda**

### **5.1 Order of Business**

1. Call to Order, Pledge of Allegiance, Roll Call
2. Presentations
3. Council Reports
4. Public Comments
5. Staff Reports
6. Community Organization Roundtable Report
7. Consent Agenda
8. Regular Agenda/Public Hearings

9. Public comments
10. Adjournment

5.2 Agenda Preparation The agenda shall be prepared in accordance with the preparation procedure as directed by the City Manager. The agenda shall be delivered to the Mayor, Councilmembers, and Library after 5:00 p.m. on the Friday preceding the Wednesday meeting. Council materials are available for public review at the Library the Saturday, and at the City Administrative Office beginning on the Monday, before the regular Wednesday Council meeting.

5.3 Agenda Posting The City Clerk shall post an agenda at least 72 hours before a regular meeting at the following locations: (a) Atherton Town Offices, 91 Ashfield Road (lobby); (b) Atherton Branch Library, 2 Dinkelspiel Lane; (c) Atherton Train Station Bulletin Board; (d) Rosewood @ Green Oaks Bulletin Board; (e) Atherton @ Selby Lane Bulletin Board, (f) Town Council Chambers, 94 Ashfield Road. The agenda shall specify the time, date, and location of the meeting and contain a brief description and proposed action of each item of business to be transacted or discussed at the meeting.

5.4 Minutes Unless requested by Council, minutes may be approved without reading if the City Clerk previously furnished a copy to each member and the Library.

5.5 Public Comments (See also Citizens' Rights, Section 6) During Public Comments, any person may address the Council, provided that the item (1) is of interest to the public and is within the subject matter jurisdiction of the Council and (2) is not otherwise on the agenda.

5.6 Consent Agenda Items listed under the Consent Agenda are those items staff believes will not require Council discussion and are routine in content. Also listed under the Consent Agenda are resolutions confirming action from a previous meeting which are brought back for approval of form rather than approval of action. Items may be removed by any Councilmember for separate discussion for clarification and/or upon request by any member of the public who wishes to speak on that item.

5.7 Regular Agenda/Public Hearings Items requiring a public hearing will be noticed as required by law.

5.8 Actions Limited to Posted Agenda The City Council shall not take action on any item not appearing on the posted agenda except under the conditions permitted by Government Code Section 54954.2 (Brown Act).

## **6. Citizens' Rights**

### **6.1 Addressing the Council**

(1) Any person may address the Council on the following portions of the agenda:

- (a) Public Comments, as provided in Section 5.5.
- (b) Public hearings, as provided in Sections 8.1 and following.
- (c) When invited by the Mayor, all other portions of the agenda prior to the vote, if any, being taken.

(2) The following shall apply:

- (a) Each person addressing the Council shall step to the podium and give their name and address (optional) for the record.
- (b) A time limit may be imposed by the Council on each speaker depending on the subject matter. (Exception: See "Public Hearing Procedures" under Section 8.1 and following.)
- (c) All remarks shall be directed to the Mayor and Council as a body and not to any particular member.
- (d) No person, other than members of the Council and the person having the floor, shall be permitted to enter into the discussion.
- (e) No question shall be asked of Councilmembers except through the Mayor.

6.2 Personal and Slanderous Remarks Any person making personal, impertinent, or slanderous remarks, or who becomes boisterous may be requested by the Mayor to leave the meeting. The Mayor shall discourage demonstrations before the Council, such as applauding or "booing". Upon instructions by the Mayor, a Sergeant-at-Arms may be called for the purpose of removing any person who, in the Mayor's judgment, has violated the rules of conduct and has disrupted the meeting. The Mayor appoints a person to fulfill the responsibilities of the Sergeant-at-Arms at the beginning of each meeting if he/she deems it to be necessary.

6.3 Reading of Protests Interested persons, or their representatives, may address the Council for the reading of protests, petitions or communications relating to the matter under consideration if a majority of the Council agree that the person should be heard.

6.4 Written Communications Any citizen may submit written comments to the Council through the City Clerk or City Manager's office and request that Council receive copies in the agenda packet provided such written comments are received four business days before the scheduled Council meeting. Written comments can be filed with the City Clerk or City Manager's office up to the time of the meeting and distributed to the Council at the meeting.

6.5 Printed Materials Printed materials contained in the agenda packet will be available upon request after the meeting is adjourned. There may be a copy charge, based on the Town's current copy fee, if printing is necessary. If the action taken requires retyping, the document will be available in Town Hall the next business day, as soon as the retyping is complete.

## **7. Ordinances, Resolutions and Contracts**

7.1 Document Preparation All ordinances and resolutions shall be approved by the City Attorney. No ordinance shall be prepared for presentation to the Council unless ordered by a majority vote of the Council or prepared by the City Attorney on the City Attorney's own initiative.

7.2 Document Approval All ordinances, resolutions, and contracts shall, before being placed on the agenda, be approved as to form and legality by the City Attorney. Additionally, all these documents shall be reviewed by the City Manager.

7.3 Ordinance Introduction/Adoption Except as to urgency ordinances, unless a member requests a full reading, a proposed ordinance will be introduced by the reading of the title only. Ordinances introduced by first reading shall not be adopted within five days of the introduction or at other than regular Council meetings. If the ordinance carries an emergency clause, introduction and adoption may occur at the same meeting.

7.4 Majority Vote Required An affirmative vote of at least a majority of a quorum of the Council shall be necessary to adopt an ordinance. Urgency (emergency) ordinances must be adopted by the affirmative vote of at least four members of the Council. Resolutions, motions, and any other matters may be adopted by the majority present.

7.5 Ordinance Preservation Following adoption of an ordinance, the City Clerk will assign a number to the ordinance, and post according to law. The ordinance shall be filed and preserved in the City Clerk's office.

## **8. Procedures Regarding Public Hearings**

8.1 Introduction Mayor announces subject of the public hearing.

### **8.2 Staff and Written Material Presentation**

1. Staff summary report and other written material included in the agenda packet is received and filed. Written comments not in the agenda packet (e.g. protests, etc.) are noted for the record.
2. Written material not in the agenda packet, if any, is received and filed.
3. Staff report, if any, is presented by staff member.
4. Staff responds to Councilmember questions.
5. Mayor declares the public hearing open.

### **8.3 Public Comment**

1. Purpose is to provide opportunity to concerned members in the audience who wish to testify in support or opposition to the matter being heard.
2. Mayor instructs members of the audience: (a) speak from the podium; (b) to give their name and address (optional) before speaking; (c) a time limit for each speaker may be designated; and (d) that repetition should be avoided.
3. The applicant/representative will normally speak first.
4. Questions by speakers will be noted prior to Council deliberation.
5. Mayor declares the public hearing closed.

### **8.4 Council Deliberations**

1. After the Mayor has determined that no other member of the audience wishes to speak, the matter is returned to the City Council for deliberation.
2. The Council may ask questions of speakers for clarification.
3. The Council makes a motion and debates.

## 8.5 Council Action

1. Council at this time may re-open and continue the public hearing.
  - (a) This should be done if any additional information is requested (e.g. a staff report).
  - (b) Continuing a public hearing to a specific date does not require additional notice.
2. Council may:
  - (a) Vote on the item;
  - (b) Offer amendments or substitute motions and re-open the hearing allowing additional public comment;
  - (c) Continue the matter to a later date for a decision. (Note: no additional reports or testimony may be received after the hearing has been closed).

## 9. City Council Committees

- 9.1 Establishment – Appointment of Council Members Thereto. At the regular meeting in January, the Mayor shall appoint Council members to serve on various committees for a one year term. Committees shall be created and members appointed thereto in accordance with rules and regulations set out by the City Council by Resolution No.08-24 and as amended.
- 9.2 Appointment of Voting Members to City Council Committees. Appointment of voting members to City Council Committees shall proceed as provided by the terms and provisions of separate resolution and as amended. Committees shall be created and members appointed thereto in accordance with rules and regulations set out by the City Council by Resolution No.08-24 and as amended.
- 9.3 City Council Review of Town Committee Decisions. City Council Members on Town committees may bring any decision of the committee to the full City Council for final determination. Pending such action by the full City Council, any such decision shall be suspended.

#### 9.4 Committees of City Council.

a. Standing Committees: Any standing committee of the Council shall be subject to the same rules of procedure as the City Council. Each standing committee is comprised of two Council Members appointed by the Mayor, and is staffed by the appropriate staff members. The standing committees are:

1. Atherton Channel Drainage District Committee. Consisting of three members including two Council Members, and one resident of the Town. The committee meets on an as needed basis in the City Council Chambers.
  2. Audit Committee. Consisting of seven members, including two Council Members of the Finance Committee, and five residents of the Town. The committee meets quarterly in the Conference Room of the Town Administrative Offices.
  3. Budget and Finance Committee. Consisting of two Council Members. The Members also serve on the Audit Committee. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices.
  4. Buildings and Facilities Committee. Consisting of two Council Members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices.
  5. Transportation Committee. Consisting of five members including two Council Members and three residents of the Town. The committee meets quarterly on the second Tuesday of the month at 6:00 p.m. in the City Council Chambers.
  6. Screening Committee. Consisting of two Council Members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices.
  7. Waste Reduction and Recycling Committee. Consisting of five members including two Council Members and three residents of the Town. The committee also includes the City Manager, Town Arborist, a SBWMA representative, and a representative of the franchise waste hauler. The committee meets quarterly on the first Wednesday of the month at 10:00 a.m. in the Conference Room of the Town Administrative Offices.
- b. Ad Hoc Committees. Any ad hoc committee of the Council shall be subject to the same rules of procedure as the City Council. Each ad hoc

committee is comprised of two Council Members appointed by the Mayor, and is staffed by the appropriate staff members. The ad hoc committees are:

1. Cal Train Corridor Committee. Consisting of thirteen members including two Council Members and up to eleven residents of the Town. The committee meets on the first Tuesday of each month at 7:00 p.m. in the City Council Chambers.

9.5 City Council Review of City Council Committee Decisions. City Council Members on City Council-appointed committees may bring any decision of the committee to the full City Council for final determination. Pending such action by the full City Council, any such decision shall be suspended.

## **10. Suspension and Amendment of These Rules**

10.1 Suspension Any provision of these rules not already governed by the Atherton Municipal Code may be temporarily suspended by a majority vote by the Council.

10.2 Amendment These rules may be amended by additions or deletions or new rules adopted by a majority vote of the Council provided the proposed amendment or new rules are introduced into the record at a prior Council meeting.

## **11. Miscellaneous Rules**

11.1 Roll Call Votes Upon demand by any Councilmember, made before the "Nays" are called for, a roll call vote shall be taken on the motion before the Council. The Mayor's name shall be called last with other members' names called at random by the City Clerk. Members shall not give explanations for their vote during roll call.

11.2 Silence During a collective vote ("Ayes", "Nays" or "Abstain"), silence by any member denotes an affirmative vote.

### **11.3 Continuance of an Item**

1. Continuance by a Councilmember: Any Councilmember may, with the consent of the Council, continue an item (not subject to a deadline) to the next agreed upon meeting. If the Councilmember will not be in attendance at the meeting, the Councilmember's request to continue an item should be personally conveyed to the Mayor or City Manager prior to the meeting.

2. **Continuances Requested by Someone Not a Councilmember:**  
Anyone may request a continuance of an item by the Council. A request for a continuance may be granted by vote of the Council only if it finds that (1) the need for the continuance was beyond the control of the person requesting it, and (2) the need for the continuance arose after (a) the date of the notice of public hearing was published if the item is subject to a public hearing, or (b) the time the Council agenda was posted for items not subject to a public hearing.

11.4 **Personal Privilege** The right of a Councilmember to address the Council on a question of personal privilege shall be limited to cases in which the integrity, character, or motives of the Councilmember is in question, or where the welfare of the Council is concerned. The Councilmember may not interrupt the speaker, however, until recognized by the Mayor

11.5 **Protests** Any member shall have the right to enter into public record reasons for dissent or protest against any action carried by the majority.

11.6 **Motion to Reconsider** A motion to reconsider any action taken by the Council may be made in accordance with the following:

1. The motion must be made by a member of the prevailing side, although it may be seconded by any Councilmember.
2. The motion must be made prior to the adjournment of the meeting at which the original action was taken.
3. The motion is debatable and has precedence over a pending motion.

## **12. Rules of Debate**

12.1 **Mayor as Presiding Officer** The Mayor may move, second, and debate from the Chair, and shall not be deprived of any rights and privileges of a Councilmember.

12.2 **Appeals** Any ruling of the Mayor may be appealed at the request of a Councilmember. The Mayor shall call for a roll call vote to determine if the ruling is upheld.

12.3 **Precedence of Motions** When a motion is before the Council, no motion shall be addressed except for the following:

- Motion to Amend
- Motion to Postpone
- Motion to Table

1. A Motion to Amend may be debated on the subject of the amendment. An amendment which modifies the motion before the Council is proper. If the intent of the Motion before the Council is changed by the amendment, a substitute Motion should be made. Amendments are voted on first. Upon the completion of these votes, the original motion as amended is voted upon. A motion may be amended more than once. Each amendment to a motion is voted on separately. There shall be only one motion to amend on the floor at any one time.
2. A Motion to Postpone. Adoption of a Motion to Postpone ends discussion of the matter which is postponed. A Motion to Postpone an item to a definite time is debatable. The motion also may be amended. Debate and the subject of the amendment must relate to the propriety of postponement and/or the time set for the postponement.
3. A Motion to Table results in temporarily passing by the item which is the subject of the motion. An item which has been tabled may be returned to the agenda at any time before the adjournment of the next regular meeting. If the item has not been taken from the table by that time, the item is deemed rejected.

APPROVED AS TO FORM:

*/s/ Marc G. Hynes*

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Marc G. Hynes, City Attorney

ITEM 30

**DISCUSS SETTING ASIDE BUILDING FUNDS FOR TOWN  
CENTER**

THIS ITEM WAS CONTINUED FROM THE CITY COUNCIL  
MEETING OF JULY 16, 2008.



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

**FROM: BILL YEOMANS, INTERIM FINANCE OFFICER**

**DATE: FOR THE MEETING OF JULY 16TH, 2008**

**SUBJECT: DISCUSS SETTING ASIDE BUILDING FUNDS FOR TOWN CENTER**

#### **RECOMMENDATION**

Discuss setting aside General Fund (101) and Facilities Construction Fund (406) balances for a new Town Center.

#### **DISCUSSION**

Building Fees were increased effective January 2008, and plans for a new Town Center are being considered.

When Building Fees were increased in May 2000, there was some discussion (staff report attached) of setting aside the Building Department's share of a new permanent facility. The calculation estimated that the Building Department would occupy 20% of the permanent facility, whose cost would be \$4,000,000, so the set aside was calculated at \$4,000,000. A new fund was created (Fund 406 Facilities Construction) and \$440,000 was transferred to that fund in FY2001 and FY2002. In FY 2003 the 406 Fund was spent on other projects leaving a current balance of about \$71,000.

If the Council decides to set aside further funds raised from building fees for a new Town Center, those funds could be transferred to the 406 Fund from the General Fund where Building Permit Fees are received or could be set aside in a specified reserve within the General Fund. The current balance in the 406 Fund could be returned to this specified reserve if the second choice were made. The name of the reserve or the name of the 406 Fund should be considered in order to designate the use of the funds or to allow broader use of the funds.

How much should be set aside and when?

- a. Town Hall value could be based on an estimate of the new construction cost possibly adjusted by consideration of other funding sources; or based on the May 2000 estimate with or without inflation or interest adjustments
- b. The building use factor could be based on plans (e.g.--% of footage) or historical factors
- c. Should the target amount be met immediately or reached over time?
- d. Should the target be adjusted for inflation?

**FISCAL IMPACT**

This discussion could lead to the restriction of collected or future building fees to a limited purpose.

Prepared by:

Approved by:

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Bill Yeomans  
Interim Finance Officer

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Jerome Gruber  
City Manager



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

**FROM: BILL YEOMANS, INTERIM FINANCE OFFICER**

**DATE: FOR THE MEETING OF JULY 16TH, 2008**

**SUBJECT: DISCUSS SETTING ASIDE BUILDING FUNDS FOR TOWN CENTER**

#### **RECOMMENDATION**

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#### **DISCUSSION**

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How much should be set aside and when?

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- b. The building use factor could be based on plans (e.g.--% of footage) or historical factors
- c. Should the target amount be met immediately or reached over time?
- d. Should the target be adjusted for inflation?

**FISCAL IMPACT**

This discussion could lead to the restriction of collected or future building fees to a limited purpose.

Prepared by:

Approved by:

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Bill Yeomans  
Interim Finance Officer

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Jerome Gruber  
City Manager

**CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**  
**FROM: MICHAEL A. HOOD, BUILDING OFFICIAL**  
**DATE: FOR THE COUNCIL MEETING OF MAY 9, 2000**  
**SUBJECT: BUILDING INSPECTION FEES**

**RECOMMENDATION:**

Pass a motion to approve a resolution pertaining to building inspection fees.

**INTRODUCTION:**

At the April 12, 2000 City Council meeting staff presented a proposal to adjust valuation figures used to calculate building inspection fees and to adjust permit and service fees to reflect the Town's actual cost of providing service.

**ANALYSIS:**

For the last ten years the Building Inspection Department has used the figure of \$110.00 per square foot for new construction and \$70.00 per square foot for remodel construction as the basis of calculating the value of construction in Atherton. The actual cost of new construction and remodel work has risen over the years and is now more realistically in the range of \$250.00 to \$350.00 per square foot.

Building permit fees are based on building valuation. The formula for calculating the building permit fee is shown in Table 1-A of the 1997 Uniform Building Code. Raising

Building Fees  
City Council Meeting; May 9, 2000

the valuation basis from \$110.00 per square foot to \$250.00 per square foot will raise the building permit fees an average of 71%.

Building permit revenues for the 2000-2001 fiscal year are anticipated to be approximately \$700,000. A 71% increase in building permit fees will generate an additional \$497,000. Since building permit revenues must be used for building permit related activities the additional revenues will be used to fund the following programs:

1. A **cost allocation plan** to reimburse administrative departments for their costs associated with supporting the building inspection function.

Administrative departments, including the City Manager, Finance, and City Clerk, cost approximately \$730,000 per year. If the cost of these departments is distributed to the Building Department based on the Building Department's percentage of total Town personnel, then 20% or \$146,000 should be allocated as a cost to the Building Department.

2. An **inspection carry-over fund**, to pay for inspection services on projects that take longer than one year to construct.

Permit fees are collected before a permit is issued and those fees are used to pay for plan checking and inspection services. Since most construction projects last more than one fiscal year, the funds to pay for inspection services should be carried over from one fiscal year to the next until the project is complete. Rather than specifically carrying over the revenues for each of several hundred projects, a group carry-over fund is usually established.

Without a carry-over fund, if the economy entered a severe depression, as it did in the mid 70's and again in the 80's, we could be faced with the situation where inadequate revenue was generated to service the existing, ongoing construction projects. In other words, with out a carry-over fund we are left with an inspection liability with no source of revenue. Revenues, in this case, would be drawn from the General Fund until the inspection liability was met.

It is therefore prudent to establish an inspection carry-over fund of approximately one-year's worth of inspection work or approximately \$600,000. At least \$150,000 per year should be set aside for four years to establish this fund.

Building Fees

City Council Meeting; May 9, 2000

3. A **Permanent Building Fund** to pay for the Building Department's portion of a new, permanent structure.

Currently the Building Department is housed in temporary, modular units. If a new, permanent town facility is built then the Building Department would pay its share of the new building construction. A new building is estimated to cost \$4,000,000 with the Building Department utilizing 20% of the floor area. The prorated share of the Building Department would therefore be \$800,000. This amount would be set aside at a rate of \$200,000 per year for four years.

Prepared By:

Approved:

*s/Michael A. Hood*  
Michael A. Hood, Building Official

*s/Ralph Freedman*  
Ralph Freedman, City Manager

**RESOLUTION NO. 00-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF  
ATHERTON RELATING TO CHARGES FOR PUBLIC SERVICES**

**WHEREAS**, the City Council of the Town of Atherton finds it necessary to recover at least some of the costs of special and extraordinary services rendered by the various departments of the Town, and

**WHEREAS**, at the direction of the City Council, the Building, Planning, Police and Public Works Departments of the Town have conducted in-depth studies to determine the actual cost to the Town of providing various special services rendered by those departments, and

**WHEREAS**, the City Council has received reports from the said Departments, showing that, in each case, the present fees charged are not adequate to recover even a relatively small portion of the costs of the services rendered, and in some instances departments of the Town are rendering special services without any cost recovery whatever, and

**WHEREAS**, said reports include recommendations for proposed new fees which new fees would be fair and would be adequate to recover a portion of said costs, but which would not, in any instance, exceed the actual costs of rendering such special services,

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the City Council of the Town of Atherton as follows:

1. The City Council hereby finds and determines that the following established charges are reasonable and necessary for the specified services, and that the cost to the Town of providing such services equals or exceeds, in every instance, the charges hereby established.

2. The following charges and fees are hereby established, to be charged for special or extraordinary public services rendered by the following named departments of the Town of Atherton:

A. Building Permit and Inspection Fees: Fees calculated in accordance with Table 1-A of the 1997 Uniform Building Code, based on a valuation of new construction and of remodeling at \$250.00 per square foot.

B. Planning Fees: All those fees listed as "Proposed" in that certain report of the Building Official dated May 9, 2000, a true copy of which report is attached hereto and by this reference incorporated herein.

C. Police Department Fees: A service charge of \$25.00 per month for each alarm system connected directly to the Police Department's Communications Center.

D. Public Works Department Fees: All those fees listed as "Recommended" in that certain report of the Public Works Director dated May 9, 2000, a true copy of which report is attached hereto and by this reference incorporated herein.

3. The foregoing fees shall be effective immediately, and shall be applicable to all applications filed after the adoption of this resolution.

**AND BE IT FURTHER RESOLVED** that if any section, subsection, sentence, clause, phrase, or portion of this resolution or the application thereof to any person or circumstances is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof nor other applications of the resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

**AND BE IT FURTHER RESOLVED** that all other resolutions and orders in conflict herewith be, and they are hereby, repealed.

\* \* \* \* \*

*I HEREBY CERTIFY that the foregoing Resolution was regularly introduced and adopted at a regular meeting of the City Council of the Town of Atherton held on May 17, 2000 by the following roll call vote:*

Ayes:	5	Councilmembers	Carlson, Conwell, Dudley, Fisher, Chapman
Noes:	0	Councilmembers	
Absent:	0	Councilmembers	
Abstain:	0	Councilmembers	

Dated: May 17, 2000

/s/ Nanette F. Chapman  
Nanette F. Chapman, Mayor  
Town of Atherton

ATTEST:

/s/ Sharon Barker  
Sharon Barker, City Clerk

## **Verbatim Excerpt from May 9, 2000, Special City Council Budget Meeting**

**Building Official Mike Hood** , real quickly, at the last budget meeting, we had discussed raising the building permit fees, or raising the valuation, from our current \$110 a square foot for new construction to, we're proposing \$200 a square foot, (???) to \$215 a square foot, which is even still on the low side as far as I'm concerned. The, a a, by doing that, it's anticipated that it will raise an additional approximately \$496,000, \$497,000 and the state law restricts the use of this money, would have to be used for building-related programs, circumstance. The three programs that we're looking at, the first is a cost allocation plan that was discussed last time. Here we have some little harder figures going with it. The administrative functions within the Town cost about \$730,000 a year if you cost allocate based on staff percentage, your line staff percentage, with the rest of the line staff, building inspection would contribute about 20%, that's ???? so that's a quite frankly at the most organizations do for a cost allocation plan. This one is consistent with.....The next item is the establishment of a carry-over fund, that Ralph has mentioned a couple of times tonight and we discussed it last time. If construction activity turns off like a switch, which it has done in the 70s and the 80s, where the activity just goes down to zero almost overnight. Most of our construction projects last for 18 months, two years, sometimes three years. So, if our activity turns off, our revenue stream is turned off, but we still have an inspection liability for permits we have already issued. So what most jurisdictions do, is they establish carry-over fund, pump it up over the ?? so if the activity turns down, you have this fund already established for the specific purpose of financing your unfunded liabilities, as opposed to going to the General Fund. The number we've attached to that is about, I think it's appropriate to have a carry-over fund establish it at about the \$600,000 level, pump it up by \$150,000 per year for four years. Building activity is extremely hot right now, so we would aggressively go after this to get that fund up there. It looks like next year's revenues are going to be every bit as high as, or building activity, will be as active next year as it was this year.

**Council Member Alan Carlson:** What happens with those as a four-year program, \$150,000 a year, what happens in year five to the \$150,000?

**Building Office Mike Hood:** We'd reevaluate it.

**Interim City Manager Ralph Freedman:** It could be built up just as we have reserves that could obviously carry us in the General Fund. The decision may be that maybe we build up two years, maybe we just cut it off. It's a decision that we make.

**Council Member Alan Carlson:** But right now there's no....

**Building Official Mike Hood: Zero. And the last major program is establishing a permanent building fund, We discussed this last time. Currently, building inspection and public works is housed in modular units and Ralph has indicated they are not designed to last forever. We finance them on a 5-year payback and at sometime it would be nice to have the choice to have permanent facilities. If we built permanent facilities, we can provide funding up front of the...you build a new facility and departments either pay rent or they can actually buy out their own square footage, and buy square footage you can do it up front. So this is an appropriate fund establishing that concept. You'd have money up front for the purpose of a building. So sort of shot-gunning it, a \$4,000,000 facility, building inspection occupies 20% of the space, we would contribute about \$800,000, so we'd kick in \$200,000 a year on a 4-year program, again while the building activity is very active. At the end of the four years, we'd reevaluate. So that in a nutshell is the revenue enhancements for the Building Inspection side.**



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: JERRY GRUBER, CITY MANAGER**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVAL OF MEMBERS TO THE BLUE RIBBON TASK FORCE REGARDING A NEW TOWN CENTER**

#### **RECOMMENDATION:**

Staff recommends that Council consider approval of a Blue Ribbon Task Force to design a new or remodeled Town facility.

#### **INTRODUCTION:**

At the May 21 City Council meeting, a staff report entitled, "Discussion and Possible Appointment of Blue Ribbon Task Force to Solicit Input and Evaluate the Feasibility of a New Town Center, Discussion and Possible Creation of a Committee to Evaluate the Feasibility of Fundraising Options for a New Town Center," was presented to council for its review. A copy of that staff report is attached for the City Councils review. After deliberation, a motion was made to approve the creation of a Blue Ribbon Task force charged with the duties as set forth in the staff report and edited to include economic feasibility and operational feasibility. An excerpt of the minutes from the May 21 meeting is attached for your review. On August 1, 2008, the Town Center Committee met and, as part of the agenda, discussed putting two Architects from the community at large on the Blue Ribbon Task Force. These positions were solicited by advertising in the *Almanac* and in the *Athertonian*. A motion was made and seconded to appoint William Grindley, a building architect, and Jim Ransohoff, a landscape architect, to serve on the Blue Ribbon Task Force. Other members of the Blue Ribbon Task Force, as indicated by the May 21, staff report, are two representatives from the City Council and one each from the following departments: Administration, Finance, Police, Building, Planning, Public

Works, and Information Technology. The following organizations and/or entities will also have one member as a representative for the Blue Ribbon Task Force: The Heritage Committee, Friends of the Library, Arts Committee, Library staff, ACIL, Central Atherton Residents' Association, Audit Committee, and a representative from the Fund Raising Committee when Council authorizes the forming of this Blue Ribbon Task Force. This Blue Ribbon Task Force will be comprised of 20 members.

**ANALYSIS:**

Council should consider the following:

1. The Blue Ribbon Task Force should evaluate all options for the Town Center including remodeling the existing facility; adding additional buildings to existing facilities to include current Town Administration Building, Police Building, Library and Council Chambers; in addition to constructing a new facility.
2. Council should consider that all Blue Ribbon Task Force meetings be agenzized, properly posted, and conform to the Brown Act.

**FISCAL IMPACT:**

Staff time will be required as part of the Blue Ribbon Task Force, and sensitivity to cost relating to staff time, especially consultants' hours, should be monitored to ensure efficiency. This was identified as one of the Council's five Goals and Objectives; however, additional funding was not allocated as part of the budget process.

Attachments:



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF MAY 21, 2008**

**SUBJECT: DISCUSSION AND POSSIBLE APPOINTMENT OF A BLUE RIBBON TASK FORCE TO SOLICIT INPUT AND EVALUATE THE FEASIBILITY OF A NEW TOWN CENTER; DISCUSSION AND POSSIBLE CREATION OF A COMMITTEE TO EVALUATE THE FEASIBILITY OF FUNDRAISING OPTIONS FOR A NEW TOWN CENTER**

#### **RECOMMENDATION:**

Appoint a Blue Ribbon Task Force to solicit input and evaluate the feasibility of a new Town Center. Appoint a Committee to evaluate the feasibility of fundraising options for a new Town Center.

#### **INTRODUCTION:**

The Facilities Committee met on March 28, 2008, and discussed the process to undertake the development of a new Town Center facility. Based on the recent experiences of other cities, the Facilities Committee recommended that two committees be formed. One would undertake to raise funds for the new facility, primarily from Atherton residents. The other would undertake to develop the design of the facility by conducting design charettes to obtain input from residents.

The City Council met on April 16, 2008, to consider appointing the two Task Forces. The Council directed that the Facilities Committee determine the composition and duties of each Task Force. The Facilities Committee met again on May 7, 2008, and developed the following recommendation regarding composition and duties of the Task Force. In

particular, the Facilities Committee felt there should be a single Blue Ribbon Task Force for the New Town Center and that the Task Force would have two supporting Committees: a Design Committee to conduct design charettes to solicit public input into the design of the facility; and a Fundraising Committee to evaluate funding options and solicit funds

### **ANALYSIS:**

#### Blue Ribbon Task Force for Town Center Feasibility

Composition of Task Force:

1. Council Members from Facilities Committee
2. Staff who would occupy the facility - Police, Administration, Building, Public Works, Planning, Information Technology (IT)
3. Others who would use the facility - Heritage Committee, Friends of the Library, Arts Committee, Library staff
4. Other interested parties - ACIL, Central Atherton Resident's Association (CARA), Audit Committee (for Finance Oversight)
5. Representative from Fundraising Task Force
6. Two Representatives from Design Committee - one architect and one landscape architect

Representatives to the Task Force to be selected by the entity represented. It is recommended that a primary and alternate representative be identified for each position.

Duties of Task Force:

Review previous studies to build on what has already been done:

1. 1995 Space Needs and Cost Estimate
2. 1999 Godbe Town Opinion Survey
3. 2006 Space Needs Study
4. 2006 Palo Alto Blue Ribbon Task Force for Public Safety Building
5. Materials from other cities efforts, i.e., Portola Valley, Los Altos Hills

Develop a 2008 Feasibility Report for Town Center which would determine:

1. New or Renovated building
2. Size
3. Site orientation
4. Cost
5. Financing
6. Impact on community
7. Public support
8. How ties in with other existing or potential facilities

9. Issue of commercial space as potential expansion space

Design Committee - comprised of volunteer architects, landscape architects and other interested professionals under the direction of Task Force.

Duties of the Design Committee:

1. Organize and conduct design charettes to solicit input to the design of the facility

Fundraising Committee - comprised of volunteer Atherton citizens experienced with fundraising activities, under the direction of the Facilities Committee.

Duties of the Fundraising Committee:

1. Evaluate feasible fundraising options, including meeting with other cities fundraisers
2. Evaluate feasible donation fund accounting, including a Capital Donation Account with the Community Foundation of Silicon Valley (fee for this service) and a Capital Donation Fund with the Town (no fee for this fund).
3. Evaluate options for donor recognition
4. Develop suggested fundraising process for approval by City Council
5. Outreach to the community to solicit funding

FISCAL IMPACT:

There is no fiscal impact of establishing the Blue Ribbon Task Force and Fundraising Committee other than staff time to participate and administer the meetings. The tasks they undertake, such as mailings for fundraising and meeting announcements, will have a cost that will be determined at the time.

Prepared By:

Approved by:

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

/s/ Jerry Gruber  
Jerry Gruber  
City Manager

**EXCERPT FROM THE CITY COUNCIL MINUTES OF  
MAY 21, 2008**

**18. DISCUSSION AND POSSIBLE APPOINTMENT OF A BLUE RIBBON TASK FORCE TO SOLICIT INPUT AND EVALUATE THE FEASIBILITY OF A NEW TOWN CENTER; DISCUSSION AND POSSIBLE CREATION OF A COMMITTEE TO EVALUATE THE FEASIBILITY OF FUNDRAISING OPTIONS FOR A NEW TOWN CENTER**

**City Manager Jerry Gruber presented a staff report. The Facilities Committee met on March 28, 2008, to discuss a process to develop a new Town Center. Council directed the Facilities Committee to prepare recommendations for the Blue Ribbon Task Force as to its composition and fundraising options. The staff report contained an outline of what had been accomplished over the years regarding a new Town facilities beginning in 1995 with a space needs analysis.**

**Council Member McKeithen suggested adding to the analysis whether the funding should be private or public funding. Under No. 7, Public Support, she wanted to add the methodology to determine public support with a question mark after the word "Referendum." She believed there was a need to determine how the majority of the Town felt about the design and funding or whether they wanted a new Town Center at all. She queried the inclusion of the ACIL as an interested party in the Task Force.**

**Mayor Janz believed the ACIL was the only Town-wide organization.**

**A discussion ensued regarding whether the Design Committee and Fundraising Committee should report to the Task Force or to the Facilities Committee. Council Member Marsala said the intent was for the committees to report to the Facilities Committee. Council Member McKeithen felt strongly with regard to the Fundraising Committee that either the Finance Committee or Finance Director be involved. City Manager Gruber suggested the Finance Director could attend the Facilities Committee meetings to provide a nexus.**

**Council Member Marsala responded to Mayor Janz' question that the Facilities Committee would select the members of the Fundraising and Design Committees.**

**A discussion ensued regarding the Brown Act and whether the Fundraising and Design Committees would be subject to it. In the interest of keeping everyone informed, agendas would be posted even though as ad hoc**

**committees, they would not be subject to the Brown Act. The Blue Ribbon Task Force, however, would be subject to the Brown Act.**

**Vice Mayor Carlson thought the idea of a new facility needed to be made a goal and objective of the Council. At the Council's Workshop, Mr. Neu noted the Council agreed to try to establish the political, economic, and operational feasibility of creating a Town Center. He believed the Town's residents needed to be brought into the starting position since many might not be aware new facilities were being considered. He thought two questions needed to be asked: 1) Were residents living in Atherton today sufficiently aware of the need for new Town facilities; and 2) if the answer was "yes," what size of project would be appropriate, etc.**

**Mayor Janz thought the first task of the Task Force would be to address Vice Mayor Carlson's questions. People would have differing opinions and answers depending upon what it would look like and how it would be financed.**

**Mayor Janz was willing to take the next step of assembling the Blue Ribbon Task Force to enable it to address the concerns. The Task Force would report to the Facilities Committee and the City Council. He suggested adding economic feasibility and operational feasibility to the 9 items, making 11 items.**

**MOTION – to approve creation of the Blue Ribbon Task Force charged with the duties as set forth in the staff report and edited to include economic feasibility and operational feasibility**

**M/S Janz/McKeithen      Ayes: 4   Noes: 0   Absent: 0   Abstain: 0**



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: JERRY GRUBER, CITY MANAGER**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: WORK PLAN FOR GOALS AND OBJECTIVES FROM  
MAY 2 COUNCIL/STAFF WORKSHOP**

#### **RECOMMENDATION:**

Approve work plan for Goals and Objectives from May 2, 2008, Council/Staff workshop.

#### **INTRODUCTION:**

At the June 18, 2008, City Council meeting, Council approved five major goals and objectives from the May 2, 2008, Council/Staff Workshop. Council has requested that the City Manager work with the Town's Department Managers to formulate a comprehensive Work Plan that specifically identifies a systematic approach for evaluating and, where applicable, achieving the goals and objectives adopted by the City Council. Those Goals and Objectives are as follows:

1. Obtain approval by residents of long-term financing mechanisms for the Town of Atherton.  
Work Plan:
  - 1) Draft calendar leading to presenting a tax measure to the November Election 2009
  - 2) Review long-term financial picture
    - a) Balances and Reserves including Unfunded Actuarial Liabilities
    - b) Operating balance and five-year prospects
    - c) Capital Improvement Program needs

- 3) Study options to replace Parcel Tax (September & October 2008)
  - a) Including Utility Users Tax, Special Parcel Tax, Business License Tax, Assessment District
  - b) Analyze for revenue potential, vote requirements, political feasibility, cash flow, collection ease, tax impact, etc.
- 4) Public Review and Involvement (December & January 2008)
  - a) Finance Committee
  - b) City Council review
  - c) Public Feedback – Straw Poll or Citizen Committee, etc.
- 5) Interaction with other projects (ongoing)
  - a) Town Hall Project
  - b) Capital Improvement Program needs

2. Obtain Town of Atherton Housing Element State Certification.

Work Plan:

The Housing Element will be updated by Neal Martin & Associates and Goldfarb & Lipman in cooperation with the San Mateo County subregion. A public workshop will be held in October 2008. The draft Housing Element Update will be completed by December 2008. Public Hearings on the update will be held in early 2009. The draft will be submitted to the State Department of Housing and Community Development for comments in early 2009. The goal is to have the Update certified by the State and adopted by the City Council by June 30, 2009.

3. Determine the feasibility politically, economically, and operationally of a new or remodeled Atherton Town Center and implement recommendations from the feasibility study.

Work Plan:

- 1) With Council approval, form a Blue Ribbon Task Force to discuss the design for the new or remodeled Atherton Town Center.
- 2) Determine the composition for members of the Blue Ribbon Task Force. Recommendations from May 21, 2008, Council meeting staff report included Council members that sit on the Town Center Committee, staff who would occupy the facility such as Police, Administration, Building, Public Works, Planning, and Information Technology. Others who would use the facility such as the Heritage Committee, Friends of the Library, Arts Committee, and Library staff. Additional interested parties include the ACIL, Central Atherton Residents' Association, and Audit Committee for Finance oversight. Representatives from the fund-raising Task Force, two representatives from the Design Committee, one architect, and one landscape architect.
- 3) Review previous studies to build on what has already been done. These documents are important to understand and will provide information on how long the project has been discussed and the amount of time and resources spent discussing the New Town Center. Each committee member should be familiar with the following documents: 1995 Space Needs Analysis, 1999 Godbe Town Opinion Survey, 2006 Space Needs Study, 2006 Palo Alto Blue

Ribbon Task Force for Public Safety Building, Material from other cities, i.e., Portola Valley, and Los Altos Hills.

- 4) Conduct a community survey early on to see if the residents of Atherton support building a new facility or remodeling and adding on to the existing facility.
  - 5) Implement a community outreach that provides information about the existing facilities and why a new or remodeled facility is being considered.
  - 6) Provide an opportunity for the community to give input on new verses, renovation, and adding on to existing facility, size, site orientation, cost, financing, impact on the community, and public support.
  - 7) With Council approval, form a Blue Ribbon Task Force to discuss funding for the new or remodeled facility.
  - 8) Develop a 2008 Feasibility Report for the Council to review and possibly adopt. The Feasibility Report would include a new or remodeled building, size of the facility, site orientation, cost, financing and impact on the community, and public support.
4. Fund Quad Gates at train crossing, implement quiet zones, and get Caltrain to accommodate Atherton's concerns for running high-speed rail through Atherton.

Work Plan:

a. Fund and Build Four-Quadrant Gates

Four-Quadrant gates can potentially be funded by Measure A, and designed and constructed by Caltrain. As a part of Caltrain's safety project, funded by Measure A through the San Mateo County Transportation Authority, the grade crossing upgrades currently under design include four-quadrant gates at the Fair Oaks Lane crossing. Town staff will continue to push for the addition of four-quadrant gates at Watkins Avenue crossing. Steps in the process include:

- Director reviews Caltrain plans, advocates to staff to include gates
- City Manager advocates to senior Caltrain staff to include gates
- If necessary, Greg Conlon assists with invoking the California Public Utilities Commission's (CPUC) authority to require gates
- Director determines schedule for installation of gates

b. Implement Quiet Zones

Establishment of a Quiet Zone is a federal process by which a city can implement a Quiet Zone so long as Supplemental Safety Measures (SSMs) are in place. This is not a new process; the final rule was effective on June 24, 2005. To date, over 300 Quiet Zones have been created in the 30 states (only 12 thus far in California), and hundreds more are in process.

According to the Federal Railroad Administration (FRA), this process creates a new standard of care, effectively insulating cities from liability from the creation of the Quiet Zone. The SSMs installed at the crossings result in the

Quiet Zone being safer than they were before the crossings were upgraded and the quiet zone implemented.

Four-Quadrant Gates satisfy the requirement for SSMs. Once the Four-Quadrant Gates are installed the Quiet Zone process can be undertaken. Once completed, the Quiet Zone becomes law and the railroad has to comply and cease sounding horns in advance of the crossings within the Quiet Zone. In case of emergency, horns can be sounded as a warning (similar to the normal use of a car horn).

Steps in the process to create a quiet zone include:

- Hire a consultant experienced with the implementation of Quiet Zones
- Assure accurate crossing inventory on file (update through CPUC)
- Crossing inspection and form with Federal Railroad Administration (FRA)
- Provide Notice of Intent (NOI) to railroads operating online (Caltrain and Union Pacific) and CPUC
- 60-day comment period on NOI
- Diagnostic review with FRA, CPUC and railroads
- Provide notice of Quiet Zone establishment to railroads, police, CPUC and FRA
- Install “No Train Horn” signs per Manual on Uniform Traffic Control Devices (MUTCD)
- If SSMs at all crossing within proposed quiet zone, Risk Index calculations are not required and annual review is not required

c. Accommodate High-Speed Rail concerns

Atherton has significant concerns about the High-Speed Rail (HSR) proposal in general, and would prefer that the system not run through Atherton because of the impacts, both temporary impacts during construction (years) and permanent impacts after the trains start running. Considerable effort has already been expended by Town officials, and will continue at higher levels with Caltrain and the California High-Speed Rail Authority (CHSRA), to move the HSR to a different alignment. The primary concern if the HSR comes through Atherton, and that Caltrain can assist us with, is whether it will be at-grade, above grade, or below grade, and the relative impacts of each alternative.

The HSR system must be grade-separated from the local streets so that no vehicle/train interaction can occur. At-grade tracks would require the streets to be either above or below grade. Above-grade tracks would require the streets to be below grade, but not as much as with at-grade tracks. Below-grade tracks, if deep enough, could result in the streets remaining at-grade, i.e., as they are. The Town has taken the position that, if the HSR comes through, it should be constructed fully below grade, i.e., in a trench.

In order to construct HSR in a trench in Atherton, it must also be in a trench through Menlo Park. There is sufficient distance from 5<sup>th</sup> Avenue in Redwood City to Fair Oaks Lane for the tracks to transition from at-grade or above grade to the trench. Likewise, there is sufficient distance south of Ravenswood Road for the tracks to come out of the trench and cross over San Francisquito Creek. In between, the tracks would have to go under all Atherton and Menlo Park streets and the Atherton Channel because there is not enough distance from Watkins Avenue to Encinal Avenue to make the change in grade.

In order to address the concerns of both Atherton and Menlo Park, a joint study of the grade separation alternatives is needed. The San Mateo County Transportation Authority (TA) has funds available for grade separation studies, and has already budgeted funds for the Atherton/Menlo Park study. Caltrain will shortly complete the Footprint Study, undertaken to determine how many tracks and what grades would be feasible for the Caltrain system. The next step is for Caltrain to undertake the Grade Separation study.

The Grade Separation study will provide the two cities and Caltrain with information about the impacts, both to residents and businesses near the tracks as well as to the environment, of alternative grade separation alternatives. The study will also develop staging concepts (how to build it) and cost estimates. This information will be useful if Caltrain and the cities decide that grade separations are advisable. It will also provide valuable information about how the Caltrain corridor can accommodate the HSR system.

As a companion study, the two cities are considering hiring an independent consultant to look specifically at the trench alternative, developing more detailed construction staging and cost information. This will be an independent check of the Caltrain study to assure that the trench alternative is treated fairly in the analysis.

Steps to accommodate Atherton's concerns include:

- Continue working with Menlo Park to cement commitment to the two studies, both at a staff level and at the City Council level
- Assure that the TA maintains the budget for the joint Grade Separation study
- Persuade Caltrain to commence the joint Grade Separation Study
- Hire a consultant to perform the independent trench study
- Coordinate with Caltrain and the consultants during the studies
- Coordinate with the CHSRA during and after the studies to assure the information from the studies is incorporated into the project level environmental and design studies for the Peninsula segment of the HSR project

5. Determine the feasibility of annexation for commercial and residential and if feasible pursue annexation of designated areas

Work Plan:

The City Council has reviewed and listened to a public presentation of the periodic Municipal Service Review and Sphere of Influence Update by the San Mateo Local Agency Formation Commission (LAFCo) Executive Officer. The Executive Officer plans to recommend that the LAFCo Commission approve the Municipal Service Review and confirm the Atherton Sphere of influence boundary coterminous with the current city limits. During the public presentation of the Municipal Services Review a possible area for expansion of Atherton northwesterly in the North Fair Oaks area was presented. Should the City Council wish to proceed further with this goal the following steps should be initiated.

- Meet formally with the County Board of Supervisors (or their designated representatives) and representatives of the City of Redwood City to discuss the proposed new boundaries of the sphere and explore methods to reach agreement on development standards and planning and zoning requirements within the sphere.
- Comply with the California Environmental Quality Act (project Exempt, Negative Declaration or Environmental Impact Report prepared).
- Complete a General Plan amendment and pre-zoning of the territory.
- Prepare a Plan for Providing Services (see attachment to LAFCo Municipal Service Review dated July 10, 2008, for details).

**ANALYSIS:**

A detailed analysis for each Goal and Objective was conducted by the Town's Department Managers as part of the Work Plan.

**FISCAL IMPACT:**

Obtain approval by residents of long-term financing mechanism for the Town of Atherton. Fiscal impact will include staff time that has already been budgeted as part of the 2008/2009 Budget.

Obtain Town of Atherton Housing Element State Certification. Council has approved funding for the Housing Element as part of the 2008/2009 Budget. Neal Martin & Associates included cost estimates for its time to complete the Housing Element document which was approved by Council.

Determine the feasibility politically, economically, and operationally of a new or remodeled Atherton Town Center and implement recommendations from the feasibility study. If the Council approves the Blue Ribbon Task Force for the design aspect of the Town Center, the cost should be minimal during this fiscal year due to needed community input and evaluation of several building alternatives.

Fund Quad Gates at train crossing, implement Quiet Zones and get Caltrain to accommodate Atherton's concerns with running High-Speed Rail through Atherton. Measure A money, as indicated by the Public Work's Directors Work Plan, should fund the needed Quad Gates that are instrumental in establishing a Quiet Zone. As indicated by the Work Plan a recommendation to hire a consultant with assisting the Town in establishing a Quiet Zone. Funds for hiring a consultant were not included as part of the 2008/2009 Budget. However, I will work with the Public Works Director to determine if other funds may be available.

Determine the feasibility of annexation for commercial and residential and if feasible pursue annexation of designated areas. Staff time will be required to evaluate annexation as indicated by the Work Plan. Additional financial resources will be required to complete economic feasibility, CEQA, and a General Plan amendment and rezoning of the territory. I have spoken with Neal Martin of Neal Martin & Associates and was given an estimate ranging from \$ 265,000 to \$ 365,000 for annexation to move forward. Funds for annexation were not designated as part of the 2008/2009 Budget.

Attachments:



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

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

**DATE: FOR THE CITY COUNCIL MEETING OF AUGUST 20, 2008**

**SUBJECT: APPROVE THE RECOMMENDATION OF THE CITY COUNCIL  
SCREENING COMMITTEE FOR AN APPOINTMENT TO THE ARTS  
COMITTEE**

#### **RECOMMENDATION:**

Accept and approve the recommendation of the City Council Screening Committee to appoint a member to the Arts Committee.

#### **BACKGROUND:**

An application for appointment to the Arts Committee was received on June 9, 2008. Due to travel, illness, and scheduling issues, the applicant was unavailable for an interview. The Screening Committee has scheduled an interview for Monday, August 18, 2008, and will make any recommendation for appointment at the meeting.

Prepared by:

Approved by:

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Kathi Hamilton  
Acting City Clerk

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Jerry Gruber  
City Manager