



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
AUGUST 19, 2009
5:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Closed Session

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

5:02 P.M. PUBLIC COMMENTS

5:15 P.M. CLOSED SESSION

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

Agency Negotiators: Council Member Dobbie, Council Member Lewis

Unrepresented Employee: City Manager

B. PUBLIC EMPLOYEE SIX-MONTH PERFORMANCE EVALUATION - (Subsection (b) of Government Code Section 54957):

City Attorney

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

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

D. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION

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

- Pacific Peninsula Group Claim *January 21, 2009*

- Carol Flaherty Claim *October 15, 2008*

RECONVENE TO OPEN SESSION

Report of action taken.

6:30 P.M. ADJOURN

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk's Office at (650) 752-0500. Notification of 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



AGENDA
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
AUGUST 19, 2009
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California
REGULAR MEETING

PLEASE NOTE:

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

- 7:00 P.M. 1. **PLEDGE OF ALLEGIANCE**
- 7:02 P.M. 2. **ROLL CALL** Lewis, Dobbie, Marsala, McKeithen, J. Carlson
- 7:03 P.M. 3 **PRESENTATIONS**
- Certificate of Appreciation to Dr. Sam Goodman for his service on the Town's Audit Committee
- 7:15 P.M. 4. **PUBLIC COMMENTS** *(This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the Agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the Council from acting on items not listed on the Agenda except by special action of the City Council under specified circumstances. Speakers' time is limited to three minutes.)*
- 7:20 P.M. 5. **REPORT OUT OF CLOSED SESSION**
- 7:25 P.M. 6. **CITY MANAGER'S REPORT**
- 7:30 P.M. 7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** (Directed by Resolution No. 99-6)
- None
- 7:30 P.M. **CONSENT CALENDAR** (Items 8-27)
- (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 JULY 15, 2009, JULY 28, 2009, SPECIAL MEETING AUGUST 3, 2009, SPECIAL AND AUGUST 10, 2009, SPECIAL MEETING MINUTES**
Recommendation: Approve July 15, 2009, July 28, 2009 Special meeting, August 3, 2009 Special meeting and August 10, 2009 meeting minutes

9. **APPROVAL OF BILLS AND CLAIMS FOR JUNE 2009 IN THE AMOUNT OF \$1,068,256**
Recommendation: Approve Bills and Claims in the amount of \$1,068,256

10. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE MONTH ENDED JULY 31, 2009**
Recommendation: Accept Monthly Financial Report

11. **RESOLUTION 09-26 ESTABLISHING A FUND BALANCE POLICY FOR THE GENERAL FUND**
Report: Finance Director Louise Ho
Recommendation: Approve Resolution 09-26 authorizing the establishment of a fund balance policy for the General Fund.

12. **ADOPTION OF A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH CALTRANS FOR FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) PROGRAM FUNDING FOR THE ATHERTON AVENUE REHABILITATION PROJECT**
Report: Public Works Director Duncan Jones
Recommendation: Adopt Resolution 09-27 authorizing the City Manager to execute agreements with Caltrans for Federal American Recovery and Reinvestment Act of 2009 (ARRA) Program funding for the Atherton Avenue Rehabilitation Project

13. **ACCEPTANCE OF WORK AND AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF CONTRACT CHANGE ORDERS IN THE AMOUNT OF \$7,183.50 FOR HOLBROOK-PALMER PARK MAIN LAWN FOUNTAIN PROJECT NUMBER 08-006**
Report: Public Works Director Duncan Jones
Recommendation: Accept work and Authorize recording of a notice of completion and approving contract change orders in the amount of \$7,183.50 for the Holbrook-Palmer Park Main Lawn Fountain Project Number 08-006

14. **APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE HOLBROOK-PALMER PARK MASTER IRRIGATION PLAN UPGRADES AND SECOND PARK WELL PROJECT NUMBER 09-006**
Report: Public Works Director Duncan Jones

Recommendation: Approve the plans and specifications and authorize advertisement for bids for the Holbrook-Palmer Park Master Irrigation Plan Upgrades and Second Park Well Project, Project No. 09-006

15. RESOLUTION REJECTING CLAIM OF ANTHONY NICOSIA

Report: Assistant City Manager Eileen Wilkerson

Recommendation: Approve Resolution 09-28 rejecting claim of Anthony Nicosia

16. RESOLUTION 09-29 TO ADOPT STATEMENT OF INVESTMENT POLICY FOR FISCAL YEAR 2009-2010

Report: Finance Director Louise Ho

Recommendation: Adopt Resolution 09-29 to approve the Statement of Investment Policy for Fiscal Year 2009-2010

17. APPROVAL OF AMENDMENT NO. 2 TO THE CONSULTANT SERVICES AGREEMENT DATED JANUARY 29, 2009, BETWEEN MUNISERVICES, LLC AND THE TOWN OF ATHERTON FOR BUSINESS LICENSE TAX MANAGEMENT AND ADMINISTRATION

Report: Finance Director Louise Ho

Recommendation: Approve Amendment No. 2 to the consultant services agreement dated January 29, 2009, with MuniServices LLC; and authorize the City Manager to execute the amendment

18. APPROVAL OF THE REQUEST FOR AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT DATED JANUARY 29, 2009, BETWEEN NBS AND THE TOWN OF ATHERTON FOR COST ALLOCATION PLAN, FULL COST RECOVERY STAFF HOURLY RATES, AND COMPREHENSIVE FEE STUDY

Report: Finance Director Louise Ho

Recommendation: Approve the request from NBS to amend the consultant services agreement dated January 29, 2009, Exhibit B Fee Schedule, and authorize City Manager to execute in an amount not to exceed \$14,600

19. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH CROSBY GROUP TO PERFORM A PROBABLE MAXIMUM LOSS (PML) AND RISK ANALYSIS FOR COUNCIL CHAMBERS AND LIBRARY

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

Recommendation: Approve a Professional Services Agreement with Crosby Group to perform a Probable Maximum Loss and Risk Analysis for the Atherton Council Chambers and Library and authorize City Manager to execute in an amount not to exceed \$14,000

20. **RESOLUTION FOR DESIGNATION OF VOTING DELEGATES AND ALTERNATES – League of California Cities Annual Conference – September 16-18, 2009**
Report: City Manager Jerome D. Gruber
Recommendation: Adopt Resolution 09-30 Designating voting delegate and alternate to the League of California Cities Annual Conference
21. **AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY HORN FOR ROAD IMPACT FEE STUDY**
Report: Public Works Director Duncan Jones
22. **APPROVAL OF ADDENDUM TO SPRINGBROOK SOFTWARE LICENSE AGREEMENT, SPRINGBROOK SOFTWARE MAINTENANCE AGREEMENT; AND AUTHORIZE CITY MANAGER TO EXECUTE THE ADDENDUM**
Report: Director of Finance Louise Ho
Recommendation: Approve the addendum to Springbrook Software License Agreement, Springbrook Software Maintenance Agreement in an amount not to exceed \$14,025 plus a 20% contingency for a total of \$16,830; and authorize City Manager to execute addendum
23. **POLICE DEPARTMENT VEHICLE PURCHASE**
Report: Police Chief Glenn Nielsen
Recommendation: Authorize the purchase of an unmarked police hybrid vehicle (Toyota Camry) for a cost not to exceed \$28,500.00 and the purchase of two Ford Crown Victoria patrol cars not to exceed a total of \$54,000.00
24. **RECOMMENDATION FROM ENVIRONMENTAL PROGRAMS COMMITTEE FOR THE CITY COUNCIL TO ENDORSE AB1404: GLOBAL WARMING COMPLIANCE OFFSETS & AIR QUALITY IN CALIFORNIA**
Report: City Manager Jerry Gruber, Building Official Mike Wasmann
Recommendation: Council endorse the passage of AB1404: Global Warming Compliance Offsets & Air Quality in California by adopting Resolution 09-31 supporting AB 1404 and sending a letter of support to the Union of Concerned Scientists and the California Senate signed by the Mayor
25. **APPROVE A CONTRACT CHANGE ORDER FOR G. BORTOLOTTO & CO, INC. FOR THE STREET RECONSTRUCTION PHASE 6 PROJECT NUMBER 08-025 IN THE AMOUNT OF \$54,176.22**
Report: Public Works Director Duncan Jones
Recommendation: Approve a Contract Change Order for G. Bortolotto and Co., Inc. for Street Reconstruction Phase 6 Project, project number 08-025 in the amount of \$54,176.22

26. CONSIDERATION OF DESIGNATING THE PARK AND RECREATION COMMISSION AND THE HOLBROOK-PALMER PARK FOUNDATION AS COORDINATING PARTNERS OF A COMMUNITY VOLUNTEERS PARK MAINTENANCE ASSISTANCE PROGRAM WITH SUPPORT AND DIRECTION FROM THE CITY MANAGER AND STAFF

Report: City Manager Jerome D. Gruber

Recommendation: Approve Designation of the Park and Receptions Commission and the Holbrook-Palmer Park Foundation as coordinating partners of a community volunteers park maintenance assistance program with support and direction from the City Manager and staff

27. ADOPTION OF A RESOLUTION APPROVING THE ISSUANCE OF REVENUE OBLIGATIONS BY THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY FOR IMPROVEMENTS TO THE SHOREWAY RECYCLING AND DISPOSAL CENTER

Report: City Manager Jerome D. Gruber

Recommendation: Adopt resolution 09-33 approving the South Bayside Waste Management Authority (SBMWA) issuance of bonds in the maximum amount of \$56,500,000 to fund improvements to the Shoreway Recycling and Disposal Center

8:00 P.M. REGULAR AGENDA (28)

28. FISCAL YEAR 2007-08 BASIC FINANCIAL STATEMENTS AND INDEPENDENT AUDITOR'S REPORT

Report: Finance Director Louise Ho

Recommendation: Accept FY 2007-08 Basic Financial Statements and Independent Auditors' Report prepared by Caporicci & Larson

8:15 P.M. PUBLIC HEARINGS (29-30)

29. ADOPT RESOLUTION 09-32 TO APPROVE MASTER FEE SCHEDULE SETTING MISCELLANEOUS FEES FOR TOWN SERVICES

Report: City Manager Jerome D. Gruber

Recommendation: Conduct a Public Hearing and Adopt resolution 09-32 approving Master Fee Schedule for miscellaneous fees for Town services

30. ORDINANCE ADOPTING TITLE 17 TO THE ATHERTON MUNICIPAL CODE - A COMPREHENSIVE ZONING ORDINANCE UPDATE

Report: Deputy Planner Lisa Costa Sanders

Recommendation: Conduct a public hearing and introduce the attached Zoning Code Update Ordinance based on the following finding for the reasons outlined in the staff report

REGULAR AGENDA, CONTINUED (Items 31-34)

- 9:00 P.M. 31. **AWARD OF CONTRACT TO THE LEW EDWARDS GROUP FOR PROFESSIONAL PUBLIC INFORMATION CONSULTING SERVICES IN AN AMOUNT NOT TO EXCEED**
Report: City Manager Jerome D. Gruber
Recommendation: Approve a professional services agreement with The Lew for professional public information consulting services related to public education of services, policy, and programs provided by the Town and that the City Council authorize the City Manager to execute an agreement in the amount not to exceed \$15,500.00
- 9:15 P.M. 32. **THE SAN MATEO COUNTY LIBRARY SYSTEM JOINT POWERS AGREEMENT AND "DONOR FUNDS" ATTRIBUTABLE TO THE TOWN OF ATHERTON**
Report: City Manager Jerome D. Gruber
Recommendation: Receive and file this report and provide any further direction to Staff
- 9:40 P.M. 33. **TOWN RESPONSE TO CIVIL GRAND JURY REPORT ON REVERSING THE UPWARD TRAJECTORY OF EMPLOYEE COSTS IN THE CITIES OF SAN MATEO COUNTY**
Report: Assistant City Manager Eileen Wilkerson
Recommendation: Accept the Town's response to the Civil Grand Jury regarding reversing the upward trajectory of employee costs in the cities of San Mateo County
- 9:50 P.M. 34. **DISCUSSION AND POSSIBLE ACTION FOR COUNCIL TO ASSIGN A SUB-COMMITTEE OR OTHER MECHANISM TO DEAL WITH TOWN FACILITIES OUTSIDE OF THE TOWN**
Report: Council Member Charles Marsala
Recommendation: To Be Determined
- 10:05 P.M. 35. **COUNCIL REPORTS**
- 10:10 P.M. 36. **FUTURE AGENDA ITEMS**
- 10:20 P.M. 37. **PUBLIC COMMENTS**
- 10:30 P.M. 38. **ADJOURN**

PLEASE NOTE THE FOLLOWING INFORMATION:

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

the date upon which the decision becomes final. Judicial review of environmental determinations may be subject to a shorter time period.

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

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

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Certificate of Appreciation



Dr. Sam Goodman

*For His work and Dedication in
serving on the Town of Atherton
Audit Committee*

*The City Council of the Town of Atherton greatly acknowledges the
expertise and professional knowledge you contributed to the Committee
from 2004 to 2009. We commend you for your outstanding contributions
and sincerely wish you continued success in the future.*

Jerry Carlson, Mayor

Dated

DRAFT MINUTES

**Town of Atherton
CITY COUNCIL**

ATHERTON CHANNEL DRAINAGE DISTRICT

JULY 15, 2009

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road

Atherton, California

REGULAR MEETING



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

1. PLEDGE OF ALLEGIANCE

2. ROLL CALL Lewis, Dobbie, Marsala, McKeithen, J. Carlson

3. PRESENTATIONS

OATH OF POLICE OFFICER KRYSTAL PRONSKE

Chief Nielsen stated that Pronske was hired with the Atherton Police Department in January of 2009 while she was attending the Police Academy at Evergreen Valley College. Officer Pronske was President of her class and graduated on June 24, 2009. The oath of office was administered and Officer Pronske's badge was pinned by her mother.

RECOGNITION OF ETHAN BANICH - EAGLE SCOUT PROJECT

Public Works Superintendent Steve Tyler introduced Ethan Banich and gave a brief background on the history of Banich's Eagle Scout project.

Banich gave a PowerPoint presentation of his project renovating six park benches located in the Library Park garden.

Council thanked Banich for his work and said he did a fantastic job.

4. PUBLIC COMMENTS

Jack Whitman, Atherton resident, informed Council that he is forming a Selby Lane neighborhood organization to keep the neighborhood apprised of any issues in Atherton. Whitman concluded that he hopes to include residents from Selby Lane to Stockbridge Avenue and all streets in between.

Colleen Anderson, Atherton resident, said that on Parker Avenue residents are putting rocks at the street line and building out to the street limiting street parking. There is no safety shoulder. Anderson questioned how this parking issue can be fixed.

Tom Campbell, Atherton resident, stated that he lives on Fenwood Drive and the street was named one of the worst streets in Atherton. Campbell questioned whether Fenwood Drive will be reconstructed this year.

Melinda Trevis, Atherton resident, informed Council that the last two Athertonians do not have Atherton Department contacts and phone numbers.

5. REPORT OUT OF CLOSED SESSION

City Attorney Wynne Furth reported that there was no reportable action from Closed Session.

6. CITY MANAGER'S REPORT

City Manager Jerry Gruber reported that Officer Tim Marks has completed a two week P.O.S.T. motorcycle certification and is now on motorcycle patrol.

Gruber added that Police Chief Glenn Nielsen used personal vacation leave to go to Los Angeles to represent Atherton at the Police Olympics. Nielsen won a silver medal in the men's doubles in Tennis.

Gruber reported that he plans to make sure that all Departments are fiscally responsible and prudent in spending the tax payer's dollars.

Gruber reported that the West Atherton siren has been installed, residents will be informed of testing procedures, and a series of protocols will be followed during testing of the siren. Gruber added that the quad gates and replacement of the roadway at the Fair Oaks railroad crossing will be completed in late August. Gruber thanked Mayor Jerry Carlson and Public Works Director Duncan Jones for their help in getting this done.

Gruber said the Park Bridge on Watkins Avenue is a very nice protected environment where people can enter the park without having to walk all the way down to the main entrances. Gruber asked Jones to comment on the Park Bridge, Valparaiso crosswalk and the Encinal Street light status update. Jones stated that the Park Bridge is designed to be coordinated with a Caltran improvement of the gates at the Watkins crossing where there will be pedestrian gates to help keep the pedestrians off the roadway.

Jones said that he spoke with Menlo Park Public Works Director who believes there should not be any real problem going directly to the Menlo Park City Council to ask for approval of a street light at Encinal. Jones added that he will write an official request for the Menlo Park September City Council meeting. Jones concluded that the Encinal street light Memorandum Of Understanding will also be taken up at the Menlo Park September City Council meeting.

Gruber reported that he has been working with Council Member Elizabeth Lewis and Atherton resident Dick Moore on the possibility of a volunteer work day at Holbrook-Palmer Park to help beautify the Park and possibly hold a BBQ for the residents who attend.

Council Member Lewis said she feels it is a great opportunity for team building and for creating interest in the Park.

7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** None

CONSENT CALENDAR (Items 8-23)

Mayor Carlson pulled Item 12 from the Agenda.

Council Member Lewis requested pulling items 12, 13, 14, 15, 16, 17 and 22.

Gruber said he met with Alan Margot, Tennis Professional earlier that afternoon. Gruber requested postponing item 17 until August. Council agreed.

Council Member James Dobbie gave edits to item 8 and asked for clarification on items 11 and 19.

Vice Mayor Kathy McKeithen said she gave City Clerk Theresa DellaSanta some grammatical changes to various staff reports in the Agenda packet. A list of those changes was handed out to Council. Vice Mayor McKeithen requested pulling item 22.

Council Member Charles Marsala gave a typed statement of two clauses he wanted added to the June 17th minutes. Staff took note and the changes will be made.

8. **APPROVAL OF MAY 28TH SPECIAL MEETING MINUTES, JUNE 17TH REGULAR MEETING MINUTES, JUNE 23RD SPECIAL MEETING MINUTES AND JUNE 25TH SPECIAL MEETING MINUTES.**

Recommendation: Approve May 28th Special Minutes, June 17th Regular Minutes, June 23rd Special Minutes and June 25th Special Minutes

Council Member Dobbie gave edits to the June 17th meeting minutes. Staff took note and will make the changes.

9. **APPROVAL OF BILLS AND CLAIMS FOR JUNE 2009 IN THE AMOUNT OF \$839,912**

Recommendation: Approve Bills and Claims in the amount of \$839,912

10. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE MONTH ENDED JUNE 30, 2009**

Recommendation: Accept Monthly Financial Report

11. **AGREEMENT FOR INFORMATION TECHNOLOGY SUPPORT WITH CITY OF REDWOOD CITY FOR FY2009-10**

Report: Finance Director Louise Ho

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

Council Member Dobbie asked why there is a minimum amount that must be paid to the IT consultants. Finance Director Louise Ho stated that if the Town uses over 200 hours they will receive a bill at the end of the fiscal year for excess charges, and if the Town uses under 200 hours then they can choose to have a refund or carry it over. Dobbie asked staff to revise the contract language to reflect that.

12. ADOPTION OF A STREET ADDRESS ASSIGNMENT POLICY

Report: Deputy Planner Lisa Costa Sanders

Recommendation: Adopt Street Address Assignment Policy

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

Report: Public Works Director Duncan Jones

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

18. RESOLUTION REJECTING CLAIM OF JONATHAN B. BUCKHEIT

Report: City Attorney Wynne Furth

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

19. ABAG EMPLOYEE PRACTICES LIABILITY INSURANCE

Report: Assistant City Manager Eileen Wilkerson

Recommendation: Authorize the City Manager to enter into an agreement with Steadfast Insurance Company (Zurich) to provide Employee Practices Liability Coverage effective July 17, 2009 through June 30, 2010 in an amount not to exceed \$36,000

Council Member Dobbie questioned how many employee exemptions there are to this agreement. Assistant City Manager Eileen Wilkerson said there are 3 exemptions which are all existing situations. Dobbie congratulated Wilkerson for getting this agreement in place. Wilkerson thanked Council for approving the harassment and violence in the workplace policies that were important in acquiring the savings.

20. APPOINTMENT OF PAUL SKEEN JONES TO THE ATHERTON RAIL COMMITTEE

Report: City Manager Jerome D. Gruber

Recommendation: Appoint Paul Skeen Jones to the Atherton Rail Committee for term commencing immediately and expire on April 30, 2011

21. REAPPOINTMENT OF DIANE CRITTENDON AND APPOINTMENT OF RICHARD MOORE TO THE ATHERTON PARKS AND

RECREATION COMMITTEE AS THE HOLBROOK PALMER PARK FOUNDATION REPRESENTATIVE

Report: City Manager Jerome D. Gruber

Recommendation: Reappoint Diane Crittendon and Appoint Richard Moore to the Atherton Parks and Recreation Committee as the Holbrook Palmer Park Foundation Representative commencing immediately and expiring on April 30, 2013

22. STATUS UPDATE ON ROAD IMPACT FEE STUDY

Report: Public Works Director Duncan Jones

Recommendation: Accept Status Report from Staff and provide possible direction

23. FAMILY DAY PROCLAMATION – A DAY TO EAT DINNER WITH YOUR FAMILY

Report: City Manager Jerry Gruber

Recommendation: Approve Proclamation for Family Day

MOTION by McKeithen, second by Lewis to approve Items 8, 9, 10, 11, 18, 19, 20, 21 and 23. The motion passed.

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

PUBLIC HEARINGS (24)

7:50 P.M.

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

Report: City Manager Jerry Gruber

Recommendation: Hold a Public Hearing and adopt the following ordinance: An Ordinance of the Town of Atherton calling an election to submit to the voters (1) an ordinance authorizing the renewal of the parcel tax for and additional four years and (2) an Ordinance increasing the Appropriations Limit for the Same Period

City Attorney Wynne Furth reported that the proposed ordinance would allow the Town to submit an ordinance to the voters of Atherton asking to extend the existing parcel tax for four years. Furth said when you propose a parcel tax you must also approve a modification of the Gann limit (the Towns revenue and expenditures limit). Furth said in the past the ordinance and Gann limit modification has been consolidated into one ordinance but is now presented as two separate measures to make it clearer to the residents.

Furth reported that the Ordinance calls an election and consolidates it with the County of San Mateo election and asks the voters to adopt the two ordinances pertaining to the renewal of the tax and the increasing the appropriations limit.

Furth stated that the language of the parcel tax renewal has been modified to the following:

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

Furth stated that if Council agrees the above language will be changed through the resolutions (presented in Item 26) relating to parcel tax renewal.

Council Member Marsala said he is in favor of a language amendment to include infrastructure to allow more flexibility of the funds.

Vice Mayor McKeithen was in favor of keeping the language as is since it was recommended by GODBE and City Manager Gruber.

Council Member Lewis stated her support that the parcel tax should go for Police, safety, roads and streets.

Council Member Dobbie said he would not want the Town to run into any legal issues with the language and said he is in favor of leaving it the way it is.

Furth informed Council that they can choose to adopt an ordinance to set the GANN limit at 1.5 times the parcel tax or set the limit to equal proceeds of the special parcel tax. Finance Director Ho said that in the past the Town has set the limit at 1.5 times.

Mayor Carlson said he is in favor of keeping the limit at 1.5 times. Vice Mayor McKeithen concurred and added that there needs to be public education so it does not look as if the Town is overreaching. The education may include how the language is developed in the measure. McKeithen concurred that an amendment is needed to include “this is in accordance with past practice in the Town.”

Council agreed to amend the language on the GANN limit measure to the following:

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

MOTION by Lewis, second by McKeithen adopt the following ordinance: An Ordinance of the Town of Atherton calling an election to submit to the voters (1) an ordinance authorizing the renewal of the parcel tax for and additional four years and (2) an Ordinance increasing the Appropriations Limit for the Same Period with the amendments stated.

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

MOTION by Marsala to amend the motion to change the language to include Public Works infrastructures. The motion failed due to lack of second.

REGULAR AGENDA (Items 25-31)

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

Report: City Manager Jerry Gruber, Finance Director Louise Ho

Recommendation: Adopt Resolution 09-22 approving the Appropriations Limit for Fiscal Year 2009-2010 and for revising the GANN Appropriations Limit for FY 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08

Finance Director Ho stated that the GANN limit places restrictions on the amount of tax revenue that can be appropriated by local governments and the limits have to be calculated every year as required by law. Ho added that in addition to calculating the limit for FY2009-10, staff also recalculated previous years from FY2002-03 through FY2008-09 to correct an error in the limit calculation.

Mayor Carlson thanked Finance Director Ho for all of her work on fixing past mistakes.

MOTION by Lewis, second by McKeithen to Adopt Resolution 09-22 approving the Appropriations Limit for Fiscal Year 2009-2010 and for revising the GANN Appropriations Limit for FY 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08.

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

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

Report: City Manager Jerry Gruber

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

City Attorney Furth stated that these procedures need to be followed once an election is called. Furth informed Council that they need to establish who will write the primary arguments. Furth concluded that the resolutions will conform to the action Council taken on item 24.

Vice Mayor McKeithen requested that the actual due date for the rebuttal arguments be added to the resolution. Staff took note and will make the change.

McKeithen and Council Member Dobbie volunteered to write the primary arguments.

Furth informed Council that a special meeting is needed during the first week of August to review and approve the draft primary arguments.

MOTION by Lewis, second by McKeithen to (1) Adopt a resolution setting priorities for filing written primary argument(s) and for designating Vice Mayor Kathy McKeithen and Council Member James Dobbie to draft the primary argument regarding the measure and directing the City Attorney to prepare an impartial analysis to be printed in the sample ballot; and (2) Adopt a resolution providing for the filing of rebuttal arguments.

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

27. POLICY DIRECTION ON THE 2007-14 HOUSING ELEMENT UPDATE

Report: Deputy Planner Lisa Costa Sanders

Recommendation: To Be Determined

Deputy Planner Lisa Costa Sanders informed Council that a Town-wide meeting was held last year where policy options and the use of guest houses as second dwelling units as full time habitation were specifically discussed. Costa Sanders said from that meeting staff was able to create a draft document that was reviewed by the General Plan Committee at two different meetings. The General Plan Committee recommended forwarding the draft document to the Planning Commission. General Plan Committee added language for new second units to the document which stated, “with adequate separation from adjacent main building areas.”

Costa Sanders reported that the Planning Commission recommended that staff change the draft update to (1) Expand the Town’s Second Dwelling Unit Program by increasing the allowable size up to 1,200 square feet and to continue allowing the Second Dwelling Unit to be attached to the main dwelling or, if detached, to be located within the main building area, (2) Allow full kitchens in internal living quarters in the main dwelling and increase the projected internal living quarters and second unit construction numbers and occupancy by an amount necessary to meet the remaining basic and carry-over allocation, (3) Include a statement in the “Internal Living Quarters” and “Second Unit” Programs in the draft Update that the Town will conduct a major “community outreach” to increase the number of internal living quarters and second units constructed in the 2007-14 planning period, to justify the increased construction and occupancy, and (4) Reduce the added site capacity projections to near 150 units, rather than providing a surplus over the RHNA numbers.

Costa Sanders concluded that the Town has hired Barbara Kautz as legal representation and for preparation of the document. Kautz and her staff have reviewed the draft document and have some concern that the document will not be approved by the State because it does not have a basis for the number of units shown in the document.

Mayor Carlson asked what the main issue is between the General Plan Committee and the Planning Commission. Costa Sanders said the difference of agreement is whether or not you can use an accessory structure for full-time habitation and the number of internal living spaces.

Vice Mayor McKeithen stated that the directive tonight as a Council is to fulfill the requirement of the state mandated requirements of the housing element and to keep the Town as close to the quality of life that our residents have appointed us to do. McKeithen suggested that the Town could increase the buildable area by 600 square feet to the extent it becomes a second dwelling unit or to the extent the second dwelling unit is on a smaller than one acre lot proportional to the size of the original lot. McKeithen suggested that the Town could offer an incentive such as waiving the building permit. She questioned whether that change would meet the requirements of the State.

Costa Sanders said that as long as we show the State that we have good production then the State will rely on that production. She added that there are a lot of accessory structures being built and even if they are not being rented out the State still considers them as a net new legal dwelling unit.

Council member Dobbie said that if we cannot limit the number of people who live in the second unit dwellings then it could change the atmosphere of Atherton. Dobbie said if the buildable area can be increased to 1200 square feet he would support it.

Council Member Marsala asked what Atherton's lot setbacks are. Costa Sanders said that on a standard acre lot it is 60-foot rear and 50-foot sides.

Herman Christensen, Atherton resident and Vice Chair of Planning Commission, stated that the main issue is to maintain quality of life in view of the State mandated requirements. Christensen said that the location of the dwelling has been discussed at length. Christensen concluded that the Planning Commission feels that the Town can reach the state mandated requirements by encouraging the use of second dwelling units in the main building area.

Phil Lively, Atherton resident, stated that he is in favor of second units within the main house area and allowing more kitchens in the main house. Lively read a list of possible incentives to offer.

Carol Smith, Atherton resident and Vice Chair of the General Plan, stated her support of the General Plan Committee and Planning Commission reviewing the document further.

Barbara Kautz, Town Attorney for housing element advice, stated that Housing and Community Development (HCD) has the authority to determine whether or not to allow second units to fulfill the State requirements and the HCD's determinations are based on past production.

Marsala felt that increasing the setbacks would be problematic and asked Kautz her opinion. Kautz said the General Plan Committee supported allowing second units to be used for housing as long as they had adequate distance from adjacent main building areas. Kautz said this still needs to be defined.

Council Member Lewis stated that she felt that since Barbara Kautz was hired by the Town to advise them on the Housing Element that the Town should follow her advice. Lewis concluded that the Town has passed the deadline for submitting the housing element.

Mayor Carlson felt that a discussion meeting between the General Plan Committee, Planning Commission, and City Council would help finalize the document.

Lewis felt that the document should be given to the General Plan Committee with further direction from Council following the recommendation of the Town's paid consultant who felt the General Plan Committees approach was more favorable.

McKeithen suggested sending the document back to the Planning Commission for more information on setbacks in surrounding jurisdictions.

MOTION by Dobbie, second by McKeithen to send the housing element update document to the Planning Commission with specific direction to (1) look at setbacks and the data that supports the reason for the number of units based upon setbacks or incentives used and any other viable information in the four surrounding jurisdictions that the General Plan recommended and, in addition, look at Monte Sereno, and (2) use at least three elements, namely, the potential waving of permit fees on second units, 10 to 20 percent or more on encroachments on the non-buildable area, and look at adding square footage to the FAR based upon looking at data from the five jurisdictions.

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

28. ENVIRONMENTAL PROGRAMS COMMITTEE RECOMMENDS APPROVAL OF RECOLOGY (FORMERLY NORCAL WASTE INC.) AS THE COLLECTION CONTRACTOR

Report: City Manager Jerry Gruber

Recommendation: Consider the Environmental Programs Committee recommendation to approve Recology (Formerly Norcal Waste Inc.) as the Collection Contractor for the Town of Atherton

City Manager Gruber gave a brief background report on the item.

Council Member Marsala stated that a number of agencies have approved this and felt that this should be approved soon in order to meet the deadline to order trucks.

Mayor Carlson expressed his reservation in approving this contractor until responses to the recent Grand Jury report regarding South Bay Waste Management Authority (SBWMA) are received. Carlson would like to wait and see if any agencies are reconsidering. Council concurred.

Kevin McCarthy, Executive Director SBWMA, stated that the Board will vote on a response to the Grand Jury on July 23rd and he has not heard that any agencies plan to reconsider.

John Zirelli, Recology, suggested that Council allow their staff to move forward with discussions on operations in order to meet the October 1st deadline to order trucks.

Vice Mayor McKeithen said she would support the City Manager moving forward with informal discussions on operations with Recology but no formal approval will be given until the next Council meeting. Council concurred.

Mayor Carlson suggested that the Environmental Programs Committee discuss tipping fees at the next meeting.

No action taken.

29. ENVIRONMENTAL PROGRAMS COMMITTEE RECOMMENDS APPROVAL OF AN APPROPRIATE SURVEY TO GAUGE RESIDENT PREFERENCES FOR SERVICE LEVELS AS THE COLLECTION CONTRACT IS NEGOTIATED

Report: City Manager Jerry Gruber

Recommendation: Consider the Environmental Programs Committees recommendation for approving an appropriate survey to gauge resident preferences for service levels as the collection contract is negotiated

Council Member Marsala stated that a survey is not needed at this time and that the Environmental Programs Committee will bring a recommendation to the Council if it is needed in the future.

No action taken.

30. ENVIRONMENTAL PROGRAMS COMMITTEE RECOMMENDS CITY COUNCIL RECONSIDER THEIR VOTE AND APPROVE BOND FINANCING FOR THE SHOREWAY FACILITY IN VIEW OF BETTER COST NUMBERS THAT ADDRESS COUNCIL'S CONCERNS

Report: City Manager Jerry Gruber

Recommendation: Consider the Environmental Programs Committee recommendation to reconsider City Council vote and approve bond financing for the Shoreway Facility

City Manager Gruber gave Council a brief background report on this item.

Mayor Carlson wanted staff to review potential risks in view of these tough economic times. Gruber said that the obligations for each member agency would not be greater then their portion.

Council Member Dobbie suggested waiting until the Board responds to the Grand Jury report. Dobbie said that he was under the assumption that if one member agency defaults the other member agencies are liable to pay for it.

Vice Mayor McKeithen asked why Hillsborough approved the bond financing and then backed out. Kevin McCarthy said the Town of Hillsborough wanted the approved plan of finance to include the use of variable rate debt. The Town also had some other ideas regarding the use of private placement financing to supplement variable rate debt. McCarthy concluded that Hillsborough backed out solely because their finance plan was different then SBWMA.

Kevin Ufret, SBWMA financial advisor, gave Council background on the type of bonds used for financing the Shoreway facility.

MOTION by Marsala, second by Lewis to approve bond financing for the Shoreway Facility as presented in the staff report with a CAP of 6.75%. The motion passed.

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

Mayor Carlson asked Council if they would like to proceed past 10:30 p.m. Council came to a consensus that they would continue past 10:30 p.m.

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

Report: Public Works Director Duncan Jones

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

Council Member Lewis asked if the change order was due to a possible error on the contractor's advice. Public Works Director Duncan Jones said the remedy that created the change order was for the specific problem that was discovered and staff chose not to go as far as the geotechnical work suggested.

MOTION by McKeithen, second by Lewis to approve a Contract Change Order for Independent Construction Co. for Street Reconstruction Phase 5 Project, project number 08-023 in the amount of \$48,798.58. The motion passed.

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

16. APPROVAL OF AGREEMENT WITH CSG CONSULTANTS FOR CODE ENFORCEMENT IN AN AMOUNT NOT TO EXCEED \$45,188

Report: Building Official Mike Wasmann

Recommendation: Approve a Professional Services Agreement with CSG Consultants, Inc. to provide Code Enforcement Services to the Town of Atherton in the amount of \$45,188.00, with a 20% contingency for a total of \$54,250.00 for the fiscal year 2009-010

Council Member Lewis asked how the requests of code enforcement are prioritized. Building Official Mike Wasmann said that the requests are prioritized in regards to life and safety issues such as swimming pools, enclosures, and mosquito abatements.

MOTION by McKeithen, second by Dobbie to Approve a Professional Services Agreement with CSG Consultants, Inc. to provide Code Enforcement Services to the Town of Atherton in the amount of \$45,188.00, with a 20% contingency for a total of \$54,250.00 for the fiscal year 2009-010. The motion passed.

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

31. REQUEST TO ISSUE A REQUEST FOR PROPOSALS (RFP) FOR PROFESSIONAL PUBLIC INFORMATION CONSULTING SERVICES

Report: City Manager Jerry Gruber

Recommendation: Authorize the City Manager to solicit Requests for Proposals (RFP) from qualified consultants, firms, and consulting teams to provide professional public

information consulting services related to public education of services, policy, and programs provided by the Town

Vice Mayor McKeithen asked what the request for proposal is intended for. Assistant City Manager Eileen Wilkerson said it is to provide the public with information on the effects of the upcoming parcel measure using past and present facts, avoiding rhetoric and actions that urge a particular result.

MOTION by Lewis, second by McKeithen to Authorize the City Manager to solicit Requests for Proposals (RFP) from qualified consultants, firms, and consulting teams to provide professional public information consulting services related to public education of services, policy, and programs provided by the Town. The motion passed.

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

13. AWARD OF WATER TOWER LAWN PROJECT AT HOLBROOK PALMER PARK FOUNDATION

Report: Public Works Director Duncan Jones

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

Public Works Director Jones informed Council that a new staff report has been distributed to reflect the lowest bidders at the bid opening which took place the day before.

Council Member Lewis expressed her concern that there are severe water shortages and increases in water rates over then next few years. She added that with the budget cuts we have had to cut landscape maintenance and wondered if there are any other options then installing this lawn. Jones stated that water would come from the Town well.

Council Member Dobbie said that the Atherton Dames raised approximately \$75,000 for this lawn and it will enhance the park.

Council Member Marsala said that staff should look at a policy which would let agencies and foundations know that the Town can not incur the overhead costs for everything that is funded by the agency or foundation.

MOTION by McKeithen, second by Dobbie to award two contracts for the Water Tower Lawn Project, project number 08-026 to SCAPES, INC. (PHASE 1) and J.J. NGUYEN (PHASE 2) the low bidders on the July 14, 2009 bids, for \$28, 775.90 (PHASE 1) and \$48,044.40 (PHASE 2) with a 10% construction contingency of \$7,682.03, for a total authorization of \$84,502.33; and to authorize the City Manager to sign the contracts on behalf of the Town. The motion passed.

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

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

Report: Public Works Director Duncan Jones

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

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

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

32. COUNCIL REPORTS

Council Member Marsala reported that he attended an Environmental Programs Committee meeting earlier that day.

Council Member Dobbie reported that he attended a Holbrook-Palmer Park Foundation meeting and thanked Denise Kuppleman for using her house for the meeting.

33. FUTURE AGENDA ITEMS

Council Member Marsala requested that an item be added to the August Agenda for discussion and action by Council to add a subcommittee or other mechanism to deal with Town facilities outside of the Town Center.

MOTION by Marsala, second by Lewis to add discussion and action by Council to add a subcommittee or other mechanism to deal with Town facilities outside of the Town Center. The motion passed.

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

34. PUBLIC COMMENTS - None

35. ADJOURN

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

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

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

Respectfully submitted,

Theresa DellaSanta
Deputy City Clerk

Draft



Draft Minutes

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

JULY 28, 2009

9:00 A.M.

Town Council Chambers

91 Ashfield Road
Atherton, California

Special Meeting

Mayor Carlson called the meeting to order at 9:04 a.m.

ROLL CALL Lewis, Dobbie, Marsala, McKeithen, Carlson

PUBLIC COMMENTS - None

**AGENDA ITEMS – CONTINUED FROM JULY 15, 2009, REGULAR
CITY COUNCIL MEETING**

12. ADOPTION OF A STREET ADDRESS ASSIGNMENT POLICY

Report: Deputy Planner Lisa Costa Sanders

Recommendation: Adopt Street Address Assignment Policy

(Continued from July 15, 2009 Regular Council Agenda)

Deputy Planner Lisa Costa Sanders informed Council that there have been multiple requests from residents to have more than one address in order to separate the utility bills between the main house and the accessory structures. Costa Sanders reported that staff is recommending adoption of the street address policy to allow only one distinct address per legal dwelling unit.

MOTION by Lewis, second by McKeithen to adopt the address assignment policy as written by staff. The motion passed.

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

22. STATUS UPDATE ON ROAD IMPACT FEE STUDY

Report: Public Works Director Duncan Jones

Recommendation: Accept Status Report from Staff and provide possible direction

(Continued from July 15, 2009 Regular Council Agenda)

Public Works Director Duncan Jones updated Council on the road impact fee study.

A discussion of vendor trucks on Town roads and the deterioration of the roads took place.

Council discussed the scope of work that Kimley Horn will do for the study and the possibility of lowering the fees.

No action taken.

REGULAR AGENDA

1. DISCUSSION AND REVIEW OF DRAFT MASTER FEE SCHEDULE

Report: City Manager Jerry Gruber, Finance Director Louise Ho

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

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

Hahn reviewed and discussed the updated working version of the master fee schedule.

Mayor Carlson adjourned the meeting to closed session at 12:10 p.m.

CLOSED SESSION

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

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

MOTION by Dobbie, second by McKeithen to adjourn to open session. The motion passed unanimously at 12:50 p.m.

Mayor Carlson called the meeting back to order at 1:00 p.m. to continue Item 1.

OPEN SESSION, REGULAR AGENDA CONTINUED

1. DISCUSSION AND REVIEW OF DRAFT MASTER FEE SCHEDULE

Report: City Manager Jerry Gruber, Finance Director Louise Ho

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

Hahn continued reviewing the proposed master fee schedule which included discussion of the current cost recovery amounts and proposed fee amounts based on staff recommendations and prior City Council direction.

A discussion ensued regarding funds designate for building replacement.

Hahn will revise the master fee schedule and bring it back to the regular City Council meeting on August 19th for final approval.

2. CANCEL SEPTEMBER 16, 2009 COUNCIL MEETING AND SET SEPTEMBER 23, 2009 AS SPECIAL CITY COUNCIL MEETING

Report: City Manager Jerome D. Gruber

City Manager Gruber informed Council that the League of California Cities is holding an annual conference starting on September 16th and he recommended canceling the regularly scheduled meeting so Council can attend the conference.

Council discussed their options and chose not to cancel the September 16, 2009 Council meeting.

City Attorney Wynne Furth reported that there was no reportable action from Closed Session.

ADJOURN

Mayor Carlson adjourned the meeting at 1:48 p.m.

Respectfully submitted,

Theresa DellaSanta
Deputy City Clerk



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
AUGUST 3, 2009
6:00 P.M.
Town Council Chambers
91 Ashfield Road
Atherton, California
Special Meeting

Mayor Carlson called the meeting to order at 6:00 p.m.

ROLL CALL Lewis, Dobbie, Marsala, McKeithen, Carlson

PUBLIC COMMENTS - None

REGULAR AGENDA

1. **DISCUSSION AND REVIEW OF DRAFT PRIMARY ARGUMENTS FOR ORDINANCE 581 FOR BALLOT ON NOVEMBER 3, 2009 SPECIAL ELECTION**
 Report: Vice Mayor Kathy McKeithen, Council Member Jim Dobbie
 Recommendation: Accept or Provide Direction for Possible Modification of Draft Primary Argument

Council reviewed the draft primary arguments and made changes. Council agreed that the changes will be made and brought back to a Special City Council meeting on Monday, August 10th for final approval.

PUBLIC COMMENTS - None

ADJOURN

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

Mayor Carlson adjourned the meeting at 7:10 p.m.

Respectfully submitted,

Theresa DellaSanta
Deputy City Clerk



Draft Minutes

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

AUGUST 10, 2009

9:00 A.M.

Town Council Chambers

91 Ashfield Road
Atherton, California

Special Meeting

Mayor Carlson called the meeting to order at 9:04 a.m.

ROLL CALL Lewis, Dobbie, Marsala, McKeithen, Carlson

PUBLIC COMMENTS - None

REGULAR AGENDA

**1. DISCUSSION AND REVIEW OF DRAFT PRIMARY ARGUMENTS FOR
ORDINANCE 581 FOR BALLOT ON NOVEMBER 3, 2009 SPECIAL
ELECTION**

Report: Mayor Carlson, Vice Mayor Kathy McKeithen, Council Member Jim Dobbie

Recommendation: Accept or Provide Direction for Possible Modification of Draft Primary Arguments

Council reviewed the argument written by Vice Mayor McKeithen and Council Member Dobbie for the following measure:

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

Council made changes and approved the finalized argument for the ballot.

Council reviewed the argument written by Mayor Carlson for the following measure:

“In accordance with past practice, shall the Town’s appropriations limit be increased by one and a half times the amount of any voter-approved parcel tax for four years?”

Council made changes and approved the finalized argument for the ballot.

Copies of the primary arguments for each measure are available in the City Clerk’s office.

2. AWARD OF CONTRACT TO TRAMUTOLA/SIDEWALK STRATEGIES FOR PROFESSIONAL PUBLIC INFORMATION CONSULTING SERVICES IN AN AMOUNT NOT TO EXCEED \$24,000.00 PLUS A TWENTY PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$28,800.00

Report: City Manager Jerome D. Gruber

Recommendation: Approve a professional services agreement with Tramutola/Sidewalk Strategies for professional public information consulting services related to public education of services, policy, and programs provided by the Town and that the City Council authorize the City Manager to execute an agreement in the amount not of \$24,000.00, with a 20% contingency for a total of \$28,800.00.

Council was concerned that there was no scope of work in the proposal and no formal contract for approval.

Council tabled this item to the August 19th regular City Council meeting.

3. APPOINTMENT OF TWO COUNCIL MEMBERS TO AD HOC COMMITTEE TO ADVISE CITY MANAGER AND PUBLIC INFORMATION CONSULTANT ON ESTABLISHMENT OF PUBLIC INFORMATION PROGRAM

Report: City Manager Jerome D. Gruber

Recommendation: To Be Determined

MOTION by Marsala, second by Lewis to appoint Mayor Jerry Carlson and Council Member Elizabeth Lewis to the ad hoc committee to advise the City Manager on establishment of a public information program. The motion passed.

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

PUBLIC COMMENTS - None

ADJOURN

Mayor Carlson adjourned the meeting at 10:30 a.m.

Respectfully submitted,

Theresa DellaSanta
Deputy City Clerk

**TOWN OF ATHERTON
CLAIMS LIST JULY 2009**

	07/11/09	07/28/09	07/29/09	Amt
Payroll Checks #	13578-13587	13648-13679	13740-13742	\$ 116,513
Direct Deposit	13588-13647	13680-13739		282,393
Electronic Transfer				105,809
A/P Checks #	28641-28715			<u>563,541</u>
			JULY 09 TOTAL	\$1,068,256

I, Jerome D. Gruber, City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 13578-13742 (payroll), 28641-28715 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$1,068,256 are true and correct, and that there are sufficient funds for payment.

Jerome D. Gruber
City Manager

The above claims, check numbers 13578-13742 (payroll), 28641-28715 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$1,068,256 are true and correct, and are authorized for payment.

Jerry Carlson
Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	\$934,795
105	Tennis	1,073
201	Special Parcel Tax	61,850
202	Transportation	-
203	Gas Tax	-
210	Road Construction Impact Fees	-
211	Park Grants	696
213	Library	10,807
401	General Capital Projects	-
402	Storm Drainage	-
403	Atherton Channel District	-
406	Facilities Construction	2,903
610	Vehicle Replacement	29,205
611	Computer Maint. & Replacement	5,164
612	Administrative Services	24,665
614	Worker's comp insurance	-
715	Evans Estate	-
716	Flex Spending	-
740	Tree Committee	-
	TOTAL	\$1,068,256

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028642	07/01/09	CALPERS HEALTH BENEFITS DIV	07/01/09	378	NON-DEPARTMENTAL	Payroll Benefit	47,670.04	TOTAL ACTIVE JULY 09
					Building	Retiree Health	410.11	RETIREE - BLDG DEPT JULY 09
					City Manager	Retiree Health	2,797.23	RETIREE-ADMIN DEPT JULY 09
					DPW - Engineering	Retiree Health	936.36	RETIREE-PUBLIC WORKS JULY 09
					DPW - Engineering	Retiree Health	275.71	RETIREE PUBLIC WORKS PARKS JULY 09
					Finance	Retiree Health	476.48	RETIREE-FINANCE JULY 09
					Police	Retiree Health	10,017.77	RETIREE-POLICE DEPT JULY 09
					Non-Department	Health Insuranc	288.77	ADMIN FEE JULY 09
						Check Totals	62,872.47	
028643	07/01/09	VISION SERVICE PLAN ATTN: A	07/01/09	002370650001	NON-DEPARTMENTAL	Payroll Benefit	765.25	VISION BENEFITS JULY 09
						Check Totals	765.25	
028654	07/15/09	CA STATE DISBURSEMENT UNIT	07/01/09	JUNE27-09	NON-DEPARTMENTAL	Payroll Deducti	100.62	06/14/09-06/27/09
					NON-DEPARTMENTAL	Payroll Deducti	339.80	06/14/09-06/27/09
						Check Totals	440.42	
028655	07/15/09	PUBLIC EMPLOYEES RETIREMENT	07/01/09	JUNE27-09	NON-DEPARTMENTAL	Payroll Deducti	4,268.90	PERS 06/14/09-06/27/09 EE
					NON-DEPARTMENTAL	Payroll Benefit	47,339.97	PERS 06/14/09-06/27/09 ER
						Check Totals	51,608.87	
028656	07/15/09	TEAMSTERS LOCAL 856 H & W	07/01/09	JULY09	NON-DEPARTMENTAL	Payroll Benefit	6,721.00	JULY 09 DENTAL INSURANCE
						Check Totals	6,721.00	
028657	07/15/09	TEAMSTERS UNION LOCAL 856	07/01/09	JUNE27-09	NON-DEPARTMENTAL	Payroll Deducti	401.55	LOCAL 856 JUNE14-JUNE 27 PR
						Check Totals	401.55	
028664	07/16/09	39 LABURN LLC	06/26/09	39 LABURNUM	NON-DEPARTMENTAL	Bus Lic Refund	12,780.00	BATCH 11 REFUND #22
						Check Totals	12,780.00	
028665	07/16/09	A-A LOCK & ALARM INC	06/15/09	212651	DPW - Engineering	Construction Ma	13.44	LOCK REPAIR PARTS, REAR PERMIT CENTER DO

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028666	07/16/09	A-A RENTALS INC	06/23/09	509726	DPW - Engineering	Check Totals	13.44	
			06/08/09	508868	DPW - Engineering	Rent - Tools &	145.00	CRACK SEAL EQUIPMENT RENTAL
			06/18/09	509231	DPW - Engineering	Rent - Tools &	126.00	TRENCHER USED TO INSTALL IRRIGATION NEXT
			06/19/09	509521	DPW - Engineering	Rent - Tools &	750.00	RENTAL OF AIR COMPRESSOR
						Rent - Tools &	33.00	RENT CHIPPING HAMMER FOR SIGN INSTALLATI
						Check Totals	1,054.00	
028667	07/16/09	ACCOMTEMP FILE 73484	06/29/09	23967219	Finance	Temporary Help	2,195.60	ACCOUNTANT J.PAN 6/22-6/26/09
						Check Totals	2,195.60	
028668	07/16/09	DANIEL AMADOR	06/15/09	06.13.09	NON-DEPARTMENTAL	Park Deposits	600.00	REFUND EVENT DATE 06/13/09
						Check Totals	600.00	
028669	07/16/09	AT&T CALNET 2	06/20/09	689243	DPW - Engineering	Communication (	84.20	325-1105 05/20-06/19/09
						Check Totals	84.20	
028670	07/16/09	BLUE WATER POOLS	06/23/09	189 HAWTHORN	NON-DEPARTMENTAL	Bus Lic Refund	727.20	BATCH 10 REFUND #21
					NON-DEPARTMENTAL	Bus Lic Refund	201.60	BATCH 10 REFUND #21
						Check Totals	928.80	
028671	07/16/09	JOSEPH COMARTIN	06/19/09	78 ALEJANDRA	NON-DEPARTMENTAL	Bus Lic Refund	90.00	BATCH 09-A REFUND #18
						Check Totals	90.00	
028672	07/16/09	CREATIVE HABITAT, INC	06/19/09	54 BARRY	NON-DEPARTMENTAL	Bus Lic Refund	15,489.20	BATCH 09-B REFUND #19
						Check Totals	15,489.20	
028673	07/16/09	DOUGLAS LANDSCAPE CONSTRUCT	06/23/09	82 MONTE VIS	NON-DEPARTMENTAL	Bus Lic Refund	432.00	BATCH 10 REFUND #20
						Check Totals	432.00	

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028674	07/16/09	KATHI DU BOIS	07/16/09	DUBOIS-07110	NON-DEPARTMENTAL	Park Deposits	1,000.00	REFUND EVENT DATE 07/11/09
						Check Totals	1,000.00	
028675	07/16/09	EMBARCADERO PUBLISHING CO	05/31/09	05.31.09	NON-DEPARTMENTAL Planning Department	Advertising/Pub Advertising/Pub	464.00 232.00	AD FOR BIDS, LOS LOMITAS SAFE ROUTE TO S NOTICE OF PUBLIC HEARING-ZONING CODE UPD
						Check Totals	696.00	
028676	07/16/09	MICHAEL FRUMKIN	06/15/09	05.23.09	NON-DEPARTMENTAL	Park Deposits	500.00	REFUND EVENT DATE 5/23/09
						Check Totals	500.00	
028677	07/16/09	PETER GODDEN	07/16/09	GODDEN-07040	NON-DEPARTMENTAL	Park Deposits	700.00	REFUND EVENT DATE 07/04/09
						Check Totals	700.00	
028678	07/16/09	GOLDFARB & LIPMAN ATTORNEYS	06/19/09	94156	Planning Department	HOUSING ELEMENT	538.75	HOUSING ELEMENT ASSISTANCE MAY 09
						Check Totals	538.75	
028679	07/16/09	HARRIS COMPUTER SYSTEMS	05/31/09	MN002237	NON-DEPARTMENTAL	Equipment Maint	1,634.65	TECHNICAL SOFTWARE ASSISTANCE JUNE 2009
						Check Totals	1,634.65	
028680	07/16/09	HORIZON	06/23/09	12385024-00	DPW - Engineering	Landscape Suppl	115.84	INDUCTIVE AMPLIFIER & TRACER TONE GENERA
			06/15/09	12383789-00	DPW - Engineering	Minor Tools & E	72.46	UNIVERSAL KEY RING FOR CONTROL BOX
			06/16/09	12383956-00	DPW - Engineering	Construction Ma	4.00	TURFGRO 12 X 12 SWING ASSY
			06/24/09	12385148-00	DPW - Engineering	Construction Ma	61.56	JUMBO VALVE BOX FOR COVER
			06/16/09	12383884-00	DPW - Engineering	Construction Ma	174.45	RAINBIRD NOZZLES
						Check Totals	428.31	
028681	07/16/09	I.M.P.A.C. GOVERNMENT SERVI	06/22/09	5424/06-09	Building	Office Supplies	44.78	RUBBER STAMP, BLDG DEPT
028681	07/16/09	I.M.P.A.C. GOVERNMENT SERVI	06/22/09	5465/06-09	Police	Other Supplies	35.90	BOOK AND RELEASE STAMPS FOR COURT
					Police	Equipment Maint	191.25	DETAIL OFTAURUS PER CHIEF NIELSEN
					Police	Machinery & Equ	33.82	BATTERY FOR IN CAR VIDEO UPS
					Police	Equipment Maint	277.79	GAS MASK FILTERS FOR SGT KOCKLER
					Police	Other Supplies	422.79	INKJET TONER, LASERJET TONER

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
					Police	Machinery & Equ	27.30	ROUTER FOR TRAILER COMPUTER
					Police	Machinery & Equ	27.30	ROUTER FOR TRAILER COMPUTER
					Police	Machinery & Equ	141.29	RECORDER FOR INTERVIEWS ROOM
					City Manager	Special Events	177.58	SHERMAN HALL EMPLOYEE OF THE QUARTER
					City Manager	Special Events	8.77	SHERMAN HALL EMPLOYEE OF THE QUARTER
028681	07/16/09	I.M.P.A.C. GOVERNMENT SERVI	05/22/09	5465/05-09	Police	Office Supplies	208.65	INK FOR PRINTER IN DISPATCH
					Police	Other Supplies	85.74	POWER STRIPS FOR TRAILER SETUP
					Police	Other Supplies	751.91	INK FOR COLORJET PRINTER, CLEANING SUPPL
					Police	Other Supplies	214.28	STAPLER, POST-ITS, CLEANING SUPPLIES
					Police	Other Supplies	93.73	FLAGS FOR IN FRONT OF P.D.
028681	07/16/09	I.M.P.A.C. GOVERNMENT SERVI	06/22/09	0596/06-22	Police	Equipment Maint	87.32	PD/HP PARK FOUNDATION TEAM BUILDING SUPP
028681	07/16/09	I.M.P.A.C. GOVERNMENT SERVI	06/22/09	5432/06-09	Police	Office Supplies	97.53	INK CARTRIDGES
					Police	Training - POST	175.00	CONFERENCE-WOMEN IN LE, K.NICHOLS 11/09
					Police	Other Contract	88.95	ENERSECT ONLINE MAY 09
					Police	Conferences	101.44	CCW SHOOT AND BREAKFAST WITH RETIRED PER
028681	07/16/09	I.M.P.A.C. GOVERNMENT SERVI	06/22/09	4324/06-09	City Manager	Computer Suppli	15.00	CONSTANT CONTACT WEBSITE
028681	07/16/09	I.M.P.A.C. GOVERNMENT SERVI	06/22/09	0612/06-09	Police	Office Supplies	24.69	USB CABLE, DISPATCH
					Police	Office Supplies	10.87	(11) PIECE COMPUTER TOOL SET, DISPATCH
					Police	Office Supplies	37.10	FOLDING MAGNIFIER, VELCRO HOLD DOWN STRI
028681	07/16/09	I.M.P.A.C. GOVERNMENT SERVI	06/22/09	4832/06-09	NON-DEPARTMENTAL	Computer Equipm	39.00	IT BACK UP FOR TOWN WEBSITE FILES
					Finance	Computer Equipm	31.50	IT BACK UP BATTERY, L.COLLIAU
					City Manager	Conferences	300.00	CONFERENCE JPA, E. WILKERSON 7/7-7/11/09
					City Manager	Conferences	86.90	LODGING, JPA CONF. E.WILKERSON 7/7-7/11/
					City Manager	Special Events	50.00	EMPLOYEE OF QTR GIFT CERTIFICATE, S.HALL
					City Council	Conferences	221.60	CITY COUNCIL DINNER 6/17/09
						Check Totals	4,109.78	
028682	07/16/09	IDEAL R.V. AND TRAILER	06/19/09	0024876	DPW - Engineering	Other Supplies	89.08	PROPANE FOR OUTDOOR HEATERS HP PARK
						Check Totals	89.08	
028683	07/16/09	IMAGE SOURCE	05/28/09	38	DPW - Engineering	Other Supplies	200.00	RENTAL OF (2) PA SYSTEMS
						Check Totals	200.00	
028684	07/16/09	CHARLES MOLDOW	07/14/09	86BROADACRES	NON-DEPARTMENTAL	Bus Lic Refund	10,426.50	BF#14 REFUND#25

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028685	07/16/09	MOHAMMAD MORTAZAVI	07/16/09	49FAIRVIEW	NON-DEPARTMENTAL	Check Totals	10,426.50	
						Bus Lic Refund	19,373.38	B#15 REFUND#26
						Check Totals	19,373.38	
028686	07/16/09	MUNI SERVICES LLC	06/25/09	IN-0018995	NON-DEPARTMENTAL	Other Contract	15,000.00	CONSULTING-REFUND PROCESSING SERVICE FEE
028686	07/16/09	MUNI SERVICES LLC	07/16/09	SARAH MUSTRA	NON-DEPARTMENTAL	Business Licens	125.00	BUSINESS LICENSE C3,
028686	07/16/09	MUNI SERVICES LLC	07/16/09	MEALSONWHEEL	NON-DEPARTMENTAL	Business Licens	75.00	BUSINESS LICENSE C4,
028686	07/16/09	MUNI SERVICES LLC	07/16/09	BURKETTSPPOOL	NON-DEPARTMENTAL	Business Licens	275.00	BUSINESS LICENSE C1
						Check Totals	15,475.00	
028687	07/16/09	NBS	05/29/09	S05290916-JH	NON-DEPARTMENTAL	Other Contract	9,665.00	PROFESSIONAL/CONSULTING SERVICE FOR A CO
						Check Totals	9,665.00	
028688	07/16/09	J.J. NGUYEN INC	06/16/09	PAYMENT #1	NON-DEPARTMENTAL	Other Contract	61,849.86	HOLBROOK PALMER PARK FOUNTAIN PROJECT NU
						Check Totals	61,849.86	
028689	07/16/09	PACIFIC PENINSULA GROUP	06/12/09	VARIOUS	NON-DEPARTMENTAL	Bus Lic Refund	27,099.20	BATCH 08 REFUND #17
					NON-DEPARTMENTAL	Bus Lic Refund	28,453.70	BATCH 08 REFUND #17
					NON-DEPARTMENTAL	Bus Lic Refund	17,965.10	BATCH 08 REFUND #17
						Check Totals	73,518.00	
028690	07/16/09	PENINSULA UNIFORMS & EQUIPM	06/30/09	43762	Police	Uniforms	98.16	LEATHER GLOVES (2) PR, MARKS
						Check Totals	98.16	
028691	07/16/09	PETTY CASH	07/15/09	07.15.09	Police	Training - POST	11.14	REIMB MEAL, D.DEVLUGT K-9 LEGAL UPDATE 3
					Police	Gas & Oil	11.81	REIMB MILEAGE, D.DEVLUGT K-9 LEGAL UPDAT
					Police	Conferences	8.00	REIMB BRIDGE TOLLS PEACE OFFICER MEMORIA
					Police	Training - POST	13.87	REIMB MEALS SUICIDE TRAINING S.HALL 5/28
					Police	Other Supplies	5.97	BIRTHDAY CARDS, P.D.

Check#	Check Dt	Vendor Name	Inv. Date	Inv #	Department	GL Account	Amounts	Detail Description
028692	07/16/09	PG & E	06/24/09	9166302556-6	NON-DEPARTMENTAL	Utilities - Elec	50.79	ELECTRIC LIBRARY 5/27-6/24/09
			06/02/09	5678831191-0	NON-DEPARTMENTAL	Utilities - Elec	801.06	ELECTRIC TOWN HALL 4/25-5/26/09
			06/24/09	7457969332-1	Building	Utilities - Elec	390.35	ELECTRIC BLDG DEPT 4/25-5/26/09
			06/24/09	9291302548-9	DPW - Engineering	Utilities - Elec	35.05	ELECTRIC P.W. 4/25-5/26/09
			06/26/09	3457969588-2	Police	Utilities - Elec	105.14	ELECTRIC P.D. 5/27-6/24/09
			06/24/09	951312943-9/	DPW - Engineering	Utilities - Elec	2,471.45	ELECTRIC ACTIVITY BLDG 150 WATKINS 4/28-5/28-5
					DPW - Engineering	Utilities - Elec	381.67	ELECTRIC MODULAR BLDG 150 WATKINS 4/28-5/28-5
					DPW - Engineering	Utilities - Elec	474.79	ELECTRIC PUMP HP PARK 4/28-5/28/09
					DPW - Engineering	Utilities - Elec	470.61	SIGNAL MIDDLEFIELD & OAK GROVE 4/28-5/28
					DPW - Engineering	Utilities - Elec	37.78	SIGNAL E/S MIDDLEFIELD 5/1-5/27/09
					DPW - Engineering	Utilities - Elec	55.65	SIGNAL MARSH & MIDDLEFIELD 5/1-5/27/09
					DPW - Engineering	Utilities - Elec	23.37	SIGNAL 99 STATION LANE 5/27-6/24/09
					DPW - Engineering	Utilities - Elec	98.77	STREET LIGHTS 5/2-6/2/09
					DPW - Engineering	Utilities - Elec	3,893.82	SIGNAL EL CAMINO & AHERTON 5/27-6/25/09
					DPW - Engineering	Utilities - Elec	43.37	ELECTRIC 93 DINKELSPIEL STATION LN 5/27-
					DPW - Engineering	Utilities - Elec	196.40	
						Check Totals	9,479.28	
028693	07/16/09	PACIFIC MUNICIPAL CONSULTAN	06/15/09	28697	Planning Department	ZONING CODE UPD	2,031.25	ZONING CODE UPDATE 4/25-5/29/09
						Check Totals	2,031.25	
028694	07/16/09	PROFESSIONAL TREE CARE COMP	06/15/09	13983	DPW - Engineering	Tree Maintenc	1,005.00	1 EA ROUTINE PRUNING, HAZARDOUS TREE REM
					Public Works Park	Tree Maintenc	223.33	1 EA ROUTINE PRUNING, HAZARDOUS TREE REM
					Public Works Park	Contract Lndscp	111.67	1 EA ROUTINE PRUNING, HAZARDOUS TREE REM
						Check Totals	1,340.00	
028695	07/16/09	CITY OF REDWOOD CITY FINANC	04/30/09	BR23048	Police	Gas & Oil	2,826.92	FUEL P.D. 3/16-4/15/09
					DPW - Engineering	Gas & Oil	63.80	FUEL P.W. 3/16-4/15/09
					DPW - Engineering	Gas & Oil	29.93	FUEL PARKS 3/16-4/15/09
					DPW - Engineering	Gas & Oil	640.32	FUEL STREETS 3/16-4/15/09
						Check Totals	3,560.97	
028696	07/16/09	CITY OF REDWOOD CITY INFORM	06/30/09	BR23324	NON-DEPARTMENTAL	Other Contract	2,800.63	I.T. SUPPORT JUNE 09

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
028697	07/16/09	CITY OF REDWOOD CITY FINANC	04/30/09	BR23006	Police	Check Totals	2,800.63	
					DPW - Engineering	Equipment Maint	1,707.97	VEHICLE REPAIR P.D. 3/16-4/15/09
						Equipment Maint	59.75	VEHICLE REPAIR P.W. 3/16-4/15/09
						Check Totals	1,767.72	
028698	07/16/09	REDWOOD PLUMBING	06/24/09	W33030	NON-DEPARTMENTAL	Facility Repair	1,220.00	REPLACED INDOOR BLOWER MOTOR, WHEEL AND
						Check Totals	1,220.00	
028699	07/16/09	SWAN POOLS	06/29/09	96 ATHERTON	NON-DEPARTMENTAL	Bus Lic Refund	180.00	BATCH 12 REFUND #23
						Check Totals	180.00	
028700	07/16/09	TERMINIX PROCESSING CENTER	06/22/09	287365315	NON-DEPARTMENTAL	Facility Repair	108.00	PEST CONTROL, LIBRARY JUNE 09
						Check Totals	108.00	
028701	07/16/09	SUSAN TOMARCHIO	06/15/09	05.30.09	NON-DEPARTMENTAL	Park Deposits	750.00	REFUND EVENT DATE 05/30/09
						Check Totals	750.00	
028702	07/16/09	TOYOTA 101	05/30/09	4T1BB46K29U1	Police	Vehicles & Acce	29,205.09	2009 TOYOTA CAMRY HYBRID, CHIEF CAR
						Check Totals	29,205.09	
028703	07/16/09	TRI-AMERICAN INC	06/24/09	0079189-IN	DPW - Engineering	Construction Ma	914.42	5520 LB CRAFTCO BRAND CRACK SEALANT
						Check Totals	914.42	
028704	07/16/09	U.S. HEALTHWORKS MEDICAL GR	06/12/09	140-004755	DPW - Engineering	Inspection & Te	75.00	DMV PHYSICAL- B.BUTLER
						Check Totals	75.00	
028705	07/16/09	BOSCO OIL INC. DBA VALLEY O	06/22/09	619813	DPW - Engineering	Equipment Maint	823.19	FUEL FOR REAR STORAGE TANK AND FILL BACK
					DPW - Engineering	Equipment Maint	272.58	FUEL FOR P.D & P.W. GENERATORS

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
						Check Totals	1,095.77	
028706	07/16/09	VERIZON WIRELESS	06/21/09	0773733100	City Manager Building	Communication (	49.19	MODEM J.GRUBER 6/22-7/21/09
					Police	Communication (	133.22	CELL PHONES BLDG DEPT 6/22-7/21/09
					DPW - Engineering	Communication (	573.38	CELL PHONES P.D. 6/22*-7/21/09
					DPW - Engineering	Communication (	166.70	CELL PHONES P.W. 6/22-7/21/09
					DPW - Engineering	Communication (	172.74	CELL PHONES STREETS 6/22-7/21/09
					DPW - Engineering	Communication (	41.52	CELL PHONES PARKS 6/22-7/21/09
					DPW - Engineering	Communication (	120.46	CELL PHONES HP PARK 6/22-7/21/09
						Check Totals	1,257.21	
028707	07/16/09	GOTSHAL & MANGES WEIL	06/15/09	06.06.09	NON-DEPARTMENTAL	Park Deposits	1,000.00	REFUND PARK DEPOSIT, 6/6/09
						Check Totals	1,000.00	
028708	07/16/09	DAVID N. WHITE	07/13/09	73MADRONE	NON-DEPARTMENTAL	Bus Lic Refund	6,510.60	B13 REFUND 24
						Check Totals	6,510.60	
028710	07/30/09	CALPERS HEALTH BENEFITS DIV	07/15/09	379	NON-DEPARTMENTAL Building	Payroll Benefit	48,686.64	TOTAL ACTIVE AUG 09
					City Manager	Retiree Health	410.11	RETIREE BLDG DEPT AUG 09
					DPW - Engineering	Retiree Health	2,797.23	RETIREE ADMIN AUG 09
					DPW - Engineering	Retiree Health	936.36	RETIREE PUBLIC WORKS AUG 09
					Finance	Retiree Health	275.71	RETIREE P.W. PARKS DEPT AUG 09
					Police	Retiree Health	476.48	RETIREE FINANCE AUG 09
					Non-Department	Retiree Health	9,112.45	RETIREE POLICE DEPT AUG 09
						Health Insuranc	261.86	ADMIN FEE AUG 09
						Check Totals	62,956.84	
028711	07/30/09	EBCON CORPORATION ERIK R. B	07/21/09	65 ASHFIELD	NON-DEPARTMENTAL	Bus Lic Refund	740.00	BATCH 16 REFUND #27
						Check Totals	740.00	
028712	07/30/09	KAL CONSTRUCTION INC OSKAR	07/21/09	4 CATALPA	NON-DEPARTMENTAL	Bus Lic Refund	1,107.20	BATCH 17 REFUND #28

Check#	Check Dt	Vendor Name	Inv Date	Inv #	Department	GL Account	Amounts	Detail Description
						Check Totals	1,107.20	
028713	07/30/09	KATHLEEN MCKEITHEN	06/18/09	06.01-06.18.	City Council	Conferences	14.85	REIMB MILEAGE PENINSULA TRAFFIC CONGESTI
						Check Totals	14.85	
028714	07/30/09	JOSEPH MERCER	06/27/09	2009	DPW - Engineering	Health Insuranc	220.20	RETIREE HEALTH REIM APRIL-JUNE 09
						Check Totals	220.20	
028715	07/30/09	PUBLIC EMPLOYEES RETIREMENT	07/17/09	07.17.09	NON-DEPARTMENTAL	Payroll Benefit	50,413.39	PERS 06/29/09-07/11/09
					NON-DEPARTMENTAL	Payroll Deducti	3,154.06	PERS W/H 06/29/09-07/11/09
028715	07/30/09	PUBLIC EMPLOYEES RETIREMENT	07/28/09	06.27.09	NON-DEPARTMENTAL	Payroll Benefit	23,809.04	PERS RETRO P.D. 7/13/08-6/27/09
					NON-DEPARTMENTAL	Payroll Deducti	999.47	PERS RETRO W/H P.D. 7/13/08-6/27/09
						Check Totals	78,375.96	
						Grand Totals	563,541.05	



Item 10

Report to Follow



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: LOUISE HO, FINANCE DIRECTOR

DATE: FOR THE MEETING OF AUGUST 19, 2009

SUBJECT: FUND BALANCE POLICY FOR THE GENERAL FUND

RECOMMENDATION

Approve resolution 09-26 authorizing the establishment of a fund balance policy for the General Fund.

DISCUSSION

On June 17, 2009, staff presented to the City Council a draft fund balance policy for the General Fund. At the meeting, the City Council directed staff to seek recommendation from the Finance Committee on the appropriate amounts of reserve. The Finance Committee met on July 16, 2009, and is recommending that the City Council set the budget stabilization reserve and the emergency disaster reserve each at 15% to 20% of annual General Fund operating expenditures. It further recommends that the Town shall not allow the total General Fund reserve to drop below 15% and a four-fifths vote of the City Council to use the two reserves.

Adoption of a written fund balance policy for the General Fund will help to provide direction during budgeting process, especially during challenging times.

FISCAL IMPACT

None

Prepared by:

Approved by:

Louise Ho
Finance Director

Jerome D. Gruber
City Manager

Attachment: Fund Balance Policy for the General Fund (draft)

RESOLUTION NO. 09-26

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
AUTHORIZING THE ESTABLISHMENT OF A GENERAL FUND RESERVE POLICY**

WHEREAS, the City Council of the Town of Atherton would like to improve financial performance, maintain financial solvency, protect against economic uncertainty, and provide a reserve for emergency; and

WHEREAS, the City Council desires to establish a reserve fund policy for the General Fund;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the Town of Atherton does hereby approve the establishment of a General Fund Reserve Policy in the form attached as Exhibit A and by reference made a part hereof.

* * * * *

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 19th day of August, 2009, by the following vote:

*AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:*

Jerry Carlson, MAYOR
Town of Atherton

ATTEST:

Theresa N. DellaSanta, Deputy City Clerk

APPROVED AS TO FORM:

Wynne Furth, City Attorney



Town of Atherton

Fund Balance Policy for the General Fund

Purpose

To help the Town provide quick response to weather economic uncertainty, unexpected situations such as natural disasters, provide sufficient cash flow to avoid the need for short-term borrowing. The policy establishes the appropriate level of reserves which the Town of Atherton will strive to maintain in its General Fund balance; how the target fund balances will be funded; and the conditions under which fund balances can be used.

For purposes of this Policy, the definition of “reserves” is limited to the portion of fund balance that is *unreserved*. Unreserved is to mean not set aside for existing legal obligations of the Town.

1. Amounts Held in Reserve

The Town of Atherton will strive to hold the amounts listed below in General Fund balance, expressed as a percentage of the Town’s annual operating expenditures of the General Fund. These amounts are expressed as goal ranges to recognize that fund balance levels can fluctuate from year to year due to the normal course of Town government operations.

- 15-20% - Budget Stabilization Reserve for economic uncertainty, possible State borrowing of Town’s fund, known or anticipated future obligations.
- 15-20% - Emergency Disaster Reserve for unforeseen events such as sudden and unexpected natural disasters, catastrophic accidents.
- 5-10% - Working Capital to provide sufficient cash flow.

2. Funding Target Fund Balance

Funding of General Fund balance targets will generally come from excess revenues over expenditures or one-time revenues. The reserves will be funded in the following priority order:

- Budget Stabilization
- Emergency Disaster

- Working Capital
- Self-insurance Reserve
- GASB 45 unfunded post-employment benefits other than pensions (retiree health-care)
- Capital improvement projects

3. Conditions for Use of Reserves

The use of reserves shall be limited to unanticipated, non-recurring needs, or anticipated future obligations. Fund balances shall not be used for normal or recurring annual operating expenditures.

The City Manager is authorized to make recommendations to City Council for use of reserves. A fourth-fifth (4/5) vote of the City Council will be required to use reserves. Any recommendation shall be accompanied by a plan for the replenishment of the reserves to the City Council.

In no circumstances shall the total General Fund reserve balance drop below 15% of the Town's annual operating expenditures for the General Fund.



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 19, 2009

SUBJECT: ADOPTION OF A RESOLUTION 09-27 AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH CALTRANS FOR FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) PROGRAM FUNDING FOR THE ATHERTON AVENUE REHABILITATION PROJECT

RECOMMENDATION:

Adopt Resolution 09-27 authorizing the City Manager to execute agreements with Caltrans for Federal American Recovery and Reinvestment Act of 2009 (ARRA) Program funding for the Atherton Avenue Rehabilitation Project

INTRODUCTION:

The Town has been awarded ARRA funding for Atherton Avenue for \$392,000. In order to receive reimbursement under this program, various funding agreements must be signed by the Town. Caltrans requires a resolution specifically authorizing the City Manager to sign these agreements.

FISCAL IMPACT:

There is no fiscal impact of this action.

Prepared By:

Approved:

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

Jerome D. Gruber
City Manager

Attachments: Resolution

RESOLUTION 09-27

AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH CALTRANS FOR FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) PROGRAM FUNDING FOR THE ATHERTON AVENUE REHABILITATION PROJECT

WHEREAS, the Town of Atherton is eligible to receive Federal funding for certain Transportation Projects through the California Department of Transportation (Caltrans); and

WHEREAS, Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and Fund Transfer Agreements need to be executed with Caltrans before such funds could be claimed, and;

WHEREAS, the Town of Atherton wishes to delegate authorization to execute these agreements and any amendments thereto to the City Manger:

NOW, THEREFORE, BE IT RESOLVED by the City Council that the Town of Atherton that the City Manager be authorized to execute all Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements and any amendments thereto with Caltrans for the Atherton Avenue Rehabilitation Project

* * * * *

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 this 19th day of August, 2009, by the following vote:

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

ATTEST:

Jerry Carlson, MAYOR
TOWN OF ATHERTON

Eileen Wilkerson, City Clerk

APPROVED AS TO FORM:

Wynne S. Furth, City Attorney



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 19, 2009

**SUBJECT: ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE
OF COMPLETION AND APPROVAL OF CONTRACT CHANGE
ORDERS IN THE AMOUNT OF \$7,183.50 FOR PROJECT
NUMBER 08-006.**

RECOMMENDATION

Pass a motion accepting work, authorizing recording of a notice of completion and approving contract change orders in the amount of \$7,183.50 for the Holbrook-Palmer Park Main Lawn Fountain Project Number 08-006.

INTRODUCTION

The Council awarded a contract in February 2009 to JJ Nguyen, Inc. for \$68,637.70, with a \$6,863.77 construction contingency, for a total authorized amount of \$75,501.47. Work under the contract has been completed.

ANALYSIS

The original contract price was for \$ 68,637.70. There were 3 field directive change orders totaling \$7,183.50 bringing the total contract to \$75,821.20. The contract changes were as follows:

- | | |
|--|-------------|
| 1. Original Contract | \$68,637.70 |
| 2. Change Order No. 1 – Reroute electrical box to main house
for additional power | \$ 3,967.50 |
| 3. Change Order No. 2 – Epoxy fountain | \$ 1,846.00 |

4. Change Order No. 2 – Install additional irrigation for new lawn \$ 1,370.00

TOTAL \$75,821.20

FISCAL IMPACT

Funding for this project in the amount of \$105,000 is included in the FY 08/09 budget. The final cost of this segment of work is \$75,821.20 less than the budget estimate.

CONCLUSION:

It is appropriate for the Council to accept the work and authorize recording a Notice of Completion at this time.

Prepared By:

Approved:

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

Jerome D. Gruber
City Manager

Attachment: Notice of Completion
Certificate of Completion

RECORD REQUESTED BY:

TOWN OF ATHERTON
AND WHEN RECORDED MAIL TO:

CITY CLERK, TOWN OF ATHERTON

91 ASHFIELD ROAD
(Street Address)
ATHERTON, CALIFORNIA 94027
(City, State and Zip Code)

No fee pursuant to Government Code Section 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TOWN OF ATHERTON
NOTICE OF COMPLETION

HOLBROOK-PALMER PARK MAIN HOUSE LAWN FOUNTAIN
PROJECT NO. 08-006
ATHERTON, CALIFORNIA

NOTICE IS HEREBY GIVEN THAT Duncan L. Jones, Engineer of Work for the Town of Atherton, County of San Mateo, California, on the 19th day of August 2009 did file with the City Clerk of said Town a Certificate of Completion for the work described in the construction contract awarded to JJ Nguyen, Inc. on the 18th day of February, 2009, said contract being executed on the 18th day of March 2009.

That said work and improvements were accepted as completed on the 10th day of July, 2009 and that acceptance for completion of said work was ordered by Motion of the City Council of said Town, adopted on the 19th day of August, 2009, and that the name of the surety on the Contractor's bond for performance, labor and materials on said project is Western Surety Company, PO Box 5077, Sioux Falls, South Dakota 57117-5077.

That said work and improvements consisted of Reinstalling Historic Fountain and Landscaping as described in the plans and specification approved by the City Council of the Town of Atherton pursuant to motion, adopted the 18th day of September, 2008.

That I, Duncan L. Jones, City Engineer of the Town of Atherton, am authorized by said Motion to execute and file this notice with the County Recorder of the County of San Mateo.

BY: _____
City Engineer

ATTEST: _____
City Clerk

Date

Date

I declare under penalty of perjury that the foregoing is true and correct.

(Date and Place) (Signature)



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 19, 2009

**SUBJECT: APPROVAL OF PLANS AND SPECIFICATIONS AND
AUTHORIZATION TO ADVERTISE THE HOLBROOK-PALMER
PARK MASTER IRRIGATION PLAN UPGRADES AND SECOND
PARK WELL PROJECT NUMBER 09-006**

RECOMMENDATION:

Approve the plans and specifications and authorize advertisement for bids for the Holbrook-Palmer Park Master Irrigation Plan Upgrades and Second Park Well Project, Project No. 09-006.

INTRODUCTION:

The FY 2008-09 adopted Capital Improvement Program includes funds for constructing the Holbrook-Palmer Park Master Irrigation Plan Upgrades and Second Park Well Project. The need for this project resulted from the age of the existing system and the need to provide additional irrigation for existing landscape and proposed landscaping projects.

ANALYSIS:

The Holbrook-Palmer Park Master Plan was approved by Council in April 2005. Many of the projects included in the Master Plan will require additional water demand or modified irrigation configuration. There is a desire to bring forward the Water Tower Lawn project, which will have a high additional water demand because there is currently very little vegetation and no irrigation where the project is proposed. As discussed at the joint City Council/Park and Recreation Commission meeting on August 25, 2008, in order to effectively implement the Water Tower Lawn Project and other Landscape Master Plan

projects, an overall irrigation plan needs to be developed. There was agreement that the underground infrastructure should be designed and constructed in phases as the projects are implemented.

The Master Irrigation Plan will provide a grid of main pipelines sized sufficient for all landscaping proposed in the Landscape Master Plan. All existing irrigation systems will be connected to the master piping. The pipes will be installed with connection points and sufficient wiring for each additional landscape area irrigation system to be connected.

The master piping will be connected to the existing well, located in the corporation yard, and a new well will be installed adjacent to the playground restrooms. The two wells will be adequate to supply the water demand at any point in the park at all times.

The Holbrook-Palmer Park Master Irrigation Plan Upgrades and Second Park Well project is budgeted for construction in FY 2009-10. Kikuchi & Associates prepared the design for the project. The project plans and specifications are ready to be advertised for construction.

FISCAL IMPACT:

Parcel Tax funds in the amount of \$200,000 are budgeted for this project in FY 2009-10. The Engineer's Estimate for the Holbrook-Palmer Park Master Irrigation Plan Upgrades and Second Park Well Project, prepared by Kikuchi & Associates, is \$234,400. In addition, a 10% contingency of \$23,440 would bring the total estimate to \$257,840. Additional funds are available from savings in the Water Tower Lawn project (approximately \$20,000) and the Atherton Avenue project (approximately \$250,000 budgeted from Road Impact fees which will not be needed and can replace Parcel Tax funds on Street Reconstruction projects). It is also anticipated that with the current bid environment, bids may come in below the estimated and budgeted amounts. The project is scheduled to receive bids in September and award the contract at the September 16, 2009 City Council meeting.

Prepared By:

Approved:

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

Jerome D. Gruber
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: EILEEN M. WILKERSON, ASSISTANT CITY MANAGER
DATE: CITY COUNCIL MEETING OF AUGUST 17, 2009
SUBJECT: REJECT CLAIM OF ANTHONY NICOSIA

RECOMMENDATION

Adopt Resolution 09-28 rejecting claim of Anthony Nicosia.

BACKGROUND

The Town received a claim filed by Anthony Nicosia who was struck by a falling tree branch while jogging near Oak Grove and Greenoaks Avenue.

ABAG has recommended that the Town reject the claim of Anthony Nicosia.

FISCAL IMPACT

No fiscal impact.

Attachment: Resolution 09-28 rejecting the claim of Anthony Nicosia

RESOLUTION 09-28

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
REJECTING THE CLAIM OF
Anthony Nicosia**

[Re: Falling Tree Branch]

BE IT RESOLVED by the City Council of the Town of Atherton that the Claim for alleged damages on May 5, 2009 and received July 7, 2009 is hereby rejected.

DULY AND REGULARLY ADOPTED this 19th day of August, 2009

TOWN OF ATHERTON

Jerry Carlson, Mayor

ATTEST

Theresa N. DellaSanta, Deputy City Clerk



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: LOUISE HO, FINANCE DIRECTOR

DATE: FOR THE MEETING OF AUGUST 19, 2009

**SUBJECT: ADOPTION OF RESOLUTION 09-29 APPROVING THE STATEMENT
OF INVESTMENT POLICY FOR FISCAL YEAR 2009-2010**

RECOMMENDATION

Adopt resolution 09-29 approving the Statement of Investment Policy for Fiscal Year 2009-2010.

DISCUSSION

The Town of Atherton is required under the California Government Code to have an annual investment policy. To provide MBIA with a more broad non-discretionary authority in investing Town's funds, the Finance Committee reviewed the proposed Statement of Investment Policy on July 18, 2009, and is recommending that the City Council adopt the Statement of Investment Policy.

The attached Statement of Investment Policy is the same as the Statement of Investment Policy adopted on March 18, 2009, except for adding AAA rated FDIC guaranteed corporate bonds to the medium-term notes.

FISCAL IMPACT

None

Prepared by:

Approved by:

Louise Ho, Finance Director

Jerome D. Gruber, City Manager

Attachment: A Resolution approving the Statement of Investment Policy
Statement of Investment Policy

RESOLUTION NO. 09-29

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON APPROVING THE STATEMENT OF INVESTMENT POLICY FOR
FISCAL YEAR 2009-2010**

WHEREAS, the State Government code establishes various limitations and reporting requirements for the investment of all public funds; and

WHEREAS, Council is required to adopt an investment policy for the investment of Town funds; and

WHEREAS, pursuant to State Law, the City Council reviewed the Town's Investment Policy on August 19, 2009; and

WHEREAS, the City Council wishes to approve the attached Statement of Investment Policy, and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the Town of Atherton does hereby approve Exhibit A attached hereto as Statement of Investment Policy.

* * * * *

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 this 19th day of August, 2009, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Jerry Carlson, MAYOR
TOWN OF ATHERTON

ATTEST:

Theresa DellaSanta, Deputy City Clerk

APPROVED AS TO FORM:

Wynne Furth, City Attorney



Town of Atherton

Statement of Investment Policy

The City Council of the Town of Atherton has adopted this Investment Policy in order to establish the investment scope, objectives, delegation of authority, standards of prudence, reporting requirements, internal controls, eligible investments and transactions, diversification requirements, risk tolerance, and safekeeping and custodial procedures for the investment of the funds of the Town. All Town funds will be invested in accordance with this Investment Policy and with applicable sections of the California Government Code.

This Investment Policy was endorsed and adopted by the City Council on August 19, 2009. It replaces any previous investment policy or investment procedures of the Town.

SCOPE

The provisions of this Investment Policy shall apply to all financial assets of the Town as accounted for in the Town's Comprehensive Annual Financial Report.

All cash shall be pooled for investment purposes. The investment income derived from the pooled investment account shall be allocated to the contributing funds based upon the proportion of the respective average balances relative to the total pooled balance. Investment income shall be distributed to the individual funds not less than annually.

OBJECTIVES

The principal investment objectives of the Town are:

1. Preservation of capital and protection of investment principal.
2. Maintenance of sufficient liquidity to meet anticipated cash flows.
3. Attainment of a market rate of return.
4. Diversification to avoid incurring unreasonable market risks.
5. Compliance with the Town's Municipal Code and with all applicable Town resolutions, California statutes and Federal regulations.

DELEGATION OF AUTHORITY

The management responsibility for the Town's investment program is delegated annually by the City Council to the Treasurer, as provided for in California Government Code Section 53607. The Town's City Manager serves as the Treasurer. The City Manager may delegate the authority to conduct investment transactions and to manage the operation of the investment portfolio to other specifically authorized staff members. No person may engage in an investment transaction except as expressly provided under the terms of this Investment Policy.

The City Manager or designee shall develop administrative procedures and internal controls, consistent with this Investment Policy, for the operation of the Town's investment program. Such procedures shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, or imprudent actions by employees of the Town.

The Town may engage the support services of outside investment advisors with respect to its investment program, so long as it can be demonstrated that these services produce a net financial advantage or necessary financial protection of the Town's financial resources.

PRUDENCE

The standard of prudence to be used for managing the Town's investment program is California Government Code Section 53600.3, the prudent investor standard which states, "When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency."

The Town's overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The Town recognizes that no investment is totally without risk and that the investment activities of the Town are a matter of public record. Accordingly, the Town recognizes that occasional measured losses may occur in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that adequate diversification has been implemented and that the sale of a security is in the best long-term interest of the Town.

The City Manager or designee and authorized investment personnel acting in accordance with established procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that deviations from expectations are reported in a timely fashion to the City Council and appropriate action is taken to control adverse developments.

ETHICS AND CONFLICTS OF INTEREST

Elected officials and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the Town's investment program or could impair or create the appearance of an impairment of their ability to make impartial investment decisions. Employees and investment officials shall subordinate their personal investment transactions to those of the Town. In addition, Town City Council members, the City Manager, and the Finance Director shall file a Statement of Economic Interests each year as required by California Government Code Section 87203 and regulations of the Fair Political Practices Commission.

AUTHORIZED SECURITIES AND TRANSACTIONS

All investments and deposits of the Town shall be made in accordance with California Government Code Sections 16429.1, 53600-53609 and 53630-53686. Any revisions or extensions of these code sections will be assumed to be part of this Investment Policy immediately upon being enacted.

The Town has further restricted the eligible types of securities and transactions as follows:

1. United States Treasury bills, notes or bonds with a final maturity not exceeding five years from the date of trade settlement.
2. Federal Instrumentality (government sponsored enterprise) debentures, discount notes, callable and step-up securities, with a final maturity not exceeding five years from the date of trade settlement, issued by the following only: Federal Home Loan Banks (FHLB), Federal National Mortgage Association (FNMA), Federal Farm Credit Banks (FFCB) and Federal Home Loan Mortgage Corporation (FHLMC).
3. Repurchase Agreements with a final termination date not exceeding 30 days collateralized by U.S. Treasury obligations or Federal Instrumentality securities listed in items 1 and 2 above with the maturity of the collateral not exceeding ten years. For the purpose of this section, the term collateral shall mean purchased securities under the terms of the Town's approved Master Repurchase Agreement. The purchased securities shall have a minimum market value including accrued interest of 102% of the dollar value of the funds borrowed. Collateral shall be held in the Town's custodian bank, as safekeeping agent, and the market value of the collateral securities shall be marked-to-the-market daily.

Repurchase Agreements shall be entered into only with broker/dealers and who are recognized as Primary Dealers with the Federal Reserve Bank of New York, or with firms that have a Primary Dealer within their holding company structure. Primary Dealers approved as Repurchase Agreement counterparties shall have a short-term credit rating of at least A-1 or the equivalent and a long-term credit rating of at least A or the equivalent. Repurchase agreement counterparties shall execute a Town approved Master Repurchase Agreement with the Town. The City Manager or designee shall maintain a copy of the Town's approved Master Repurchase Agreement and a list of the broker/dealers who have executed same.

4. Prime Commercial Paper with a maturity not exceeding 270 days from the date of trade settlement with the highest letter and number rating as provided for by a Nationally Recognized Statistical Rating Organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions in either sub-paragraph A. or sub-paragraph B. below:

A. The entity shall (1) be organized and operating in the United States as a general corporation, (2) have total assets in excess of \$500,000,000 and (3) have debt other than commercial paper, if any, that is rated at least A or the equivalent by a NRSRO.

B. The entity shall (1) be organized within the United States as a special purpose corporation, trust, or limited liability company, (2) have program wide credit enhancements, including, but not limited to, over collateralization, letters of credit or surety bond and (3) have commercial paper that is rated at least A-1 or the equivalent by a NRSRO.

No more than 5% of the Town's total portfolio shall be invested in the commercial paper of any one issuer, and the aggregate investment in commercial paper shall not exceed 25% of the Town's total portfolio.

5. Medium-Term Notes issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States, with a final maturity not exceeding five years from the date of trade settlement, and rated at AAA or the equivalent by a NRSRO. The aggregate investment in medium-term notes shall not exceed 5% of the Town's total portfolio. In addition, AAA rated FDIC guaranteed corporate bonds are herein authorized, within the aforementioned diversification and maturity requirements.
6. State of California's Local Agency Investment Fund (LAIF), pursuant to California Government Code Section 16429.1. The aggregate investment in the pool shall not exceed 50% of the Town's total portfolio.
7. Money Market Funds registered under the Investment Company Act of 1940 that (1) are "no-load" (meaning no commission or fee shall be charged on purchases or sales of shares); (2) have a constant net asset value per share of \$1.00; (3) invest only in the securities and obligations authorized in the applicable California statutes and (4) have a rating of at least AAAM or the equivalent by at least two NRSROs. The aggregate investment in money market funds shall not exceed 20% of the Town's total portfolio.

The foregoing list of authorized securities and transactions shall be strictly interpreted. Any deviation from this list must be preapproved by resolution of the City Council.

INVESTMENT DIVERSIFICATION

The Town shall diversify its investments to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions or maturities. Nevertheless, the asset allocation in the investment portfolio should be flexible depending upon the outlook for the economy, the securities markets and the Town's anticipated cash flow needs.

PORTFOLIO MATURITIES AND LIQUIDITY

To the extent possible, investments shall be matched with anticipated cash flow requirements and known future liabilities. The Town will not invest in securities maturing more than five years from the date of purchase, unless the City Council has by resolution granted authority to make such an investment at least three months prior to the date of investment.

SELECTION OF BROKER/DEALERS

The City Manager or designee shall maintain a list of broker/dealers approved for investment purposes, and it shall be the policy of the Town to purchase securities only from those brokers and the firms they represent. Each approved broker/dealer must possess an authorizing certificate from the California Commissioner of Corporations as required by Section 25210 of the California Corporations Code.

To be eligible, a firm must meet at least one of the following criteria:

1. be recognized as Primary Dealers by the Federal Reserve Bank of New York or have a primary dealer within their holding company structure, or
2. report voluntarily to the Federal Reserve Bank of New York, or
3. qualify under Securities and Exchange Commission (SEC) Rule 15c3-1 (Uniform Net Capital Rule).

The City Manager or designee will select broker/dealers on the basis of their expertise in public cash management and their ability to provide service to the Town's account. Each authorized broker/dealer shall submit and annually update a Town approved Broker/Dealer Information Request form that includes the firm's most recent financial statements.

The Town may purchase commercial paper from direct issuers even though they are not on the approved broker/dealer list as long as they meet the criteria outlined in Item 4 of the Authorized Securities and Transactions section of this Investment Policy.

COMPETITIVE TRANSACTIONS

All investment transactions shall be conducted competitively with authorized broker/dealers. At least three broker/dealers shall be contacted for each transaction and their bid or offering prices shall be recorded.

If the Town is offered a security for which there is no other readily available competitive offering, then the City Manager or designee will document quotations for comparable or alternative securities.

SELECTION OF BANKS

The City Manager or designee shall maintain a list of FDIC insured banks approved to provide depository and other banking services for the Town. To be eligible, a bank shall qualify as a depository of public funds in the State of California as defined in California Government Code Section 53630.5 and shall secure deposits in excess of FDIC insurance coverage in accordance with California Government Code Section 53652.

SAFEKEEPING AND CUSTODY

The City Manager or designee shall select one or more banks to provide safekeeping and custodial services for the Town. A Safekeeping Agreement approved by the Town shall be executed with each custodian bank prior to utilizing that bank's safekeeping services.

Custodian banks will be selected on the basis of their ability to provide services for the Town's account and the competitive pricing of their safekeeping related services.

The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis. All securities shall be perfected in the name of the Town. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

All investment securities, except non-negotiable Certificates of Deposit, Money Market Funds and LAIF, purchased by the Town will be delivered by either book entry or physical delivery and will be held in third-party safekeeping by a Town approved custodian bank, its correspondent bank or its Depository Trust Company (DTC) participant account.

All Fed wireable book entry securities owned by the Town shall be held in the Federal Reserve system in a customer account for the custodian bank which will name the Town as "customer."

All DTC eligible securities shall be held in the custodian bank's DTC participant account and the custodian bank shall provide evidence that the securities are held for the Town as "customer."

PORTFOLIO PERFORMANCE

The investment portfolio shall be designed to attain a market rate of return throughout budgetary and economic cycles, taking into account prevailing market conditions, risk constraints for eligible securities, and cash flow requirements. The performance of the Town's investments shall be compared to the average yield on the U.S. Treasury security that most closely corresponds to the portfolio's weighted average effective maturity. When comparing the performance of the Town's portfolio, its rate of return will be computed net of

all fees and expenses.

REPORTING

Monthly, the City Manager or designee shall submit to the City Council a report of the investment earnings and performance results of the Town's investment portfolio. The report shall include the following information:

1. Investment type, issuer, date of maturity, par value and dollar amount invested in all securities, and investments and monies held by the Town;
2. A description of the funds, investments and programs;
3. A market value as of the date of the report (or the most recent valuation as to assets not valued monthly) and the source of the valuation;
4. A statement of compliance with the investment policy or an explanation for non-compliance; and
5. A statement of the Town's ability to meet expenditure requirements for six months, and an explanation of why money will not be available if that is the case.

POLICY REVIEW

This Investment Policy shall be adopted annually by resolution of the City Council. It shall be reviewed at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity, yield and diversification and its relevance to current law and economic trends. Amendments to this Investment Policy shall be approved by resolution of the City Council.



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: LOUISE HO, FINANCE DIRECTOR

DATE: FOR THE MEETING OF AUGUST 19, 2009

SUBJECT: APPROVAL OF AMENDMENT NO. 2 TO THE CONSULTANT SERVICES AGREEMENT DATED JANUARY 29, 2009, BETWEEN MUNISERVICES, LLC AND THE TOWN OF ATHERTON FOR BUSINESS LICENSE TAX MANAGEMENT AND ADMINISTRATION

RECOMMENDATION

Approve Amendment No. 2 to the consultant services agreement dated January 29, 2009, with MuniServices LLC; and authorize the City Manager to execute the amendment.

DISCUSSION

On January 29, 2009, The Town of Atherton engaged the services of MuniServices, LLC for business license tax management and administration. On April 15, 2009, the City Council approved amendment 1 to change the business license collection process from depositing into a Town bank account to MuniServices' net remit process. Amendment 2 will clean up the language in the original contract to reflect the current practice in Amendment 1 and to ensure that MuniServices is being compensated on each business license certificate issued. The Town currently charges a \$25 processing fee for each license issued.

FISCAL IMPACT

None.

Prepared by:

Approved by:

Louise Ho, Finance Director

Jerome D. Gruber, City Manager

Attachment: Consultant Services Agreement dated January 29, 2009
Amendment No. 1
Amendment No. 2

Amendment No. 2
To Agreement for Business License Tax Management and Administration

This is dated July 20, 2009, and amends the Agreement for Business License Tax Management and Administration Discovery and Audit dated January 29, 2009 ("Agreement") between the Town of Atherton, a municipal corporation of the State of California (Town) and MuniServices, LLC a Delaware limited liability company (Consultant) (collectively, the "Parties").

- When the Agreement was amended the first time there should have also been a change to the language in Section III of Exhibit A, Compensation, sub-part A. Business License Tax Administration & Privatization Services, clarifying payment of the administrative fee.

The parties therefore agree as follows:

- 1. Exhibit A, Section III. Compensation, sub-part A is hereby deleted and replaced with the following:**

MuniServices' fee for providing the Business License Tax Administration Services shall be an annual fee of \$25 per maintained account. Maintained account shall be defined as any account for which a license has been issued *or payment of the administration fee is collected.*

The Annual Fee is adjusted upward at the beginning of each calendar year by the percentage change in the Consumer Price Index - West Urban (CPI-WU) as reported by the Bureau of Labor Statistics. The initial Consumer Price Index used for the first CPI adjustment will be the CPI-WU for the month in which the agreement is fully signed with the first adjustment to occur on January 1, 2012. The adjustments thereafter will be based on the CPI-WU from December of the prior calendar year. Each Annual Fee adjustment will not be less than two percent (2%) or greater than four and one-half percent (4.5%).

- 2. Other terms.** All other terms and conditions of the Agreement remained unchanged.

The parties are signing this Amendment on the date stated in the introductory clause.

MuniServices, LLC

Town of Atherton

By:



Marc Herman
President

By: _____

Name:

Title:

Amendment No. 1
To Agreement for Business License Tax Management and Administration

This amendment number 1 is dated June 2, 2009, and amends the Agreement for Business License Tax Management and Administration Discovery and Audit dated January 29, 2009 ("Agreement") between the Town of Atherton, a municipal corporation of the State of California (Town) and MuniServices, LLC a Delaware limited liability company (Consultant) (collectively, the "Parties").

- Under paragraph B.i. of Exhibit A to the Agreement, the Town and MuniServices agreed that taxes and fees would be remitted as directed by Town into a Town Bank Account. The Town and MuniServices desire to clarify that the nature of that account and the method for payment to MuniServices.

The parties therefore agree as follows:

1. The following is hereby added at the end of section III, Compensation, of Exhibit A of the Agreement:

E. Payment method.

1. *Notwithstanding anything in this agreement to the contrary, the parties agree that Town will participate in MuniServices' net-remit program, which is conducted as follows:*
 - a. *Taxpayers' payments received by MuniServices will be deposited into a general account maintained by MuniServices. The taxpayers' payments deposited into this account will be remitted to the Town on a monthly basis net of MuniServices fees.*
 - b. *MuniServices will send to the Town a remittance package no less frequently than once per month that will contain the taxpayer business license application, copy of the taxpayer payment, other supporting documents received from the taxpayer, a MuniServices generated report identifying each taxpayer payment received and the amount of MuniServices fees attributed to the taxpayer payment, a check made payable to the Town for the amount of fees collected less MuniServices' fees, and an invoice showing our contingency fee or administration fee.*
 - c. *The interest earned on this account will be used by MuniServices to offset the costs of the program.*
 - d. *Should there be any disputed payments, refunds, and returned checks due to taxpayers' insufficient funds, MuniServices will work with Town to mutually resolve these issues. If the resolution results in Town's favor, MuniServices will refund the fee to Town within 10 days of resolution.*
2. *Because of efficiencies gained from the net-remit program, MuniServices will discount its Discovery contingency fees by 10% of the quoted contingency rates, resulting in an effective contingency fee rate of 36% for each service, as long as Town pays all other invoices for MuniServices within 90 days of receiving the invoice and Town remains a participant in the net remit program.*

3. *MuniServices is insured up to \$100,000 for employee theft of Town's property, including Town's monies. MuniServices does not treat the monies remaining in the account after MuniServices removes its fees as MuniServices' assets.*

2. **Other terms.** All other terms and conditions of the Agreement remained unchanged.

The parties are signing this Amendment on the date stated in the introductory clause.

MuniServices, LLC

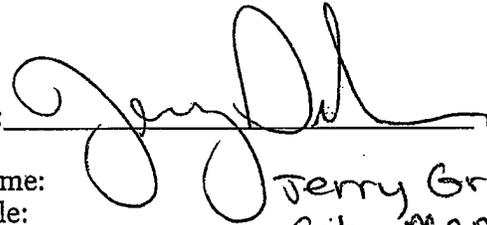
Town of Atherton

By:



Marc Herman
President

By:



Name:
Title:

Jerry Gruber
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: LOUISE HO, FINANCE DIRECTOR

DATE: FOR THE MEETING OF AUGUST 19, 2009

SUBJECT: APPROVAL OF AMENDMENT #1 TO THE CONSULTANT SERVICES AGREEMENT DATED JANUARY 29, 2009, BETWEEN NBS AND THE TOWN OF ATHERTON FOR COST ALLOCATION PLAN, FULL COST RECOVERY STAFF HOURLY RATES, AND COMPREHENSIVE FEE STUDY

RECOMMENDATION

Approve amendment #1 to the consultant services agreement dated January 29, 2009, between NBS and the Town of Atherton for cost allocation plan, full cost recovery staff hourly rates, and comprehensive fee study.

DISCUSSION

On January 29, 2009, The Town of Atherton engaged the services of NBS to prepare a cost allocation plan, full cost recovery staff hourly rates, and comprehensive fee study. Due to the complexity of the project and the additional times and meetings needed to complete the project, NBS is requesting that the City Council approve their request to increase their compensation fee from \$37,400 to \$52,000, an increase of \$14,600. The attached letter from NBS provides detail explanations for the requested increase.

In addition to the above-mentioned services, the Town expanded the scope of NBS services to include review of FY 2001 to FY 2009 Building Department operating results. On March 18, 2009, the City Council approved a \$4,000 mid-year budget adjustment in the Administrative Services Fund to increase the NBS contract from \$37,400 to \$41,400. With the amendment #1, the total NBS contract will change from \$41,400 to \$56,000.

FISCAL IMPACT

The cost of amendment #1 is \$14,600. Currently, this amount is not budgeted in FY 2009-10 General Fund operating budget. A mid-year budget adjustment will be needed to cover this cost. Staff is anticipated that when the Administrative Services Fund (#612) is closed out, there will be available fund for transfer to General Fund to cover this expenditure.

Prepared by:

Approved by:

/s/ Louise Ho

Louise Ho
Finance Director

Jerome D. Gruber
City Manager

Attachment: Consultant Services Agreement dated January 29, 2009
Amendment #1
Request for Amendment to Professional Services Agreement

AMENDMENT #1 TO PROFESSIONAL/CONSULTING SERVICES AGREEMENT

The **PROFESSIONAL/CONSULTING SERVICES AGREEMENT** ("Agreement") by and between the **TOWN OF ATHERTON** ("Town") and **NBS** ("Consultant") dated January 29, 2009, is hereby amended this ____th day of August, 2009, as follows:

1. In consideration of services provided above original work plans, total compensation payable to Consultant shall be increased from \$37,400 to \$52,000, an increase of \$14,600 as described in Exhibit A.
2. For an additional amount of not-to-exceed \$4,000, NBS agrees to perform review of Town's Building Department operating result from FY 2001 to FY 2009 to determine the actual direct and indirect costs of operation including but not limited to cost allocation plan, future building inspection fees liability, and future building replacement reserve fund. A written report will be submitted to the Town to document the review and to present the result at a Council meeting in September 2009.

All other terms of the Agreement shall remain the same.

In Witness Whereof, Town and Consultant have executed this Agreement as of the date first written above.

Town of Atherton

NBS

Jerry Gruber
City Manager

By: _____

Exhibit A

ADDITIONAL CONSULTANT COMPENSATION

Activity	Distribution of Consultant Labor (Hours)				Grand Totals	
	Project Mgr., J. Hahn	Sr. Consultant J. Hahn	Consultant, T. Madsen	Analyst, J. Bero	Consultant Labor (hrs.)	Consultant Costs (\$)
<i>Hourly Rate</i>	<i>\$190</i>	<i>\$150</i>	<i>\$130</i>	<i>\$100</i>		
Additional City Council Meetings:						
6/25/2009	5.0	-	5.0	-	10.0	\$ 1,600
7/28/2009	5.0	-	5.0	-	10.0	1,600
8/19/2009	3.0	-	3.0	-	6.0	960
Supplemental Activities from Additional Meetings:						
Meeting/Presentation Preparation (3)	-	12.0	6.0	4.0	22.0	2,980
Analytical Iterations (2)	-	-	20.0	24.0	44.0	5,000
Analytical Model Training Session	-	6.0	12.0	-	18.0	2,460
TOTAL	13.0	18.0	51.0	28.0	110.0	14,600



August 7, 2009

Louise Ho
Finance Director
Town of Atherton
91 Ashfield
Atherton, CA 94027

Re: Request for Amendment to Professional Services Agreement

Dear Ms. Ho:

The purpose of this letter is to request an amendment to the existing professional services agreement between the Town of Atherton and NBS associated with the Town's Cost Allocation Plan, Full Cost Recovery Hourly Labor Rates, and Comprehensive Fee Study.

The consulting fee agreed upon by the Town and NBS was established as an amount not to exceed \$41,400.00 for a defined scope of services. However, during the course of this study, events outside the control of the NBS project team have led to an elongation of the originally anticipated schedule, resulting in an extended public meeting process. This level of process was not anticipated by NBS when we submitted our original scope of services and estimated our not-to-exceed consulting fee.

The additional efforts incurred by NBS due to the process extension are caused primarily by onsite events in excess of the number of meetings defined in our scope of services. Our scope included preparation for and attendance at a total of two City Council meetings, which we exhausted on April 7th and June 1st. Since then, we have attended Council meetings on June 25th and July 28th, and we are scheduled for a final Council meeting on August 19th. Efforts associated with these additional meetings include attendance at each event, as well as preparation of presentation and written materials (for three of the meetings) and subsequent generation of analytical iterations to respond to direction received (for two of the meetings).

Additionally, the Town has requested an onsite training session in the future use and maintenance of the analytical models developed during this study. Conducting an additional onsite event with staff will exceed the ten onsite (non-Council) events defined in our scope of services and performed already on the following dates: February 23rd, February 24th/26th, March 23rd, April 2nd, April 27th, April 29th, May 13th, May 29th, June 5th, and June 17th.

To cover total efforts associated with the three additional City Council meetings and facilitation of one additional staff event, NBS respectfully requests an amendment to our professional services agreement to allow an additional consulting fee of \$14,600.00. This addition would raise our contract limit from \$41,400.00 to \$56,000.00. A table illustrating the calculation of our requested additional fee is listed on the following page as Exhibit 1.

Thank you for your consideration of our request. Please contact me at 800.676.7516 or jhahn@nbsgov.com with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeanette Hahn', written over a light blue horizontal line.

Jeanette Hahn
NBS Director of Financial Consulting / Atherton Project Manager



Exhibit 1. Calculation of Additional Consulting Fee

Activity	Distribution of Consultant Labor (Hours)				Grand Totals	
	Project Mgr., J. Hahn	Sr. Consultant J. Hahn	Consultant, T. Madsen	Analyst, J. Bero	Consultant Labor (hrs.)	Consultant Costs (\$)
<i>Hourly Rate</i>	\$190	\$150	\$130	\$100		
Additional City Council Meetings:						
6/25/2009	5.0	-	5.0	-	10.0	\$ 1,600
7/28/2009	5.0	-	5.0	-	10.0	1,600
8/19/2009	3.0	-	3.0	-	6.0	960
Supplemental Activities from Additional Meetings:						
Meeting/Presentation Preparation	-	12.0	6.0	4.0	22.0	2,980
Analytical Iterations	-	-	20.0	24.0	44.0	5,000
Analytical Model Training Session	-	6.0	12.0	-	18.0	2,460
TOTAL	13.0	18.0	51.0	28.0	110.0	14,600

TOWN OF ATHERTON
PROFESSIONAL/CONSULTING SERVICES AGREEMENT

This **PROFESSIONAL/CONSULTING SERVICES AGREEMENT**, (this "Agreement") is made and entered into this 29th of January, 2009, by and between the **TOWN OF ATHERTON**, a municipal corporation (hereinafter "Town") and **NBS** (hereinafter "Consultant").

In consideration of the mutual promises contained herein, the parties hereto agree as follows:

Section 1. Term of Agreement

This Agreement shall be for a cost allocation plan, full cost recovery staff hourly labor rates, and comprehensive fee study.

Section 2. Scope of Work

Consultant shall provide Town with the services described in Exhibit A which is attached hereto and incorporated herein by this reference as though set forth in full. The duties and services required of Consultant under this Agreement and pursuant to this Section 2 are referred to throughout the remainder of this Agreement as "the Work."

Section 3. Responsible Individual

Consultant represents and warrants that the execution of this Agreement has been approved by Consultant and that person executing this Agreement on behalf of Consultant has the full authority to do so.

Section 4. Work Schedule

Consultant shall be available to complete each task in a timely manner as specified in the Request for Proposal unless time extension is granted by the Town. Consultant shall not be held responsible for delays caused beyond its reasonable control.

Section 5. Compensation

In consideration of the performance of the Work described in Section 2, Consultant shall be compensated at the rate set forth in Exhibit B which is attached hereto and incorporated herein as though set forth in full. Consultant shall not charge Town for any administrative expenses or overhead, including without limitation, facsimile, mileage and other/or any other expenses incurred by Consultant in connection with Consultant's provision of the Work. Consultant acknowledges and agrees that the compensation to be paid to Consultant under this Section 5 represents the full amount due and owing to Consultant in connection with performance of the Work.

Section 6. Amendments

In the event Town desires to retain Consultant for the performance of additional services, or wishes to delete any services in connection with this Agreement, specifications of such changes and adjustments to compensation due Consultant therefore shall be made only by written and signed amendment to this Agreement.

Section 7. Independent Contractor - Subcontractors

It is specifically understood and agreed that in the making and performance of this Agreement, Consultant is an independent contractor and is not and shall not be construed to be an employee, common law employee, agent or servant of Town. The consultant shall be solely liable and responsible to pay all required taxes and other obligations, including, but not limited to, withholding and Social Security. Consultant acknowledges and agrees that he/she is not entitled to the benefits of civil service status and/or the rights and privileges enjoyed by civil service employees and Consultant hereby waives any and all claims to such rights and/or privileges.

Section 8. Consultant's Responsibility

It is understood and agreed that Consultant has the professional skills necessary to perform the Work, and that Town relies upon the professional skills of the Consultant to do and perform the Work in a skillful and professional manner in accordance with the standards of the profession. Consultant thus agrees to so perform the Work.

Acceptance by Town of the Work, or any of it, does not operate as a release of the Consultant from such professional responsibility. It is further understood and agreed that Consultant has reviewed in detail the scope of the work to be performed under this Agreement and agrees that in his professional judgment, the Work can and shall be completed for a fee within the amounts set forth in Section 5 of this Agreement.

Section 9. Hold Harmless and Indemnification

Consultant shall indemnify, defend and save Town, its officers, elected and appointed officials, employees, contractors and agents harmless from and against any and all liability, claims, suits, actions, damages and/or causes of action of any kind arising out of any bodily injury, personal injury, property damage or in violation of any federal, state or municipal law or ordinance or other cause in connection with the activities of Consultant, or on account of the performance or character of the Work or otherwise related to its performance of this Agreement to the extent that any such liability, claims, suits, actions, damages and/or causes of action arises out of the intentional, negligent or willful misconduct of the Consultant.

Section 10. Insurance

Consultant shall provide proof of insurance coverage during the life of the Contract: (a) Comprehensive General Liability and Automobile Liability Insurance in an amount not less than \$1,000,000 combined single limit applying to bodily injury, personal injury and property damage; (b) professional liability insurance in the amount of \$2,000,000 per claim. Carrier shall provide notice to the Town of any change in or limitation of coverage or cancellation no less than 30 days prior to the effective date. Proof of worker's compensation coverage pursuant to statutory requirement shall also be provided.

Section 11. Compliance with Applicable Laws, Permits and Licenses

Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement.

Section 12. Nondiscrimination

There shall be no discrimination against any employee who is employed in the Work, or against any applicant for such employment because of race, religion, color, sex or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Section 13. Consultant Conflict of Interest

Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement, no persons having any such interest shall be employed.

Section 14. Assignment

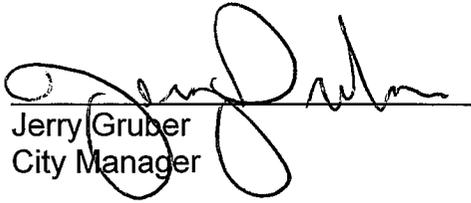
Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of Town.

Section 15. Ownership of Documents

Consultant agrees that all documents produced in the performance of this Agreement shall be available to the Town upon request. The Work shall be used solely for the project for which it was originally intended.

In Witness Whereof, Town and Consultant have executed this Agreement as of the date first written above.

Town of Atherton


Jerry Gruber
City Manager

NBS


By: MICHAEL RENTNER
PRESIDENT & CEO

Exhibit A

SCOPE OF WORK

1. Cost Allocation Plan

Develop a Cost Allocation Plan and Overhead Rates stated as a percentage of direct costs, for all Town Departments and funds.

Develop a model and methodology for gathering data and periodically updating the Cost Allocation Plan and Overhead Rates as new costs are added or old costs are eliminated or modified. The model should be in spreadsheet or database format that automatically recalculates as cost items are input.

Advise Town staff on application of model to future funds, department, programs and activities.

Present a preliminary plan to Town management and adjust as necessary.

Present the Cost Allocation Plan and Overhead Rate Study to the City Council.

2. Full Cost Recovery Staff Hourly Labor Rates

Identify all staff positions whose time can properly be allocated to or among Town departments, funds, programs, activities and/or fees charged for Town services.

Determine each staff position's direct cost (stated in dollars and cents per hour) that includes fringe benefits (stated both in dollars and cents per hour and as a percentage of salary) and overhead rate (stated as a percentage of direct cost).

Review existing programs in place that capture employee time and allocate it to projects.

Develop a model and methodology by which finance staff can gather data and periodically update the staff labor rates as new salaries and pay rates, fringe benefits and other costs are added or old costs are eliminated or modified. The model should be in spreadsheet or database format that automatically recalculates as cost items are input.

Advise Town staff on the application of the model to future funds, departments and programs.

Present a preliminary plan to Town management and adjust as necessary.

Present the Full Cost Recovery Staff Hourly Labor Rate Study to the City Council.

3. Comprehensive Fee Study

Meet and confer with Town staff to gain an understanding of the Town's existing fee structure, current and future development environment, and political considerations.

Conduct a comprehensive review of existing fees and service charges including various administration, planning, police, park programs, building, public works permit fees.

Identify the total cost of providing each Town service at the lowest reasonable activity level (utilizing the cost allocation plan and full cost recovery labor rates).

Where the Town is currently charging for services, compare existing recovery levels and fees with service costs and identify services for which the Town is not currently charging, but could lawfully do so.

Recommend revised and/or new fees and service charges where cost recovery might be appropriate in light of the Town's existing policies and practices, the practices of neighboring cities, and market fee rate.

Recommend appropriate fees and service charges where full cost recovery might be unrealistic or undesirable.

Develop a model and methodology for gathering data and periodically updating the fees and service charges schedules for inflation and as new costs are added and old costs eliminated or modified. The model should be in spreadsheet or database format that automatically recalculates as cost items are input.

Prepare a report that identifies each Town service, its full cost, the costs currently being recovered, and the recommended cost recovery levels. For each activity, the report should define and identify direct and indirect costs.

Prepare a report that evaluates the impact on Town revenues by fund, program or activity, and in total, of recommended changes in the fee and service charge structure.

Advise Town staff on the application of the cost allocation model developed in determining appropriate fees and charges based on program costs in the future.

Prepare a report that compares the Town's fee and service charges to similar cities selected by Town with Consultant's input.

Present initial findings and recommendations to management and adjust as necessary.

Prepare and deliver to the City Council a report on findings and recommendations, to facilitate an understanding by the City Council and the Public of the methodologies, issues and recommendations resulting from the fee study.

Exhibit B

FEE SCHEDULE

1. Cost allocation plan	\$ 9,900
2. Full Cost Recovery Staff Hourly Labor Rates	5,300
3. Comprehensive Fee Study	<u>22,200</u>
Total not-to-exceed	\$37,400

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/27/2009

PRODUCER License # 0B23506 (858) 541-2900
Vanorsdale Insurance Services
 4909 Murphy Canyon Road, Suite 510
 San Diego, CA 92123

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED	INSURERS AFFORDING COVERAGE	NAIC #
NBS Government Finance Group 32605 Temecula Parkway, Suite 100 Temecula, CA 92592	INSURER A: Maryland Casualty Insurance Company	
	INSURER B: American States Insurance Company	
	INSURER C: Republic Indemnity	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY	PAS00053837	9/24/2008	9/24/2009	EACH OCCURRENCE	\$ 2,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 2,000,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 10,000
						PERSONAL & ADV INJURY	\$ 2,000,000
						GENERAL AGGREGATE	\$ 4,000,000
						PRODUCTS - COMP/OP AGG	\$ 4,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
B		AUTOMOBILE LIABILITY	01CH0603344	9/24/2008	9/24/2009	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
		<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		<input type="checkbox"/> HIRED AUTOS					
<input type="checkbox"/> NON-OWNED AUTOS							
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
							\$
		<input type="checkbox"/> DEDUCTIBLE					\$
		<input type="checkbox"/> RETENTION \$					\$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	17355502	9/24/2008	9/24/2009	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Except 10 days notice of cancellation for non-payment of premium.

Proof of Insurance

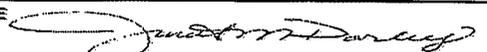
CERTIFICATE HOLDER

Town of Atherton
 91 Ashfield Road
 Atherton, CA 94027-

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL **30** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/27/2009

PRODUCER License # 0B23506 (858) 541-2900
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INSURED NBS Government Finance Group
32605 Temecula Parkway, Suite 100
Temecula, CA 92592

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Philadelphia Indemnity Insurance Compar	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE	\$
					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
					MED EXP (Any one person)	\$
					PERSONAL & ADV INJURY	\$
					GENERAL AGGREGATE	\$
					PRODUCTS - COMP/OP AGG	\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE	\$
					AGGREGATE	\$
						\$
						\$
						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS	OTHER
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
A	Professional Liability	PHSD361580	9/24/2008	9/24/2009	Each Wrongful Act	\$2,000,000
A	Professional Liability	PHSD361580	9/24/2008	9/24/2009	Annual Aggregate	\$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

*Except 10 days notice of cancellation for non-payment of premium.

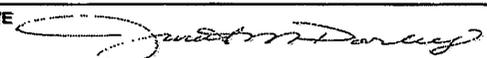
Proof of Insurance

CERTIFICATE HOLDER

Town of Atherton
91 Ashfield Road
Atherton, CA 94027-

CANCELLATION

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AUTHORIZED REPRESENTATIVE 



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 19, 2009

SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH THE CROSBY GROUP FOR SEISMIC PROBABLE MAXIMUM LOSS (PML) AND RISK ANALYSIS SERVICES FOR THE ATHERTON LIBRARY AND COUNCIL CHAMBERS, IN AN AMOUNT NOT TO EXCEED \$14,000 PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$15,400.

RECOMMENDATION:

Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with The Crosby Group to provide Seismic PML and Risk Analysis services for the Atherton Library and Council Chambers buildings in an amount not exceed \$14,000, plus a 10% contingency, for a total authorization of \$15,400.

BACKGROUND:

The Atherton Library and Council Chambers were evaluated for seismic stability last year. The final report identified significant remedial work needed to upgrade the facilities to current seismic standards for public buildings. As a follow-up step, a PML and Risk Analysis needs to be performed to determine the performance level of the buildings in a seismic event.

ANALYSIS:

The San Mateo County Library uses the Crosby Group to perform their structural evaluations. The Crosby Group was selected by qualifications based selection procedures by the library.

FISCAL IMPACT:

Library funds are not budgeted for this project in FY 2009-10, but the library has agreed the funds for building security, budgeted for \$15,000 in FY 2009-10, should be reallocated as needed to this more important analysis. Parcel Tax funds in the amount of \$254,500 have been budgeted in the CIP for this project in FY 2009-10. The cost of the study will be shared equally by the two funds.

The Scope of Services and Fee Estimate were negotiated with the selected firm. The final negotiated fee estimate is \$14,000. A 10% contingency of \$1,400 would bring the total authorization to \$15,400, which is within the approved budget.

Prepared By:

Approved:

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

Jerome D. Gruber
City Manager

Attachments: Professional Services Agreement

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of August, 2009 by and between the TOWN OF ATHERTON, herein called the "Town", and Crosby Group, herein called the "Consultant".

Recitals

WHEREAS, Town desires to obtain PML and Risk Analysis services in connection with the Council Chambers and the Library; and

WHEREAS, Consultant hereby warrants to the Town that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, Town desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. Town. The City Manager or his/her designee, shall represent Town for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Dan Petruc-Naum to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services

A. Scope of Services. Subject to such policy direction and approvals as the Town through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no later than August 31, 2009 and be completed no later than October 31, 2009. Any changes to these dates in this Section 3 must be approved in writing by the Project Manager.

C. Standard of Quality. Town relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall as the lump sum fee shown on Exhibit A, and incorporated herein by reference. However, in no event shall the amount Town pays Consultant exceed Fourteen thousand Dollars (\$14,000.00). Payment by Town under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the Town at the time of payment.

B. Timing of Payment. Consultant shall submit monthly progress statements for work performed. Town shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at Town's request if litigation is brought against Town in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, Town will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by Town and not part of the litigation brought by Town against Consultant.

5. Amendment to Scope of Work. Town shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the Town. Failure of the Consultant to secure

Town's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate Town authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish Town with every reasonable opportunity for Town to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in Town, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the Town. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to Town without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of Town during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the Town.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of Town, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the Town. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the Town in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the Town or of any Town official, other than normal contract monitoring; and

(2) possesses no authority with respect to any Town decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of Town. No member of the Town and no other officer, employee or agent of the Town shall be personally liable to Consultant or otherwise in the event of any default or breach of the Town, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the Town), indemnify, and hold harmless the Town, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of Town. The Town has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement.

13. Consultant Not an Agent of Town. Consultant, its officers, employees and agents shall not have any power to bind or commit the Town to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of Town; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to Town's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to Town that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession.

Consultant shall maintain a Town business license. The Town is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the Town's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. Town Not Responsible. Town is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against Town, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the Town.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the Town, or as required by law.

17. Assignment; Subcontractors; Employees

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the Town's prior written consent. Any assignment without such approval shall be void and, at the Town's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the Town as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses

to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (One Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The Town of Atherton, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the Town may possess, including any self-insured retention the Town may have, and any other insurance the Town does possess shall be considered excess insurance only and shall not contribute with it."

(c) “This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company.”

(6) Consultant shall provide to Town all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with Town on or before commencement of performance of this Agreement. Town reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Town, its officials, officers, agents, employees, and volunteers.

(8) Consultant’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days’ prior written notice by certified mail, return receipt requested, has been given to Town. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best’s rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. At the Town’s option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the Town with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the Town upon 5-days’ written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, Town may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the Town shall deduct from such amount

the amount of damages, if any, sustained by Town by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by Town without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the Town. Consultant, however, shall not be liable for the Town's use of incomplete materials nor for the Town's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The Town shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the Town and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the Town and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to Town: City Clerk
Town of Atherton - Town Hall
91 Ashfield Road
Atherton, CA 94027

If to Consultant: Dan Petruc-Naum, P.E.
Principal
Crosby Group
726 Main Street
Redwood City, CA 94063

26. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the Town and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the Town for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The Town may, by written request by any of the above-named officers, require that custody of the records be given to the Town and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees

and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. Town Not Obligated to Third Parties. The Town shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

A. Exhibit A: Scope of Work and Fee

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the Town.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of San Mateo, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement as of the date first above written.

TOWN OF ATHERTON

CONSULTANT

By: _____
City Manager

By: _____
Title: _____

Date:

Date:

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

EXHIBIT A

Scope of Work

[to be inserted]

EXHIBIT B

Schedule of Performance

[to be inserted]

EXHIBIT C

Compensation

[to be inserted]

EXHIBIT A

July 17, 2009

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

**Subject: PML and Risk Analysis for Council Chambers and Library
Town of Atherton, California.**

Dear Mr. Gruber,

I am pleased to present our proposal and the associated fee for the above referenced project. This proposal is based on our previous assessments of the two buildings and the reports previously issued to you.

Following our phone conversation from last week, the Crosby Group's engineering scope of work for this project is as follows:

1. Perform a PML risk analysis for the two buildings.
2. Submit in a report form the results of the two PML analyses.
3. Using FEMA 356/ASCE-41 methodology and damage description, we will determine Building Performance Level for the two structures.
4. As a result of the determination at point 3 above we will be able to issue a report stating if the buildings are at "Life Safety Performance Level, Collapse Prevention Performance Level", or worst.

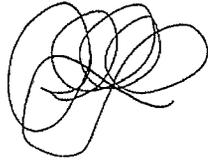
For the above-defined scope, we propose a total fee of \$14,000. Any additional work outside of the above scope of work will be billed separately as per our standard rate schedule.

Included in this scope is any Geotechnical Investigation that may be required to validate the final assumption. (T&M not to exceed \$2,000.00)



If the scope of services and fee structure meet with your approval, please sign the attached *Agreement* and send it back to us at your earliest convenience. If you have any questions regarding this proposal, please feel free to call me.

Regards,

A handwritten signature in black ink, consisting of several overlapping loops and curves, positioned below the text "Regards,".

Dan Petruc-Naum, P.E.
Principal
Crosby Group

**An Agreement for the Provision of Limited Professional
Services
Between Client and Crosby Group**



Design Professional

Firm: The Crosby Group
726 Main Street
Redwood City, CA 94063

Date: July 17, 2009

Project Name/Location:

PML Risk Analysis
FEMA 356 Procedures

Scope/Intent and Extent of Services:

See Attached proposal letter dated 07/17/2009

Fee Arrangement: Total Fee \$14,000.00

Client:

Town of Atherton
91 Ashfield Road
Atherton, CA 94027

Offered by:

A handwritten signature in black ink, appearing to be 'Dan Petruc-Naum'.

Signature 07/17/2009
Date

Dan Petruc-Naum P.E.
Name/Title

Accepted by:

Signature _____
Date

Name/Title



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JEROME D. GRUBER, CITY MANAGER

DATE: FOR THE MEETING OF AUGUST 19, 2009

SUBJECT: ADOPT RESOLUTION 09-30 DESIGNATING A VOTING DELEGATE AND UP TO TWO ALTERNATE TO THE LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE – SEPTEMBER 16-18, SAN JOSE

RECOMMENDATION:

Adopt Resolution 09-30 designating a voting delegate and an alternate to the League of California Cities Annual Conference

BACKGROUND:

The League's 2009 Annual Conference is scheduled for September 16-18 in San Jose. The Annual Business is scheduled for 3:15 p.m. on Friday, September 18th. At this meeting the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business meeting, City Council must designate a voting delegate. Council may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. In order to cast a vote at least one person must be present at the Business Meeting and in possession of the voting delegate card.

FISCAL IMPACT:

There is no fiscal impact.

Attachments: Resolution 09-30
League of California Cities Memo RE: Annual Conference Resolutions Packet/
Notice of League Annual Meeting

Resolution No. 09-30

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON DESIGNATING COUNCIL MEMBER _____ AS THE VOTING DELEGATE AND COUNCIL MEMBER _____ AS THE ALTERNATE FOR THE LEAGUE OF CALIFORNIA CITIES ANNUAL BUSINESS MEETING TO BE HELD ON SEPTEMBER 18, 2009

WHEREAS, The League of California Cities Annual Business meeting will be held on September 18, 2009, and

WHEREAS, The League of California Cities Bylaws require that a city's voting delegate be designated by the City Council and that the voting delegate must be registered to attend the conference and be present at the business meeting.

NOW, THEREFORE BE IT RESOLVED that

- 1) The City Council designates Council Member _____ as the voting delegate for the League of California Cities Annual Conference Business meeting to be held on Friday, September 18th, 2009
- 2) The City Council designates Council Member _____ as the alternate voting delegate for the League of California Cities Annual Conference Business meeting to be held on Friday, September 18th, 2009
- 3) That the City Council directs the City Clerk to transmit a copy of this resolution to the League of California Cities.

* * * * *

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 19th day of August, 2009 by the following vote:

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

Jerry Carlson, Mayor
Town of Atherton

ATTEST:

Theresa DellaSanta

APPROVED AS TO FORM:

Wynne Furth
City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF AUGUST 19, 2009

**SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH
KIMLEY-HORN AND ASSOCIATES, INC. FOR TRAFFIC
ENGINEERING SERVICES FOR THE ROAD IMPACT FEE STUDY,
PHASE 2, IN AN AMOUNT NOT TO EXCEED \$53,045 PLUS A TEN
PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF
\$58,349.50**

RECOMMENDATION:

Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Kimley-Horn and Associate, Inc. to provide traffic engineering services for the Road Impact Fee Study in an amount not exceed \$53,045, plus a 10% contingency, for a total authorization of \$58,349.50.

BACKGROUND:

The Road Impact Fee was originally approved by Council in September of 2000 based on a study performed by DKS Associates, Inc. in August of 2000. In 2005, Kimley-Horn updated the fee study, including an Off-Haul Fee. That study apportioned the road deterioration 45% to general construction traffic and 55% to excavation off-haul (after reducing the net deterioration by 12.6% for refuse vehicles, based on a study done by Hilton Farnkopf and Hobson). The revised road impact fee and off-haul fee were approved by Council in March of 2005. The Off-Haul Fee was rescinded in September of 2006 without reapportioning the roadway deterioration. Had the Road Impact fee been adjusted for the total roadway deterioration, it would have increased by 122%.

In June of 2007 the permitted value for building permits was increased from \$250 per square foot to \$350 per square foot. The Road Impact Fee is set at 0.71% of project valuation. The Road Impact Fees therefore increased by 40%. A nexus study was not performed to determine if this increase was justified by the cost of roadway deterioration.

ANALYSIS:

It was recommended by the Finance Committee that the Road Impact Fee Study be updated using the three years of data since the previous study. Kimley-Horn is the Town's traffic engineer selected by a qualification-based selection. Kimley-Horn was requested to update their 2005 study, using the exact same methodology but excluding the Excavation Off-Haul portion. Kimley-Horn prepared a proposal for this work with an estimate of \$13,190. The proposal was approved in February 2009, the work executed and a draft report issued.

As a follow-up to this study, additional tasks were suggested to be performed to provide checks of the reasonableness of the fee, and of the fees collected in the past. The scope of the follow-up work was to include:

1. Survey of similar fees in other communities
2. Public process with contractor community to evaluate example projects and compare number of miles and number of trucks and relate that to the useful life of streets used.
3. Establish a method of escalation, such as Construction Cost Index (CCI) or tri-annual re-evaluation.
4. Establish a per square foot basis for the fee instead of a project valuation basis.

At recent public meetings, additional concerns were raised and direction given to staff regarding the road impact fee study. Staff and the consultant met with the City Attorney and developed the Phase 2 scope of work that is included in this agreement.

FISCAL IMPACT:

Road Impact Fee funds from the FY 2008-09 Capital Improvement Program (210-00-3165-000) will be used to fund this study. The Scope of Services and Fee Estimate were negotiated with the selected firm. The final negotiated fee estimate is \$53,045. A 10% contingency of \$5,304.50 would bring the total authorization to \$58,349.50. There are sufficient funds in the Road Impact Fee fund to cover this amount.

Prepared By:

Approved:

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

Jerome D. Gruber
City Manager

Attachments: Professional Service Agreement

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of August, 2009 by and between the TOWN OF ATHERTON, herein called the "Town", and Kimley-Horn and Associates, Inc., herein called the "Consultant".

Recitals

WHEREAS, Town desires to obtain traffic engineering services in connection with the Atherton Road Impact Fee Study, Phase 2; and

WHEREAS, Consultant hereby warrants to the Town that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, Town desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. Town. The City Manager or his/her designee, shall represent Town for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Paul Krupka to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services

A. Scope of Services. Subject to such policy direction and approvals as the Town through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no later than August 31, 2009 and be completed no later than November 30, 2009. Consultant shall perform its services in accordance with the schedule shown on

Exhibit A, and incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit A must be approved in writing by the Project Manager.

C. Standard of Quality. Town relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit B, and incorporated herein by reference. However, in no event shall the amount Town pays Consultant exceed fifty-three thousand forty-five Dollars (\$53,045). Payment by Town under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the Town at the time of payment.

B. Timing of Payment. Consultant shall submit itemized monthly statements for work performed. Town shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at Town's request if litigation is brought against Town in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, Town will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by Town and not part of the litigation brought by Town against Consultant.

5. Amendment to Scope of Work. Town shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the Town. Failure of the Consultant to secure Town's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate Town authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish Town with every reasonable opportunity for Town to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in Town, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the Town. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to Town without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of Town during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the Town.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of Town, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer,

employee, agent, or subcontractor without the express written consent of the Town. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the Town in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the Town or of any Town official, other than normal contract monitoring; and

(2) possesses no authority with respect to any Town decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of Town. No member of the Town and no other officer, employee or agent of the Town shall be personally liable to Consultant or otherwise in the event of any default or breach of the Town, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the Town), indemnify, and hold harmless the Town, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of Town. The Town has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement.

13. Consultant Not an Agent of Town. Consultant, its officers, employees and agents shall not have any power to bind or commit the Town to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of Town; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other

benefits which accrue to Town's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to Town that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a Town business license. The Town is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the Town's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. Town Not Responsible. Town is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against Town, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the Town.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the Town, or as required by law.

17. Assignment; Subcontractors; Employees

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the Town's prior written consent. Any assignment without such approval shall be void and, at the Town's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the Town as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (One Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The Town of Atherton, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the Town may possess, including any self-insured retention the Town may have, and any other insurance the Town does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to Town all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with Town on or before commencement of performance of this Agreement. Town reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Town, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to Town. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. At the Town's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the Town with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the Town upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, Town may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the Town shall deduct from such amount the amount of damages, if any, sustained by Town by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by Town without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the Town. Consultant, however, shall not be liable for the Town's use of incomplete materials nor for the Town's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The Town shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the Town and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the Town and Consultant. All provisions of this Agreement are expressly made conditions.

alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The Town may, by written request by any of the above-named officers, require that custody of the records be given to the Town and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. Town Not Obligated to Third Parties. The Town shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work and Schedule
- B. Exhibit B: Compensation

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the Town.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of San Mateo, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement as of the date first above written.

TOWN OF ATHERTON

CONSULTANT

By: _____
City Manager

By: _____
Title: _____

Date:

Date:

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

EXHIBIT A

Scope of Work and Schedule

EXHIBIT B

Compensation



Analysis of Key Assumptions and Development of Revised Findings for Atherton Roadway Impact Fee Update

The Town of Atherton staff reviewed the draft roadway impact fee calculation presented in the *Draft Report: Road Impact Fee Evaluation* (Kimley-Horn and Associates, Inc., May 13, 2009) and raised concerns that were primarily focused on the following three topic areas.

- 1) What types of vehicles (such as passenger vehicles, refuse vehicles, delivery trucks, construction trucks, and large semi trucks) use the Town roadways?
- 2) What are the impacts of construction trucks on pavement deterioration in Atherton? Is pavement deterioration limited to construction trucks or do other types of vehicles substantially contribute to deterioration?
- 3) The draft road impact fee calculation does not take into account the amount expended by the Town for roadway improvements over the past three years and therefore is low.

The scope of work presented below was developed to provide additional research and information to address the topics presented above. The draft roadway impact fee calculation will be revised to incorporate this new information.

Scope of Work

Task 1 – Data Collection

The subtasks presented below will result in estimates of the type and number of vehicles on the Town's streets, information on construction traffic generated by typical residential projects (i.e. a new home or other substantial project), and information on existing truck travel patterns in Town.

Task 1a – Conduct Vehicle Classification Counts

A series of vehicle classification counts will be undertaken on a sample of Town streets to estimate average daily traffic by vehicle type. For planning purposes, a sample of about 10% of the Town's streets (or 15 of 150 Town streets) is proposed. The survey locations will be determined in consultation with Town staff.

Counts will be collected using electronic traffic counters for a one-week (7 days) period. Kimley-Horn and Associates, Inc. (KHA) personnel would visit the data collection sites on one weekday to observe the traffic counts and sample vehicle characteristics (e.g. delivery, moving, construction, refuse, recycling, and transit). Two survey locations will be videotaped for up to 12 hours each to augment the truck classification counts. The data collected would be checked and validated, then tabulated for review by Town Staff. The output from this task would be a



summary of the vehicle volumes by classification that would be representative of all Town streets.

Task 1b – Interview General Contractors to Research Truck Trip Generation

KHA staff will interview three contractors to determine the number of daily truck trips typically generated by various types of projects. The contractors will be surveyed to obtain information on vehicle type and estimated volumes/weights of construction materials and excavation off-haul for new homes or other substantial projects. KHA will also obtain information on the duration of the projects through various phases (mobilization, demolition, construction, and demobilization), and the typical loads brought in or removed from the site. The contractors will also be surveyed to determine other vehicle trips (e.g. passenger vehicle, delivery trucks) are generated by the various construction projects.

Task 1c – Conduct Construction and Large Truck Origin-Destination Surveys

To determine the origin and destinations of large truck traffic in Atherton, surveys of trucks will be conducted at two locations for 12 hours. The truck drivers will be surveyed to determine their purpose, load, origin, and destination. This task assumes that the Town of Atherton Police Department will assist in setting up checkpoints for surveys to be conducted. The cost of Police Department staff and other Town costs associated with conducting the surveys are not assumed by KHA and are not included in this proposal.

Task 2 – Research Impacts of Roadway Deterioration

These subtasks will provide further clarification on the impacts to pavement deterioration caused solely by vehicular traffic.

Task 2a – Research Impacts of Roadway Deterioration Due to Vehicles

The assumptions used in the 2005 and 2009 Update to the Road Impact Fee study assumed that the impacts of regular passenger vehicles on roadway deterioration are negligible. This was based upon research conducted by Kimley-Horn and Associates regarding Equivalent Single Axle Loadings (ESAL) of various vehicle types. The March 30, 2005 Hilton Farnkopf and Hobson study indicated that other trucks and passenger vehicles contribute to pavement deterioration.

KHA staff will conduct further research by comparing the estimated weights for various types of vehicles (passenger vehicle, box trucks, refuse vehicles, dump trucks, etc.). A comprehensive write-up of the methodology and impacts on roadway deterioration will be included in the revised report.



Task 2b – Meet With Building Inspector to Review Town Fees

KHA staff will meet with the Building inspector to review the various types of construction permits that generate or don't generate large truck trips. KHA will review the current City fee structure to determine what fees are currently collected and for what purpose.

Task 2c – Review Estimated Cost of Roadway Deterioration

Kimley-Horn will review the "Project Expenditures by Funding Source" spreadsheet provided by town staff to confirm the amount spent on roadway improvements from 2005 to 2008. KHA will review the formulas and assumptions used to calculate the estimated roadway deterioration.

Task 3 – Develop Opinion of Roadway Deterioration due to Construction Trucks

The information gathered in Tasks 1 and 2 above will be used to prepare a revised roadway impact fee assessment.

Task 3a – Determine Roadway Deterioration due to Construction Trucks

Based on the data collected and research gathered in Tasks 1 and 2, KHA will determine the percentage of roadway deterioration attributed to construction trucks. The results of the vehicle classification counts will be used to determine the mix of vehicle traffic. The research into the impacts of various vehicles on roadway deterioration will be used to exclude any vehicles (e.g. passenger vehicles or panel trucks), if applicable. The classification counts will be compared to the estimated vehicle mix from the contractor surveys.

Task 3b – Review Other Jurisdiction Road Impact Fees

KHA will review the research conducted by Town of Atherton staff into fees collected by Hillsborough, Portola Valley, Los Altos Hills, and Woodside. This task includes up to 4 staff hours per community (16 hours total) by KHA staff to review the details of the fees collected and to compare the road impact fee determined in Task 3a.

Task 4 – Update Documentation

Kimley-Horn will prepare a draft letter report that documents all procedures and findings and presents the updated determination of roadway impact fees. The draft letter report will be submitted for review to the Town. Upon receipt of written comments on the draft letter report, a final letter report will be prepared and submitted. This task assumes up to 12 hours of staff time to incorporate comments into a final letter report.



Task 5 – Attend Meetings

Kimley-Horn will attend one meeting with Town staff to discuss findings. Also, attendance by KHA staff is included for one City Council Study session and two additional public hearings to discuss and present findings of the revised report.

Schedule

KHA estimates that the data collection (vehicle classification counts, contractor surveys, truck origin-destination surveys) will take approximately four (4) weeks to complete. Assuming that Town staff have completed their research into other jurisdiction fees by the end of the fourth week, the evaluation and submittal of a draft letter report will occur approximately four (4) weeks following completion of the data collection. The actual schedule will be based on the approval scope of work.

Estimated Budget

The estimated budget to complete the tasks listed above is \$53,045, of which \$17,520 is to collect traffic counts and to conduct surveys. The detailed budget is presented in Table 1. The actual budget will be based on the approved scope of work and schedule.



Table 1 - Fee Estimate

Task	Principal	Project Manager	Analyst	Support	Total Labor	Labor Costs	Direct Costs
Task 1 - Data Collection							
1a. Collect Truck Classification (15 locations)	2	4	16	2	24	\$3,910	\$ 5,800
1a. Video Tape 2 locations	0	4	8	0	12	\$1,980	\$ 2,800
1b. Conduct Construction Site Truck Generation Research	0	4	16	0	20	\$3,220	
1c. Conduct Truck OD Surveys (2 locations)	0	4	32	0	36	\$5,700	
Task 2 - Research Roadway Deterioration							
2a. Research Veh Type	0	4	8	4	16	\$2,400	
2b. Meet with Building Inspect and Review Town Fees	4	4	4	0	12	\$2,320	
2c. Review Roadway Deterioration Spreadsheet	2	4	8	0	14	\$2,460	
Task 3 - Develop Opinion of Roadway Deterioration							
3a. Determine % of Deterioration	4	8	16	0	28	\$4,920	
3b. Research other fees	2	2	12	0	16	\$2,710	
Task 4 - Update Documentation							
4a. Update report	2	8	16	6	32	\$5,070	
4b. Respond to comments (12 staff hours)	2	4	4	2	12	\$2,050	
Task 5 - Attend Meetings							
1 study session	0	6	0	4	10	\$1,530	
1 staff meeting and 2 public hearings	4	12	0	4	20	\$3,600	
Total Hours	22	68	140	22	252		
Billing Rate	\$240	\$185	\$155	\$105			
Labor	\$5,280	\$12,580	\$21,700	\$2,310	\$41,870	\$ 41,870	
Direct Costs					\$8,600		\$ 8,600
Indirect Expenses (Mileage, Telephone, Postage, Computer, etc) 6.15% of Labor					\$2,575		
Total					\$53,045		



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: LOUISE HO, FINANCE DIRECTOR

DATE: FOR THE MEETING OF AUGUST 19, 2009

**SUBJECT: APPROVAL OF THE ADDENDUM TO THE SPRINGBROOK
SOFTWARE LICENSE AGREEMENT, SPRINGBROOK SOFTWARE
MAINTENANCE AGREEMENT; AND AUTHORIZE THE CITY
MANAGER TO EXECUTE THE ADDENDUM**

RECOMMENDATION:

Approve the addendum to the Springbrook Software License Agreement, Springbrook Software Maintenance Agreement in an amount not to exceed \$14,025 plus a 20% contingency for a total of \$16,830; and authorize the City Manager to execute the addendum.

DISCUSSION

On March 18, 2009, the City Council approved the purchase of new financial software Springbrook for the Town of Atherton to improve efficiency and effectiveness. As part of the implementation process, Springbrook conducted a business process study to design and document the needs of the Town. Through the study, customized reports and special programming were identified to be important for integration of cash receipts and revenues posting from the CRW system and to meet the recommendations of the external auditors for improving internal control.

Staff completed the review of the final business process study report and is ready to sign off. The additional scope will cost \$14,025. If it is determined that the two optional items are not needed, the addendum cost will change from \$14,025 to \$9,487.50.

Once the addendum is approved by the City Council, the implementation will begin for a target go-live date of December 1, 2009.

FISCAL IMPACT

The additional cost of \$16,830 will be funded through the Equipment Replacement Fund in FY 2009-10. For FY 2010-11 to FY 2013-14, the additional increase to the maintenance cost will be \$1,614 to \$2,441 per year plus a 5% annual adjustment after FY 2010-11.

Prepared by:

Approved by

Louise Ho
Finance Director

Jerome Gruber
City Manager

Attachments: Springbrook Software License Agreement
Springbrook Software Maintenance Agreement
Addendum

1. SUMMARY

1.1. This contract agreement documents additional services that are not identified in the Software License Agreement (SLA) and the Software Maintenance Agreement (SMA). These services were identified as part of the Business Process Study conducted with the client. This document outlines the specific additional services being provided above and beyond Springbrook’s (Vendor) products and services. The additional costs for these items will be identified in either this document, the SLA and/or the SMA.

2. SCOPE

2.1. This document defines specific services that are being offered to the client that were not included in the Software License Agreement or the Software Maintenance Agreement. These additional services which may include but are not limited to; Customer Specific Product Modifications, Conversion Services, Training Services, Consulting Services, and Data Entry Services.

2.2. In addition the client stipulates that the services identified in this agreement represent all of the required services that are not part of the Software License agreement and the Software Maintenance Agreement. Both parties understand that additional items may be identified during the implementation or after the implementation. Such items may require that a change order be completed.

3. PRODUCTS REVIEWED WITH CUSTOMER AS A PART OF THIS STATEMENT OF WORK

3.1.1. The products identified in Table A are the subject of this statement of work.

<input checked="" type="checkbox"/> Finance Suite (GL)	<input type="checkbox"/> Utility Billing (UB)	<input type="checkbox"/> Special Assessments (SA)
<input checked="" type="checkbox"/> Accounts Payable (AP)	<input type="checkbox"/> Inventory Control (IC)	<input type="checkbox"/> Building Permits (BP)
<input checked="" type="checkbox"/> Clearing House (CH)	<input checked="" type="checkbox"/> Human Resources (HR)	<input type="checkbox"/> Bids and Quotes (BQ)
<input checked="" type="checkbox"/> Bank Reconciliation (BR)	<input checked="" type="checkbox"/> Fixed Assets (FA)	<input type="checkbox"/> Contract Administration (CA)
<input checked="" type="checkbox"/> Purchase Orders (PO)	<input type="checkbox"/> Work Orders (WO)	<input type="checkbox"/> Fleet Maintenance
<input checked="" type="checkbox"/> Requisitions	<input checked="" type="checkbox"/> Payroll (PR)	<input checked="" type="checkbox"/> Extended Budgeting (EB)
<input type="checkbox"/> Project/Grant Management (PM)	<input type="checkbox"/> Licenses and Permits (LP)	<input type="checkbox"/> Business Tax (BT)
<input checked="" type="checkbox"/> Accounts Receivables (AR)	<input type="checkbox"/> Code Enforcement (CM)	
<input checked="" type="checkbox"/> Central Cash/POS	<input type="checkbox"/> Parking Tickets (PT)	

Table A

4. Additional Services

4.1. THE FOLLOWING ADDITIONAL SERVICES HAVE BEEN IDENTIFIED AS A RESULT OF THE BUSINESS PROCESS STUDY.

1	<p>Conversion – 2-years GL history annual summary plus year to date balance for current year.</p> <ul style="list-style-type: none"> • Client will provide Vendor with totals by account for each year. Vendor will not total balances for individual transactions. • Balance conversion will include standard information that is supported by Vendor including the GL Account Number, dollar amount and description for the entry. These converted records will allow queries and reporting and converted data will not support drill-downs beyond the journal entry level. • Annual totals will be converted and imported into Vendor software as a Journal Entry for each year. • Client will review the entries and commit the Journal Entry. • Client is responsible for insuring the accuracy of converted data and to determine the appropriate use of converted data.
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	<ul style="list-style-type: none"> Client agrees to provide staff and resources to research and resolve any discrepancies identified during the conversion process.
2	<p>JE – Include on-screen Proof List before Commit</p> <ul style="list-style-type: none"> Vendor will add an icon at the top of the Commit JE window to allow the user to view the JE prior to the commit process. User with security permission to Commit JE’s can open the JE. The uncommitted JE will be displayed in the same format as the JE drill down from the GL Account History screen. User cannot modify the JE from this display window. Custom development charges and additional maintenance will be assessed for this modification.
3	<p>BR – Electronic Reconciliation</p> <ul style="list-style-type: none"> Vendor will create an import from a bank supplied file. If bank changes the format of the file at any time after this item is completed, a change order will be required. File will be imported by the Client to the BR/Clear Transactions process. The checks and deposits listed on the file will be selected to clear in the Clear Transaction process. The Clear Transaction process will be completed by the Client. Users with security to Clear Transactions will be allowed to import the file.
4	<p>PR – Optional - Create custom report that prints any lists any employee payroll changes.</p> <ul style="list-style-type: none"> Vendor will create a custom report to be run in the Payroll module. Custom report will include changes made to specific Employee Maintenance fields during a user defined time period. Change fields include: <ul style="list-style-type: none"> Employee Name Employee Pay Fields – Includes Hourly Rate, Salary, Grade/Step, Hours per year or Periods per year. Employee Deduction and Benefit fields The report will generate if the employee has any specified changes to the fields listed below within the PR_Employee table during the entered dates. This report would have a double space between each employee. The detail portion of the report will have the history of changes to the PR_Employee table with the most recent at the top. The Employee header information will include the following fields - Employee Number and Employee Name, Hire Date, Anniversary Date, Termination Date, Department The Changed fields listed on the report will include - Range Step (grade/step), Salary, Hourly Rate, Status. For each change the following information will be reported. <ul style="list-style-type: none"> Effective Date - date the change in Pay Rate takes effect Prior field value New field value Employee that made the change This report will run based on HR History date. Client will agree to final report format prior to programming starting work. Client will advise Vendor if this report will be needed after reviewing currently available history reports.
5	<p>PR – Custom programming to combine multiple deferred comp codes to determine if employee payroll deduction exceeds the annual maximum.</p> <ul style="list-style-type: none"> Client will provide Vendor with a list of Deduction Codes to be included in the Annual Maximum calculation. <ul style="list-style-type: none"> If the codes change in the future, a change order with associated costs will need to be completed.

	<ul style="list-style-type: none"> • Client will key the annual maximum to each deduction code and change it annually or when the maximum is adjusted. • Vendor will write custom programming for the Payroll Calculate process to total the annual amount of the combined deductions and compare it to the annual maximum. • System will not exceed the annual maximum amount. • If System total exceeds the annual maximum, the system will post the deduction amounts based on the deduction code on an alpha-numeric basis.
6	<p>PR – Custom FLSA calculation that is the same as Sausalito (WO 06.05.06-045). This will only be necessary if the standard functionality cannot calculate the FLSA rates. This is an optional item that will be determined during training.</p> <ul style="list-style-type: none"> • Trainer will attempt to utilize standard FLSA programming prior to the custom being written. • If custom is necessary Client will provide the specific OT Pay Codes will be provided to the Vendor. • Client will advise Vendor of the number of hours to be associated with each FLSA pay code. • Client will set the affect flags on the pay codes.
7	<p>CR – Interface with CRW for daily Permit and Project receipts.</p> <ul style="list-style-type: none"> • Vendor will create an import that will create a Cash Receipt for each line on the file. <ul style="list-style-type: none"> ○ Client will work with Vendor and CRW to determine the file format that can be exported from CRW and imported to Springbrook. ○ Only information that has fields available in Springbrook will be imported. ○ Each line in the CRW file will be mapped to a Springbrook CR Type Code on the receipt. ○ Vendor expects that multiple lines in the CRW file will map to a single receipt in Springbrook Software. This requires additional programming effort and is reflected in the cost. ○ Receipts can be associated with Customer’s in Springbrook but these types of transactions will not display in any account history. ○ Client will extract the information from the CRW system. ○ Client will manually locate the file and import file to an open Cash Receipt batch. ○ The imported information will include the Permit or Project number as well as the Receipt number from the CRW system. The Receipt Number will be stored in a field other than the Receipt Number field in Springbrook. ○ Batch will be completed by Client and committed to Springbrook. ○ Only users with security permission will be allowed to import files. • If Client cannot get information required to import into Cash Receipts from CRW, Vendor will write an import to a Journal Entry which is similar to the process with the existing system. • Client will advise Vendor which import will be utilized prior to the custom work beginning.
8	<p>CR – Interface with CRW for daily Project revenue. This is an optional item.</p> <ul style="list-style-type: none"> • Vendor will create an import process to import Project Revenue to the Springbrook JE Process. <ul style="list-style-type: none"> ○ Client will work with Vendor and CRW to determine the file format that can be exported from CRW to provide dollar amounts for work completed. This file will include the Project Plan Number and the dollar value of the work to be posted. If multiple GL Account numbers are to be posted to, these numbers must be included in the file. If only one liability and one revenue account will be utilized, the import can include these GL Account numbers. ○ Client will export the file from CRW and save it. ○ Client will manually locate and import the file to the Springbrook Journal Entry. ○ Only users with security permission to input Journal Entries will be allowed to import files.
9	<p>AR – Attach documents to invoice during the AR Invoice Entry process</p> <ul style="list-style-type: none"> • Vendor will add a attachment icon to the AR Invoice entry window. • Client will utilize an approved scanner or copier for this functionality. • Client will enter the AR Invoice information into the batch.

	<ul style="list-style-type: none"> • Client will utilize the attachment icon to open the scan window and scan the attachment desired. User will name the attachment. • Vendor will not be responsible for connection problems with scanning equipment. • Attachment will be attached to the Customer record with name of the file that was assigned by the user. • Users with security permission to view Customer information will be allowed to view scanned documents. • Client can view the attachment by opening the Customer and clicking on the attachment icon.
10	<p>Turn-Key Conversion - Turn key conversion means that the vendor will complete data entry for data elements that are required by Springbrook Software's applications to function correctly and is limited to items associated with the conversions being purchased. This is required when clients existing system does not support the data that new system needs. For example: Payroll Deductions and Benefits. Data entry that falls outside of this basic need is not included in the Turnkey conversion. Client will be required to consult with vendor and provide the required information for the data entry services. Client is responsible for insuring the accuracy of converted data and to determine the appropriate use of converted data. Client agrees to provide staff and resources to research and resolve any discrepancies identified during the conversion process. The items entered by the Vendor are listed below by system.</p>
	<p>System Setup (SS)</p> <ul style="list-style-type: none"> • Bank Information <ul style="list-style-type: none"> ○ Will require the Client to provide a list of all banks utilized by the City with corresponding routing numbers. ○ Will require the Client to provide a list of all banks utilized for Payroll Direct Deposits with corresponding routing numbers. • Bank Account Information <ul style="list-style-type: none"> ○ Will require the Client to provide a list of all bank accounts with correct account numbers and GL Account that should be associated with the bank account. • Security – <ul style="list-style-type: none"> ○ Will require the Client to provide a list of users and the security desired to the Vendor. ○ Will require the Client to provide information for Requisition security setups. • Department Setups <ul style="list-style-type: none"> ○ Will require the Client to provide a list or file with all Department Codes associated to any Payroll Employee with the correct description.
	<p>General Ledger (GL)</p> <ul style="list-style-type: none"> • Key Section Headers and Descriptions in GL Maintenance • Key Account Types in GL Maintenance • Create the following requested reports <ul style="list-style-type: none"> ○ Summarized expenditures across all departments and funds – The account number desired will be keyed by the user when generating the report. ○ Trial Balance by account number summarized for all departments and funds. This will only be created in the Query Manager if the standard Trial Balance is determined to be in a format other than the one desired by the Client. ○ Create financial reports for Revenues and Expenses utilizing either Query Manager or VRI to provide the calculations requested in the BPS document.
	<p>Accounts Payable (AP)</p> <ul style="list-style-type: none"> • Vendor will set up security settings on employees that will be utilizing Requisitions. • Vendor will work with Client to set up AP Utilities.
	<p>Payroll (PR)</p> <ul style="list-style-type: none"> • Vendor will work with Client to set up PR Utilities. • Vendor will set up initial Pay Codes according to the Client provided Pay Code setup.

	<ul style="list-style-type: none"> • Vendor will set up initial Workers Comp tables based on information provided by the Client. • Vendor will set up initial Accrual Schedules based on information provided by the Client. • Vendor will set up initial Deduction and Benefits based on information provided by the Client. • Vendor will add Deductions, Benefits, Accruals and Workers Comp codes to Employees based on electronic information provided by the Client. • Client will provide Vendor a list of each employee that includes total pay by pay code, total deduction and benefit amounts by code, total accruals by accrual type. Vendor will post a year to date (ytd) payroll batch including pay, ytd accruals, ytd deductions and benefits. Client will confirm balances match their ytd balances from their prior system. Client will confirm the accuracy of the balances. • Vendor will generate a parallel payroll batch and compare calculations to Client provided payroll registers. The Vendor will discuss any material changes that should be made in setups with the Client. • Client will submit a Direct Deposit Pre-note batch to their bank software during the Vendor's parallel payroll process. Client will inform Vendor if any errors occur or will correct any errors with the Vendor's assistance. • Client will review the parallel payroll with the Vendor to approve the results. • Client will modify any records or setups necessary after approval of the parallel payroll. • Vendor will create the following Payroll QBE Reports: <ul style="list-style-type: none"> ○ Report to display all terminated employees during a date range. After report is created the Client will modify the filters to provide the date range desired on the report. ○ New Hires by Date is a standard report so no additional report will be created. ○ QBE Report to print the Payroll Tax Tables. ○ QBE Report displaying any deduction or benefit codes that affect Federal income tax. ○ QBE Report displaying any Pay Codes that are subject to Retirement. ○ QBE Report to display the Employee Hire and Anniversary Dates.
	<p>Cash Receipts (CR)</p> <ul style="list-style-type: none"> • Vendor will set up CR Type Codes according to files provided by the Client. • Vendor will set up CR Slip according to a sample slip provided by the Client. • Vendor will set up Pay Methods according to files provided by the Client. • Stations and Operators must be set up on-site. Vendor will assist with these setups during training.
	<p>Miscellaneous Accounts Receivable (AR)</p> <ul style="list-style-type: none"> • No Vendor setups will be provided unless the Client can provide printed for file copies of Fee Codes utilized that include associated Cash, Accounts Receivable and Revenue accounts.
	<p>Fixed Assets (FA)</p> <ul style="list-style-type: none"> • Vendor will set up Fixed Asset locations according to file provided for conversion. • Vendor will set up Fixed Asset Class Codes according to file provided for conversion. If no Class Codes are included in the conversion file, assets will be assigned to a single Class Code. • Vendor will assign Asset, Investment in Fixed Asset, Depreciation Expense, Accumulated Depreciation and Disposal GL Accounts as provided in the conversion file. If no GL Accounts are submitted the GL Accounts will be assigned during training. • Vendor will create a Query Manager report for Asset Gain or Loss Schedule that will be exported. After export the Client will need to add the formula to calculate the Gain/Loss on the disposal. This report will require the Client to enter Sale Prices to the Asset maintenance record upon disposal of the asset. • Vendor will create a Query Manager report displaying Fixed Asset additions during a period that will be keyed by the Client during report generation. • Vendor will create a Query Manager report displaying Fixed Asset disposals during a period that will be keyed by the Client during report generation. • Vendor will create a Query Manager report to display Depreciation Expense by Fund and Department. • Vendor will create Query Manager report to display additional Fixed Asset Master information. The requested information of Parcel Number, Fund of Asset and Custodian of Asset will need to be keyed by Client to the Fixed Asset Maintenance window.

	Human Resources (HR) <ul style="list-style-type: none"> • Client will provide Vendor with an Excel sheet including all HR related issues and tracking they want converted. • Vendor will set up HR Type Codes according to the Excel sheet provided. Client will provide a contact to assist vendor to resolve any questions. • Client will approve the Type Codes set up by Vendor prior to adding to individual employee records. • Vendor will add HR Type Codes with associated dates and data provided on the Excel spreadsheet to each employee. • Client will review converted and manually keyed data and approve. • All information not included on the initial spreadsheet will be added by the Client after the conversion is approved.
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5. Client stipulates that additional services identified represent all of the known required modifications to the product and terms of the SLA. Both parties understand that additional items may be identified during the implementation or after the implementation. Such items will require that a change order be completed.

5.1. Listed below are potential custom features, functions, or interfaces the Client may put into practice during the course of the implementation project. These items are not mandatory but should the Client desire to take advantage of the custom application, Vendor will process a formal bid with specifications for the prices as outlined.

Type	#	Feature	Service Fee's	Annual Maintenance Fee Increase	Implementation Management Fee's
R	1	Conversion – 2-years GL history annual summary plus year to date balance for current year	Included in SLA	NA	NA
R	2	JE – Include on-screen Proof List before Commit	\$900.00 - \$1,200.00	\$225.00 - \$300.00	NA
R	3	BR – Electronic Reconciliation	\$750.00	\$187.50	\$300.00
O	4	PR – Optional Custom report for Payroll Changes	\$2,250.00	\$562.50	\$300.00
R	5	PR – Custom PR Calculation to sum multiple deferred comp deductions to process annual cap	\$1,200.00	\$300.00	\$300.00
O	6	PR – Custom FLSA pay rate Calculation, only if this is determined to be necessary	\$900.00	\$225.00	\$300.00

		during training.			
R	7	CR – Interface with CRW for daily Permit and Project receipts.	Included in SLA	NC per SLA	NC per SLA
R	8	GL – Optional Import CRW exported file for daily Cost Recovery Project revenue to a Journal Entry.	\$1,200.00	\$300.00	\$1200.00
R	9	AR – Attach documents to invoice.	\$1,800.00	\$450.00	NA
O	10	Turn-Key Conversion	Included in SLA	N/A	N/A
		Total Costs: \$14,025	\$9,300.00	\$2,325.00	\$2,400.00
		Total Known <u>Required</u> Costs: \$9,487.50	\$6,150.00	\$1,537.50	\$1,800.00

5.2. SCHEDULE

Clients are scheduled for implementation services on a first come first serve basis. Scheduling can proceed once the following has occurred;

5.2.1. Software License Agreements (SLA) are fully executed by both parties; and

5.2.2. Software Maintenance Agreements are fully executed by both parties; and

5.2.3. A Business Process Study (BPS) has been completed and the Preliminary Statement of Work has been fully executed by both parties.

5.2.4. Initial Payment.

6. CONVERSIONS

6.1. Vendor cannot guarantee that all data elements supported in the current system can be converted to the Vendor system. Cost quotes assume that only data that is presently supported by Vendor data schema and processes will be converted.

6.2. Vendor cannot populate data that is not available in the legacy system as part of a conversion. If the Vendor systems require information to operate correctly that is not in the legacy system and available for conversion, client understands that data entry will be required. Client agrees that it is responsible to either contract with Vendor to provide these services or to perform the data entry activities themselves.

6.3. Client agrees to provide any and all information and resources requested by Vendor to facilitate the conversion process.

6.4. All Conversations assume that data is provided in electronic format that can be manipulated by standard database tools.

6.5. A variety of factors will increase the cost of a conversion as estimated on agency's Signed License Agreement. Also, there several items that are not included in the standard cost estimate and will require a change order be completed. For example, the estimate for fixed conversion cost will not include the following:

- 6.5.1. If the client is unable to provide legacy data for conversions, vendor will assess if additional resource time is required to acquire and compile the data into a usable format. This may require a change order.
- 6.5.2. Removal/clean-up of data from the legacy system.
- 6.5.3. Data modifications, outside terms of this agreement or requested after the 1st draft conversion.
- 6.5.4. Changes in the format/schema of data provided by client after the first conversion.
- 6.5.5. Mixed formats of data (a file containing tab delimited and comma delimited format).
- 6.5.6. Obstacles and/or problems with data integrity.
- 6.5.7. Data manipulation not for the purpose of the conversion, but for the purpose of supplying information not previously accessible.
- 6.5.8. Data fixes to completed data conversion due to data not provided in the files utilized for the conversion process(s)

7. REPORTING REQUIREMENTS

7.1. Client agrees that not every legacy system report can be precisely duplicated using Vendor Standard Reports, and/or Report Writing Tools. The Client agrees to the new report formats and designs that will be provided and where appropriate the client will produce reports using standard Vendor reporting tools. Client understands that requests for custom report development will be considered additional bid items.

7.2. Client has reviewed and approved the **Vendor's** Standard Reporting examples presented during the Business Process Study. With the exception of reports identified in the Additional Services or reports that the customer can create using standard spring brook reporting tools, client agrees that the reporting meets requirements and that any additional reporting requirements that are identified outside of this agreement will require that a change order be completed.

8. HARDWARE AND SOFTWARE REQUIREMENTS

8.1. Client has reviewed vendor's current hardware and software requirements included in the BPS findings document. Client agrees to make available appropriate configured servers and software as required. Client understands that vendor does not provide IT services for its clients.

9. Change Orders

9.1. Any Service or product that was not identified in this document, the Service Level Agreement, or the Software Maintenance Agreement will require that a Change Order be created and approved in writing by both parties. Client understands that these items may incur additional costs.

10. Failure of Vendor to enforce a right under this Agreement shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved.

11. If any provision of this Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

12. In the event that there is a conflict between this addendum and the SLA or SMA, This addendum will prevail.

IN WITNESS WHEREOF, parties hereto have caused their duly authorized representatives to execute this Agreement.

Springbrook Software Inc.

Client

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: CHIEF GLENN NIELSEN

DATE: FOR THE MEETING OF AUGUST 19, 2009

SUBJECT: VEHICLE PURCHASE

RECOMMENDATION:

Staff recommends that Council authorize the purchase of an unmarked police hybrid vehicle (Toyota Camry) for a cost not to exceed \$28,500.00 and the purchase of one Ford Crown Victoria patrol car not to exceed \$25,094.00.

INTRODUCTION:

Council approved the purchase of three vehicles for the police department in FY 09/10 (two marked patrol vehicles and one unmarked vehicle). In light of budgetary concerns, PD is requesting the purchase of only two vehicles (one marked patrol and one unmarked).

ANALYSIS:

The new unmarked fuel-efficient (hybrid) car will replace a 2002 Ford Crown Victoria (VID# 2FAF874W23X216778) with 79,229 miles on it and also has an engine manifold leak that is estimated to cost \$1500.00 to repair. According to an estimate by the Redwood City Corporation Yard that services our fleet, the estimated value of this car is under \$2500.00.

The 2009 Toyota Camry at \$28,500.00 continues to be the lowest responsive bid from a responsible bidder that matches our specifications, specifically, a high mileage/low emission vehicle suitable for police work.

The 2010 Ford Crown Victoria Interceptor patrol car would replace patrol car #3 (VID# 2FAFP71W6YX201714) with 89,629 miles on the odometer. This vehicle is not drivable and has not been repaired since it was towed to our PD lot after breaking down while on patrol.

The old vehicles will be surplus and sold at auction or made available to other Town Departments.

FISCAL IMPACT:

The purchase of these three vehicles will be conducted through the City of Redwood City's competitive bid process (piggy-backing). This practice is in accord with Atherton Municipal Code Section 3.16.110 (A) 5. In regards to the Camry, other written bids were also collected as reflected on Exhibit A, with the City of Redwood City's bid being the least costly alternative. The City Manager, in his capacity as Purchasing Officer, has approved the procedures followed.

The cost for the 2010 Ford Crown Victoria Interceptor with a 5-year/100,000 mile power train warranty is \$25,094.00. The total cost for the 2009 Toyota Camry Hybrid is \$28,500.00. Net cost of these vehicles will be significantly less than the budgeted amount for FY 09/10 PD vehicle purchases.

Prepared By:

Approved:

Glenn Nielsen
Chief of Police

Jerome D. Gruber
City Manager

TOWN OF ATHERTON

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

FROM: KATHY HUGHES ANDERSON, TOWN ARBORIST

DATE: FOR THE REGULAR MEETING OF AUGUST 19, 2009

**SUBJECT: RECOMMENDATION FROM ENVIRONMENTAL PROGRAMS
COMMITTEE FOR THE CITY COUNCIL TO ENDORSE AB1404:
GLOBAL WARMING COMPLIANCE OFFSETS & AIR QUALITY IN
CALIFORNIA**

RECOMMENDATION:

The Environmental Programs Committee is recommending that the City Council endorse the passage of AB1404: Global Warming Compliance Offsets & Air Quality in California by adopting the Resolution supporting AB 1404 and sending a letter of support to the Union of Concerned Scientists and the California Senate signed by the Mayor.

BACKGROUND:

The Environmental Programs Committee was contacted by the Union of Concerned Scientists and asked to endorse Assembly Bill No. 1404, which regulates the use of compliance offsets of AB32 obligations. The EPC reviewed the Fact Sheet sent by the Union of Concerned Scientists as an informational item at their July 1st meeting. They directed staff to put it on the agenda for their next meeting. At their July 15th meeting, the EPC reviewed the draft resolution and draft letter of support from the Town. The EPC feels this is important legislation that is needed to establish limits for compliance offsets for emission reductions in the cap and trade program.

At the July 15th, 2009 special meeting of the Environmental Programs Committee, the following motion was made and passed:

The Environmental Programs Committee recommends to the City Council that a letter and resolution be sent to the Union of Concerned Scientists and the State Senate on behalf of the Town, endorsing AB1404.

On July 6, 2009, the Senate Environmental Quality Committee passed AB 1404 and it is expected to make its way out of Senate Appropriations committee by the end of August and hit

the Senate floor the first week of September. Securing and endorsement by the end of August would be timely for the Union of Concerned Scientists support of AB 1404.

FISCAL IMPACT:

There is no fiscal impact to the Town in supporting the adoption of AB 1404.

Prepared by:

Reviewed by:

Kathy Hughes Anderson

Jerome D. Gruber, City Manager

Attachments:

1. Letter of Support to Honorable Darrell Steinberg and Members of the Senate
2. Resolution of the City Council Supporting the Passage of AB 1404
3. Union of Concerned Scientists Fact Sheet
4. Assembly Bill No. 1404



Town of Atherton

91 Ashfield Road
Atherton, California 94027
650-752-0500
Fax 650-688-6528

Honorable Darrell Steinberg
President Pro Tempore
Members of the California Senate
Fax: 916-323-2263

July 15th, 2009

RE: AB 1404 (De Leon, V.M. Perez, Carter)—**SUPPORT**

Dear President Pro Tempore Steinberg and Senators:

The Town of Atherton is writing to express our support for AB 1404--legislation to create parameters on the use of offsets for compliance with California's global warming regulations.

AB 1404 limits the use of offsets for compliance with California's global warming policies to ensure that the vast majority of the emission reductions promised by AB 32 come from our state's most heavily-polluting entities instead of being outsourced to other states and countries. The bill also requires prioritization of offsets that provide environmental and public health benefits to the state of California.

When the California Air Resources Board adopted its AB 32 Scoping Plan last year, several CARB Board members expressed concerns with the proposed offset limit and the possibility that large global warming polluters in California would rely too heavily on out-of-state offsets to meet their global warming reduction obligations. CARB has not yet decided on a specific offset limit, but is poised to do so within the next year. *Now is the time for the legislature to direct CARB on an appropriate limit.*

The California Air Resources Board (CARB) has wisely chosen to place a regulatory cap over sources comprising about 85% of our state's emissions. Our state's global warming policies should be designed to ensure that the vast majority of the reductions occur in these high-emitting capped sectors. Why? Because these sectors rely heavily on long-lasting infrastructure and equipment that burns fossil fuels. Investment in transforming these sectors is needed immediately to avoid locking in new polluting power plants, vehicles, freeways, etc. that will continue to pollute for decades.

If California's global warming emitters are allowed to keep polluting and simply buy credits for emissions reductions happening elsewhere in the world, Californians will lose out on local air quality and other co-benefits, including the improved energy security that will follow from reduced reliance on imported oil and gas.

DRAFTAB1404supportltr

Currently, all or part of 30 California counties are failing to attain federal health standards for PM2.5. With so many local areas struggling to meet state and federal health-based air quality standards, we can't afford to outsource any global warming efforts that could have helped reduce criteria and toxic air pollution. Those co-benefits are too valuable to lose.

In order to avoid the most catastrophic effects of severe warming, scientists from around the world are in general agreement that both developed and developing countries must make substantial cuts in global warming pollution *simultaneously and immediately*. We can't afford to delay emission reductions in California or the U.S. by buying offsets in developing countries instead of making the needed cuts ourselves.

Finally, economic-modeling done by CARB and UC Berkeley suggests that the costs of implementing AB 32 will be modest, close to zero, or possibly even positive, even when the many ancillary economic and environmental benefits of reducing global warming emissions—such as cleaner air—are ignored. Under these circumstances, compliance offsets would not be needed in California to make AB 32 implementation cost-effective.

Reaching the 2020 climate goal is only an interim step toward the state's ultimate goal of reducing global warming pollution 80 percent below 1990 levels by 2050. In order to meet this longer-term goal, investments in clean energy and transportation infrastructure must be made as soon as possible. Limiting offsets will help keep California on the path toward realizing this long-term goal, while an over-reliance on offsets could increase the cost of meeting California's 2050 climate goal.

I encourage you to support this important bill.

Sincerely,

Jerry Carlson, Mayor
Town of Atherton

RESOLUTION NO. 09-31

RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON SUPPORTING THE PASSAGE OF AB 1404

WHEREAS, California's Global Warming Solutions Act (AB 32) requires California to cut its global warming pollution to 1990 levels by 2020; and

WHEREAS, AB 1404, authored by Assembly members de Leon, Perez and Carter, would ensure that Californians reap the benefits of AB 32 directly by closing a loophole that would otherwise let polluters buy their way out of their AB 32 obligations instead of reducing global warming emissions and dangerous air pollutants at home; and

WHEREAS, AB1404 limits the use of offsets to no more than 10 percent of emission reductions, establishes requirements for verifying and tracking compliance offsets, and requires the California Air Resources Board to prioritize the use of offsets that provide air quality benefits to communities already suffering from disproportionate levels of air pollution; and

WHEREAS, excessive reliance on offsets would undermine the very purposes of a law like California's AB 32 cap on emissions; and

WHEREAS, the California Air Resources Board's AB 32 Scoping Plan would allow up to 49% of emission reductions to come from offsets anywhere in the world; and

WHEREAS, offsets need strong safeguards to ensure that the promised emission reductions are real, additional, verifiable, permanent, and enforceable; and

WHEREAS, if polluters are allowed to simply buy credits for emissions reductions happening elsewhere in the world instead of doing their fair share at home, Californians and the environment will lose out; and

WHEREAS, curbing global warming will require a fundamental transformation of our energy economy, a task that cannot be outsourced to other countries; and

WHEREAS, requiring California's largest polluters to reduce their own emissions will spur technological advances that can be exported to the rest of the world, bringing green jobs to California; and

WHEREAS, AB 1404 is supported by the Union of Concerned Scientists, the Sierra Club, the League of Conservation Voters, the California Building and Construction Trades Council, Environmental Defense Fund and many other environmental, health and labor organizations; and

WHEREAS, we need to ensure that pollution is addressed at its source rather than offset remotely, keeping the resultant environmental, health and economic benefits in California.

NOW, THEREFORE, BE IT RESOLVED that the Council of the Town of Atherton hereby endorses the passage of AB 1404.

PASSED AND ADOPTED by the Town of Atherton City Council this 19th day of August, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jerry Carlson, MAYOR

Town of Atherton

ATTEST:

Theresa DellaSanta, Deputy City Clerk

APPROVED AS TO FORM:

Wynne Furth, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF AUGUST 19, 2009

SUBJECT: APPROVE A CONTRACT CHANGE ORDER FOR G.
BORTOLOTTO & CO, INC. FOR THE STREET
RECONSTRUCTION PHASE 6 PROJECT NUMBER 08-025 IN
THE AMOUNT OF \$54,176.22.

RECOMMENDATION:

Approve a Contract Change Order for G. Bortolotto and Co., Inc. for Street Reconstruction Phase 6 Project, project number 08-025 in the amount of \$54,176.22.

INTRODUCTION:

Street Reconstruction Phase 6 began on Monday July 27, 2009. While working on Atherton Avenue, the contractor encountered unanticipated field conditions. After removing the asphalt from the roadbed, a water truck sub-base test was performed by our Engineering staff. Approximately 10,602 SF of soils were identified as unsuitable for paving. The soil was overly wet and constantly rolled under the heavy equipment, a sign of sub-grade instability. Staff authorized the contractor to stabilize the area with 6" dig-outs of the soft sub-base and plugged the holes with ¾ inch asphalt.

The solution was successful. The contractor is now in the process of paving the stabilized roadbed to a finished product, and the job has only incurred a one day setback in time.

ANALYSIS:

Field Change Orders

AC stabilization = \$54,176.22
TOTAL COST OF FIELD CHANGE ORDER = \$54,176.22

These costs are based on regular unit prices and industry standard time and materials costs. The cost of this repair item exceeded the amounts planned for sub-grade correction in the contract and will exceed the contingency of the contract. Staff recommends that the contract amount and authorization be increased by the amount of the change order, leaving the contingency intact to handle minor items on the remainder of the street to be constructed.

These repairs were time sensitive in nature, and failure to make a decision would have either meant constructing the road to an unacceptable standard or delaying of the project which would have incurred delay cost to our contractor as well as inconvenience to our residents within the construction site and along the areas of detour.

FISCAL IMPACT:

This change order for base stabilization effort of \$54,176.22 will bring the contract total to \$444,440.87. The current authorized amount including 10% contingency is \$429,291.11. The authorized amount will increase to \$483,467.33.

Federal American Recovery and Reinvestment Act of 2009 (ARRA) Program funding in the amount of \$468,000.00 (of that, \$247,000 will be reimbursed to Woodside from Road Impact Fee funds), Proposition 1B funding in the amount of \$63,923, Measure A funding in the amount of \$80,000 and Road impact Fee funds of \$29,736 (in addition to the Woodside reimbursement) were budgeted for this project in FY 2009-10. The total budget for the project is \$641,659. With this additional work, the total authorization is within the FY 2009-10 budget.

Prepared By:

Approved:

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

Jerome D. Gruber
City Manager

ITEM 26

Date: August 19, 2009

To: Honorable Atherton City Council

From: Richard Moore, Resident & Holbrook-Palmer Park Foundation Board of Director & Atherton Park & Recreation Commissioner

Subject: Holbrook-Palmer Park Community Maintenance Assistance Program

Recommendation:

The City Council consider designating the Park & Recreation Commission and the Holbrook-Palmer Park Foundation as coordinating partners of a Community Volunteers Park Maintenance Assistance Program with support and direction from the Town Manager & his staff.

Background:

I was asked if I would be interested in developing a park volunteer maintenance assistance program utilizing members from our community and users of Holbrook-Palmer Park by City Manager Jerry Gruber. I said yes and began this process by drafting a concept paper and sharing it with Jerry Gruber (City Manager), Duncan Jones (Public Works Director), Steve Tyler (Park Superintendent), Jean Cardona (Park Program Director), Mike Anderson (Park Supervisor), Elizabeth Lewis (City Councilperson), James Dobbie (City Councilperson) and members from the Holbrook-Palmer Park Foundation Board of Directors and Atherton Park & Recreation Commission.

The Holbrook-Palmer Park Foundation and Atherton Park & Recreation Commission approved program concept at their regular scheduled August meetings and indicated their willingness to work together to formulate a volunteer assistance program. Below is the program which was developed after going through the processes described above.

Program Introduction:

Holbrook-Palmer Park is a beautiful 22 acre park which is a real asset for both the residents of Atherton and its surrounding neighborhoods. In order to maintain the park in its intended purpose, the Town of Atherton & Holbrook-Palmer Park Foundation over the years have financially supported the park's capital improvements and daily maintenance requirements.

The park's current maintenance needs now overwhelms its available resources and the town's ability to support those needs have been limited due to its present financial climate. In order to supplement the park maintenance, a program staffed by volunteers would be of great value.

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Proposed Community Participation Programs:

The implementation of each phase is based upon the community acceptances and its willingness to become involved.

- **Phase One (Cleanup Day):** A community support program to augment the maintenance needs of the park through a designated four hour cleanup day of park grounds. If successful, additional cleanup days could be scheduled throughout the year.
- **Phase Two (Adoption Concept):** Designate portions of the parks for adoption by community groups/persons/associations to provide on-going monthly clean-up activities.
- **Phase Three (Handyman Resources):** Development of handyman repair resources from within the community to assist in various facility and grounds repair requirements.

Cleanup Day Preparation Plans-Phase One:

- Town staff establishes the standards to which volunteers are to be utilized and provides the necessary leadership as it pertains the interworking of the proposed cleanup day.
- Town staff develops a list of maintenance needs and separate those into various areas within the park for inclusion into a four hour volunteer clean up day. Areas would be prioritized to allow use of resources based upon the amount of available volunteers.
- Together HP Park Foundation & Park & Recreation Commission contacts various community and park users' resources to obtain sufficient volunteers.
- Together HP Park Foundation & Park & Recreation Commission designates community members to take leadership roles in specified areas for cleanup designation by those volunteers assigned to their area.
- Town staff organizes needed equipment and resources for use by volunteers and position those resources within specified clean-up areas.

- Town staff designates an area to which clean-up collection items to be disposed.
- Town staff trains volunteer group leaders' days in advance in safety measures and how the maintenance requirements are to be performed in their specific cleanup area.

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Clean-Up Day Schedule-Phase One

- 8:00am to 8:30am: Final instructions to group leaders from Staff and placement of need support items in each clean up area.
- 8:30am to 9:00am: Organizing volunteers by HP Park Foundation & Park & Recreation Commission , Town staff conducts training of volunteers on safety issues (OSHA) dealing with use of cleanup tools. Volunteers are then introduced to their group leaders and assigned cleanup areas.
- 9:00am to 1:00pm: Volunteers with guidance from their group leaders provide clean-up activities within their assigned areas and if needed in other areas as the work load may demand.
- 1:00pm to 2:00pm: BBQ luncheon for volunteers-thank you for a job well done.

Possible Volunteers & Groups for Clean-up Day-Phase One

- **Town Commissions & Committees:** Planning Commission, General Plan Committee, Transportation Committee, Railway Committee, Environmental Committee, Tree Committee, Heritage Committee, Parks & Recreational Commission, plus members of the City Council.
- **Town Support Groups:** Friends of the Library, Holbrook-Palmer Park Foundation, Atherton Dames, Park Tennis Key Holders, Atherton Disaster Committee, Atherton Police Explorer Scouts & Police Crime Prevention Committee
- **Homeowners Associations:** Lindenwood Home Owners Association, Lloyd Park Homeowners Association, Felton Gables Homeowners Association, plus the three smaller local homeowner associations within Atherton.
- **Park User Groups:** Pre-School Parents, Dog School Participates, Little League players & parents, AYSO players & parents, Lacrosse players & parents, Tennis School players & parents, park classes participates & other youth user groups, and parents of the users of

the children park playground area, and groups/businesses who are frequent facility renters

- **Community Groups:** Boy/Girl Scout Troops, Lions Club, Atherton Civic Interest League, Atherton Garden Guild, Menlo Park Rotary Club & Woodside-Atherton Garden Club

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- **Three Local High Schools & College Student Volunteers:** Encourage students to volunteer to earn community service units through their school.

Getting the Word Out For Community Participation-Phase One:

- Articles in the Town's Newsletter and Local Newspapers
- E-mail Messages to the Community via the Town e-mail listing
- Banners posted at Middlefield & Marsh Roads, plus banners at the Park Entries.
- Voice Messages sent through the town's alert phone system
- Homeowners Newsletters
- Park Class Schedules
- Flyers distributed to Pre-School Parents & Other Group Users
- Contact the local high schools & college students to volunteer their time for community service graduation credits.
- Flyers posted throughout the park

Financial Costs Estimates For Phase One:

- Extra clean-up tools as needed above those the town have in its inventory: **\$ unknown.**
Note: Volunteers will be asked to bring their own gardening hand tools to support this effort.
- BBQ luncheon food-luncheon prepared on sight: **\$750.00**, cost estimates are on based upon 100 volunteers in attendance.
- Banners, Flyers& Misc Items: **\$250.00**

- Staff Support on cleanup day & possible liability insurance inclusion costs: **\$ unknown**

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Proposed Dates for Phase One:

Based upon Council's approval and staff's detailed maintenance cleanup schedule, it is possible to have a late October or early November cleanup day. It also may depend upon what previously park activities have been scheduled for a Saturday or Sunday. If planning efforts fail to meet this schedule, perhaps an early spring event would be more doable for possible inclusion into an Earth Day or Arbor Day event.

Phases Two and Three:

Based upon the support from the community, these phases will take extra planning before they can be considered for implementation. The key for success rests with having a successful Clean- Up Day Program and then these phases may be considered.

Conclusion:

I would volunteer to help coordinate the community volunteer program with assistance from the Park & Recreation Commission & Holbrook-Palmer Park Foundation and direction from Town Staff, if the Council so desires.

Respectfully Submitted:

Richard Moore



DATE: FOR THE CITY COUNCIL MEETING OF AUGUST 19, 2009

TO: THE CITY COUNCIL

FROM: JEROME GRUBER, CITY MANAGER

SUBJECT: ADOPTION OF A RESOLUTION APPROVING THE ISSUANCE OF REVENUE OBLIGATIONS BY THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY FOR IMPROVEMENTS TO THE SHOREWAY RECYCLING AND DISPOSAL CENTER

RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution approving the South Bayside Waste Management Authority (SBMWA) issue bonds in the maximum amount of \$56,500,000 to fund improvements to the Shoreway Recycling and Disposal Center.

BACKGROUND

The City Council heard a presentation at its July 15, 2009 meeting from Bill Euphrat on the SBWMA financing for Shoreway Center improvements. The Council requested this item be scheduled for action at its next meeting.

ANALYSIS

The estimated total cost of the Shoreway Center improvements, including a new materials recovery facility (MRF) building with single stream recycling equipment, is currently \$42.31 million. The cost has come down considerably from earlier estimates due to the construction bids coming in 38% lower than the engineering estimate. The total maximum debt amount of \$56.5 million includes additional expenses such as insurance costs, capitalized interest, incidental costs associated with bond issuance, and a debt service reserve fund.

Construction of the updated facility will provide a facility and the equipment required for the new collection services (weekly single stream recyclables, plant materials and food scraps for residences, and more frequent services for all for commercial businesses and multi-unit complexes).

Additional types of materials will also be recycled. In addition, the new Shoreway Center will include an enhanced drop-off recycling location, an education/viewing area, safer vehicle routing, seismic safety and green building features. It is estimated that diversion of recycling and organics from landfills will increase by about 30% with the new services and facility improvements.

Plan of Finance

The authorization of new debt is net of cash reserves the SBWMA will contribute to the Shoreway project, a portion of which will be used to redeem the SBWMA's existing 2000 bonds. Those bonds were used by the SBWMA to purchase the Shoreway facility in 2000.

A summary of the proposed bond characteristics is as follows:

- Bond type- Fixed interest rate estimated to be 5.9% as of mid May.
- Bond size- \$56.5 million
- Bond term- 27 years
- Unique feature- SBWMA member agencies can invest up to \$10 million in subordinated notes within the issue as an investment for their portfolios
- Debt service coverage ratio- 1.67 to 3.20 during the first six years
- Estimated sale date- August 4, 2009

All debt service payments are a direct obligation of SBWMA rather than its member agencies. The Town of Atherton has no obligations to pay these bonds. SBWMA will recover all operating and non-operating expenses, including debt service on the new bonds, through its tipping fees, which apply to all waste processed at the Shoreway facility, and through the sale of recycled materials. Atherton's franchised collection contractor pays those tipping fees and passes those costs on to ratepayers in the solid waste rates set by the Town.

Rate Impact

Based on the bond authorization amount and the estimated interest on the bonds of 5.9%, annual debt service for the SBWMA will increase after 2010 by an estimated \$2.5 million. SBWMA tipping fees will be increased over the next three years to bring revenues up to a level necessary to pay increased debt service on the facility improvements, provide necessary debt service coverage, and to provide for adequate operating and replacement reserves. Tipping fees are expected to increase 12.5% in 2010, 11.1% in 2011 and 5.5% in 2012. Subsequent tipping fee increases are expected to be at or near the rate of inflation to keep pace with increased operating expenses.

For single family homes in Atherton, the current monthly rate for the most popular service, one 32-gallon can, is \$23.68 per month. The rate increase for those customers would amount to about \$0.71 per month, although the actual impact will not be known exactly until the interest rate is determined.

Debt Financing Process

Pursuant to the SBWMA Joint Powers Agency agreement, at least two-thirds (8) of the 12 member agencies' elected bodies are required to approve any debt sold by the SBWMA. As this requirement has been met, at its July 23, 2009 meeting, the SBWMA Board approved issuing bonds. It is anticipated that bonds will be sold on August 4, 2009.

ALTERNATIVES

The minimum required number of member agencies have already agreed to the issuance of bonds. As noted above, the SBMWA Board has voted to issue the bonds and with the sale anticipated on August 4, 2009. As a member of the SBWMA, Atherton is required to approve rates to cover the SBMWA expenses including the bonds. Regardless of the action by the City Council on the Resolution, the bonds will be issued and the resulting cost passed on to the rate payers.

FISCAL IMPACT

It is anticipated that the issuance of the bonds will result in a 3% increase to Atherton rate payers, or \$0.71 per month per can.

FORMAL MOTION

I move that the City Council adopt the adopt the Resolution approving the issuance of revenue obligations by the South Bayside Waste Management Authority for improvements to the Shoreway Recycling and Disposal Center.

Jerome Gruber, City manager

Attachment:

1. Resolution

RESOLUTION NO. 09-33

A RESOLUTION OF THE TOWN OF ATHERTON APPROVING, AUTHORIZING AND DIRECTING THE ISSUANCE OF REVENUE OBLIGATIONS BY THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY IN CONNECTION WITH A SOLID WASTE FACILITY PROJECT FINANCING

WHEREAS, the City of Atherton (the “Member”) has, together with certain other public agencies (the “Member Agencies”), entered into a First Amended and Restated Joint Exercise of Powers Agreement dated as of December 14, 2005 (the “Agreement”), establishing the South Bayside Waste Management Authority (the “Authority”) for the purpose, among others, of having the Authority issue its obligations to be used to finance the acquisition, construction and improvement of the Shoreway Recycling and Disposal Centers (“Project”);

WHEREAS, for the purpose of raising funds necessary to finance the public capital improvements, the Authority proposes to authorize the issuance of its revenue obligations (the “Obligations”) under the provisions of Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “Act”);

WHEREAS, a portion of the proceeds received from the sale of the Obligations will be used by the Authority to acquire, construct and improve the project;

WHEREAS, pursuant to the Agreement, the Authority will own and operate, or cause to be operated, the Project for the benefit of the Member and the Member Agencies;

WHEREAS, pursuant to the Agreement, so long as bonds of the Authority remain outstanding, the Member Agencies have agreed to designate the Authority’s solid waste facility as the disposal and processing location for solid waste, recyclable materials and plant materials generated and collected pursuant to each Member Agency’s solid waste collection franchise agreement;

WHEREAS, the Authority will collect solid waste tipping fees charged on tonnage delivered to the Authority’s solid waste facility and will receive revenues from the sale of recyclable materials recovered therefrom (the “Revenues”);

WHEREAS, the Authority will use the Revenues to pay debt service on the Obligations;

WHEREAS, the member has no responsibility to pay for the obligations; and

WHEREAS, the Member has duly considered such transactions and wishes at this time to approve said transactions in the public interest of the Member.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ATHERTON AS FOLLOWS:

Section 1. Pursuant to Section 7.1.1 of the Agreement, the Member hereby approves the issuance of the Obligations, in one or more series, in a principal amount not to exceed \$56,500,000. The Member hereby further approves the refunding of the Authority's Solid Waste Revenue Bonds, Series 2000 (the "2000 Bonds") at such time and in such manner as determined by the Authority.

Section 2. The City Manager or his designee is hereby authorized and directed to do any and all things, to execute and deliver any and all documents which, in consultation with the City's Attorney and counsel to the Member, they may deem necessary or advisable in order to effectuate the purposes of this Resolution.

* * * * *

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 19th day of August, 2009 by the following vote:

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

Jerry Carlson, Mayor
Town of Atherton

ATTEST:

Theresa DellaSanta
Deputy City Clerk

APPROVED AS TO FORM:

Wynne Furth
City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: LOUISE HO, FINANCE DIRECTOR

DATE: FOR THE MEETING OF AUGUST 19, 2009

**SUBJECT: FISCAL YEAR 2007-08 BASIC FINANCIAL STATEMENTS AND
INDEPENDENT AUDITOR'S REPORT**

RECOMMENDATION

Accept FY 2007-08 Basic Financial Statements and Independent Auditors' Report prepared by Caporicci & Larson.

DISCUSSION

The Town of Atherton completed the required annual financial report for FY 2007-08. The acceptance of the audited financial report will bring the Town into compliance with the Government Code which requires the Town to issue the annual financial report within 180 days after the year ended on June 30th. The delay in issuance of the FY 2007-08 was due to personnel changes in the Finance Department and the clean-up needed to prepare for the audit.

FY 2008-09 audit, Finance Department is on track to issue the financial report by December 2009. Maze & Associates completed the interim work in June 2009 and will return in late September 2009 to complete the final audit.

FISCAL IMPACT

None

Prepared by:

Approved by:

Louise Ho, Finance Director

Jerome D. Gruber, City Manager

Attachment: Basic Financial Statements and Independent Auditor's Report

Town of Atherton

Atherton, California

*Basic Financial Statements and
Independent Auditors' Report*

For the year ended June 30, 2008

Town of Atherton
Basic Financial Statements
For the year ended June 30, 2008

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Town of Atherton
Basic Financial Statements
For the year ended June 30, 2008

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**CITY OFFICIALS
As of June 30, 2008**

CITY COUNCIL

Mayor James R. Janz
Vice Mayor Jerry Carlson
Council Member James Dobbie
Council Member Charles E. Marsala
Council Member Kathy McKeithen
Council Member Elizabeth Lewis (elected 12/08)

ADMINISTRATION & DEPARTMENT HEADS

City Manager Jerome D. Gruber
Assistant City Manager Eileen Wilkerson (appointed)
Police Chief Robert J. Brennan
Police Chief Glenn Nielsen (appointed)
Public Works Director Duncan Jones
Building Official Mike Wassmann
Finance Director Louise Ho (appointed)
Acting City Clerk Kathi Hamilton
City Attorney Marc G. Hynes
Deputy Town Planner Lisa Costa Sanders

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INDEPENDENT AUDITORS' REPORT

To the Honorable Mayor and Members of the Town Council
of the Town of Atherton
Atherton, California

We have audited the accompanying financial statements of governmental activities, each major fund, and the aggregate remaining fund information of the Town of Atherton, California (Town), as of and for the year ended June 30, 2008, which collectively comprise the Town's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the Town's management. Our responsibility is to express an opinion on these basic financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the basic financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall basic financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

Subsequent to the basic financial statement date of June 30, 2008 and the year then ended, the United States has entered into a Financial Credit Crisis. Although the United States Federal Government has taken actions that, at least in part, are intended to relieve and correct this Financial Credit Crisis, investments are subject to significant impairment and losses. To date, the Town has not been informed and is not aware of any investment losses other than that described below. Accordingly, any such investment losses have not been reflected in the accompanying basic financial statements.

As explained in Note 2F to the basic financial statements, the investments in the San Mateo County Investment Pool were impaired as a result of the failure of certain investments held by the Pool. Consequently the Town incurred a loss of \$552,009 which has been reflected in the accompanying financial statements.

In our opinion, such basic financial statements referred to above present fairly, in all material respects, the financial position of the governmental activities, each major fund, and the aggregate remaining fund information of the Town as of June 30, 2008, and the respective changes in financial position and cash flows, where applicable, thereof for the year then ended in conformity with generally accepted accounting principles in the United States.

As described in Note 1 to the basic financial statements, the Town adopted Statement of Governmental Accounting Standards Board No. 48, *Sales and Pledges of Receivables and Future Revenues and Intra-Entity Transfers of Assets and Future Revenues*, and No. 50, *Pension Disclosures, an Amendment of GASB Statements No. 25 and No. 27*.

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Toll Free Fax: (866) 436-0927

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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

To the Honorable Mayor and Members of the Town Council
of the Town of Atherton
Atherton, California
Page 2

The accompanying Required Supplementary Information, such as management's discussion and analysis and other information as listed in the table of contents is not a required part of the basic financial statements but is supplementary information required by the Governmental Accounting Standards Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the Required Supplementary Information. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Town's basic financial statements. The accompanying supplementary information is presented for purpose of additional analysis and is not a required part of the basic financial statements. The supplementary information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

Capricci & Carson

Oakland, California
August 7, 2009

Town of Atherton

Management's Discussion and Analysis

For the year ended June 30, 2008

As management of the Town of Atherton (Town), we offer readers of the Town's financial statements this narrative and analysis of the financial activities of the Town for the fiscal year ended June 30, 2008. We encourage readers to consider the information presented here.

Financial Highlights

- The assets of the Town exceeded its liabilities at the close of the most recent fiscal year by \$45,016,952 (net assets). Of this amount, \$7,874,370 (unrestricted net assets) may be used to meet the Town's ongoing obligations to citizens and creditors.
- The Town's total net assets increased by \$1,991,620. Page 24 provides reconciliation between the increase in fund balance as reported on the governmental funds statements of revenues, expenditures and changes in fund balance with the government-wide statement of activities and changes in net assets.
- As of the close of the current fiscal year, the Town's governmental funds reported combined ending fund balances of \$15,552,871, an increase of \$2,362,171 in comparison with the prior year.
- At the end of the current fiscal year, unreserved and undesignated fund balance for the General Fund was \$1,867,624, or 18 percent of the total general fund expenditures.

Overview of the Financial Statements

This discussion and analysis is intended to serve as an introduction to the Town's basic financial statements. The Town's basic financial statements comprise three components: 1) government-wide financial statements, 2) fund financial statements and 3) notes to the financial statements. This report also contains supplementary information in a separate section.

Government-wide financial statements. The *government-wide financial statements* are designed to provide readers with a broad overview of the Town's finances, in a manner similar to a private-sector business.

The *statement of net assets* presents information on all of the Town's assets and liabilities; the difference between the two reports is *net assets*. Over time, increases or decreases in net assets may serve as a useful indicator of whether the financial position of the Town is improving or deteriorating.

The *statement of activities* shows how the Town's net assets changed during the most recent fiscal year. All changes in net assets are reported as soon as the underlying event giving rise to the change occurs, *regardless of the timing of related cash flows*. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future fiscal periods (e.g., uncollected taxes and earned but unused vacation leave).

Town of Atherton Management's Discussion and Analysis, Continued For the year ended June 30, 2008

The government-wide financial statements are intended to distinguish functions of the Town that are principally supported by taxes and intergovernmental revenues (*governmental activities*) from other functions that are intended to recover all or a significant portion of their costs through user fees and charges (*business-type activities*). The governmental activities of the Town include general government, building, planning, and public works including park. At present the Town does not provide municipal services for any business-type activities.

The government-wide financial statements include not only the Town itself (known as the *primary government*), but also the Atherton Channel District, a legally separate special purpose district. The Atherton Channel District, although legally separate, functions for all practical purposes as a department of the Town, and therefore has been included as an integral part of the primary government.

Fund financial statements. A *fund* is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The Town, like other state and local governments, uses fund accounting to ensure and demonstrate the compliance with finance-related legal requirements. All of the funds of the Town can be divided into three categories: governmental, proprietary, and fiduciary funds.

Governmental funds. *Governmental funds* are used to account for essentially the same functions reported as *governmental activities* in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund financial statements focus on *near-term inflows and outflows of spendable resources*, as well as on *balances of spendable resources* available at the end of the fiscal year. Such information may be useful in evaluating a government's near-term financing requirements.

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for *governmental funds* with similar information presented for *governmental activities* in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government's near-term financing decisions. Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures, and changes in fund balances prove a reconciliation to facilitate this comparison between *governmental funds* and *governmental activities*.

The Town maintains sixteen individual governmental funds. Information is presented separately in the government fund balance sheet and in the governmental fund statement of revenues, expenditures, and changes in fund balances for the general fund, special tax special revenue fund, library special revenue, and facilities construction capital projects fund, all of which are considered to be major funds. Data from the other governmental funds are combined into a single, aggregated presentation. Individual fund data for each of these non-major governmental funds is provided in the Required Supplementary Information.

The Town adopts an annual appropriated budget for its general fund and special tax special revenue fund. A budgetary comparison statement has been provided for the general fund and the special tax special revenue fund to demonstrate compliance with this budget.

Town of Atherton
Management's Discussion and Analysis, Continued
For the year ended June 30, 2008

Proprietary funds. The Town maintains one type of proprietary fund type, internal service funds. *Internal service funds* are an accounting device used to accumulate and allocate costs internally among the Town's various functions. The Town uses internal service funds to account for its fleet of vehicles, management information systems, and certain administrative services functions activities. Because these services predominantly benefit governmental rather than business-type functions, they have been included within *governmental activities* in the government-wide financial statements. Internal service funds are combined into a single, aggregated presentation in the proprietary fund financial statements. Individual fund data for the internal service funds is provided in the form of *combining statements* elsewhere in this report.

Fiduciary funds. Fiduciary funds are used to account for resources held for the benefit of parties outside the government. Fiduciary funds are *not* reflected in the government-wide financial statement because the resources of those funds are *not* available to support the Town's own programs. The accounting used for fiduciary funds is much like that used for proprietary funds.

Notes to the financial statements. The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements.

Other information. In addition to the basic financial statements and accompanying notes, this report also presents certain *required supplementary information* concerning the Town's progress in funding its obligation to provide pension benefits to its employees.

Government-Wide Financial Analysis

As noted earlier, net assets may serve over time as a useful indicator of a government's financial position. In the case of the Town, assets exceeded liabilities by \$45,016,952 at the close of the most recent fiscal year.

The largest portion of the Town's net assets consists of investments in capital assets (64 percent). An additional portion of the Town's net assets (18 percent) represents resources that are subject to external restrictions on how they may be used. The remaining balance of *unrestricted net assets* \$7,874,370 may be used to meet the Town's ongoing obligations to citizens and creditors.

Town of Atherton's Net Assets

Net Assets	
Invested in capital assets, net of related debt	\$ 29,002,562
Restricted for:	
Capital projects	2,138,056
Special projects	6,001,964
Unrestricted	7,874,370
Total net assets	\$ <u><u>45,016,952</u></u>

At the end of the current fiscal year, the Town is able to report positive balances in all three activities. The same situation held true for the prior fiscal year.

Town of Atherton
Management's Discussion and Analysis, Continued
For the year ended June 30, 2008

Governmental activities. Governmental activities increased the Town's net assets by \$1,991,620. The increase in net assets was due to a combination of factors including higher property and related tax revenues, return of excess library (tax) fund, special parcel tax assessment to be spent on Town's infrastructure and police services.

Financial Analysis of the Town's Government-Wide Financial Statements

The following table provides a comparison of revenues, expenditures, assets, liabilities and net assets for all governmental-type activities for the fiscal year ended June 30, 2007 and 2008.

Town of Atherton
Comparative Analysis of Revenues, Expenses, Assets, Liabilities, and Net Assets
For the Years Ended June 30, 2007 and 2008

	2008	2007	Variance	Change
Revenues	\$ 15,126,379	\$ 12,769,943	\$ 2,356,436	18%
Expenses	\$ 13,134,759	\$ 11,606,043	\$ 1,528,716	13%
Assets	\$ 47,547,469	\$ 45,273,713	\$ 2,273,756	5%
Liabilities	\$ 2,530,517	\$ 2,248,381	\$ 282,136	13%
Net Assets	\$ 45,016,952	\$ 43,025,332	\$ 1,991,620	5%

Total assets and total net assets increased by 5% and 4% respectively.

As noted earlier, the Town uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

Governmental funds. The focus of the Town's *governmental funds* is to provide information on near-term inflows, outflows, and balances of *spendable* resources. Such information is useful in assessing the Town's financing requirements. In particular, *unreserved fund balance* may serve as a useful measure of a government's net resources available for spending at the end of the fiscal year.

As of the end of the current fiscal year, the Town's governmental funds reported combined ending fund balances a net change of \$2,362,171 in comparison with the prior year. 18 percent of this total, *unreserved fund balance*, is available for spending at the government's discretion. The remainder of fund balance is reserved to indicate that is not available for new spending because it has already been committed:

- To provide for a budget stabilization for economic uncertainty and an emergency reserve \$3,191,364
- To provide for a reserve for future building inspections \$769,057
- To provide for GASB 45 unfunded liability \$500,000
- To provide for special and capital projects \$1,867,624
- For compensated absences \$737,806
- For business licenses \$817,000

Town of Atherton
Management's Discussion and Analysis, Continued
For the year ended June 30, 2008

The general fund is the chief operating fund of the Town. At the end of the current fiscal year, unreserved fund balance of the general fund was \$1,867,624, while total fund balance reached \$7,882,851. As a measure of the general fund's liquidity, it may be useful to compare both unreserved fund balance and total fund balance to total fund expenditures. For the year ended June 30, 2008 total general fund balance represents 74 percent of FY 2008 operating expenditures.

The fund balance of the general fund decreased by \$1,958,872 for the 12 months ended June 30, 2008. Key factors in this growth are as follows:

- The Town transferred \$1,805,144 to the Facilities Construction Fund for future building replacement cost.
- The Town experienced an investment loss of \$552,009 of which \$282,540 was to General Fund due to the collapse of Lehman Brothers in September 2008.

General Fund Budgetary Highlights

During the year, there was a \$558,166 increase in appropriations between the original and final adjusted budget. Following are the main components of the increase:

- \$285,000 supplemental appropriation for the City Attorney Department to cover additional legal costs.
- \$187,000 supplemental appropriation for the Building Department to acquire a new permit tracking system.

During the year, however, revenues exceeded budgetary estimates by \$1,311,668. The increase was due to higher property tax, building fees, sales tax, and franchise fees.

Expenditures exceeded appropriations by \$191,004. The increase was due to the City Attorney Department overspent by \$121,288 and Building Department by \$116,202. Other departments came in under budgets. The excess expenditures were funded by available financial resources.

Capital Assets

The Town's investment in capital assets for its governmental activities as of June 30, 2008, amounts to \$29,002,562 (net of accumulated depreciation). This investment in capital assets includes land, building, computers, a telecommunications system, improvements, machinery, equipment, park facilities, a corporation yard, and roads. The total increase in the Town's investment in capital assets for the current fiscal year was \$490,812 (all of which were for governmental activities).

Major capital asset events during the current fiscal year included the following:

- CRW Systems \$151,425

Town of Atherton
Management's Discussion and Analysis, Continued
For the year ended June 30, 2008

Town of Atherton's Capital Assets

	Balance July 1, 2007	Additions	Retirements	Inventory Adjustments	Balance June 30, 2008
Governmental Activities:					
Capital assets, not being depreciated:					
Land	\$ 690,884	\$ -	\$ -	\$ -	\$ 690,884
Construction in progress	774,411	105,319	-	(774,411)	105,319
Total non depreciable assets	<u>1,465,295</u>	<u>105,319</u>	<u>-</u>	<u>(774,411)</u>	<u>796,203</u>
Capital assets, being depreciated:					
Buildings	1,668,094	-	-	-	1,668,094
Other improvements	826,751	215,264	-	-	1,042,015
Vehicles	634,888	66,212	(25,050)	-	676,050
Equipment - computer	60,404	-	-	-	60,404
Software	-	151,425	-	-	151,425
Equipment - furniture/equipment	421,280	-	-	-	421,280
Infrastructure	48,942,648	346,571	(368,929)	-	49,694,701
Total depreciable assets	<u>52,554,065</u>	<u>779,472</u>	<u>(393,979)</u>	<u>774,411</u>	<u>53,713,969</u>
Accumulated Depreciation:					
Buildings	(695,956)	(37,391)	-	-	(733,347)
Other improvements	(523,715)	(33,631)	-	-	(557,346)
Vehicles	(433,752)	(73,664)	25,050	-	(482,366)
Equipment - computer	(24,792)	(9,995)	-	-	(34,787)
Software	-	(25,237)	-	-	(25,237)
Equipment - furniture/equipment	(371,287)	(10,311)	-	-	(381,598)
Infrastructure	(22,033,367)	(1,621,049)	361,487	-	(23,292,929)
Total accumulated depreciation	<u>(24,082,869)</u>	<u>(1,811,278)</u>	<u>386,537</u>	<u>-</u>	<u>(25,507,610)</u>
Depreciable assets, net	<u>28,471,196</u>	<u>(1,031,806)</u>	<u>(7,442)</u>	<u>774,411</u>	<u>28,206,359</u>
Governmental activities capital assets, net	<u>\$ 29,936,491</u>	<u>\$ (926,487)</u>	<u>\$ (7,442)</u>	<u>\$ -</u>	<u>\$ 29,002,562</u>

Additional information on the Town's capital assets can be found in Note 4 of this report.

Economic Factors Affecting Subsequent Years

At the date of publication of this report, the Town is facing fiscal challenge due to the downturn of housing market which has impacted the Town's building revenue and the State borrowing of Town's property tax revenues. Property taxes comprise 54% of the General Fund operating revenues. It appears that this will remain a stable source of revenue into the coming year.

The Town expects to be able to maintain its moderate and responsible fiscal policies related to operating expenditures; however, rising employee salaries and benefits costs including retiree health-care cost remain a major concern to the Town's fiscal health.

In addition, the special parcel tax assessment is due to expire on June 30, 2010. This tax helps the Town to continue to provide the current level of services and in meeting the capital improvement needs.

This financial report is designed to provide a general overview of the Town's finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Finance Director, 91 Ashfield Road, Atherton, California 94027.

BASIC FINANCIAL STATEMENTS

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GOVERNMENT-WIDE FINANCIAL STATEMENTS

Town of Atherton
Statement of Net Assets
June 30, 2008

	<u>Governmental Activities</u>
ASSETS	
Cash and investments in treasury	\$ 17,624,078
Receivables:	
Accounts	731,355
Interest	128,871
Miscellaneous	8,635
Prepaid expense	51,968
Capital assets:	
Non-depreciable	796,203
Depreciable, net	28,206,359
Total capital assets	<u>29,002,562</u>
Total assets	<u>47,547,469</u>
LIABILITIES	
Current liabilities:	
Accounts payable	702,906
Accrued payroll	311,843
Deposit payable	623,656
Compensated absences payable, due in one year	337,491
Total current liabilities	<u>1,975,896</u>
Noncurrent liabilities:	
Compensated absences payable, due in more than one year	400,315
Claims payable	154,306
Total noncurrent liabilities	<u>554,621</u>
NET ASSETS	
Invested in capital assets, net of related debt	29,002,562
Restricted for:	
Capital projects	2,138,056
Special projects	6,001,964
Unrestricted	7,874,370
Total net assets	<u>\$ 45,016,952</u>

See accompanying Notes to Basic Financial Statements.

Town of Atherton
Statement of Activities and Changes in Net Assets
For the year ended June 30, 2008

Functions/Programs	Expenses	Program Revenues			Total	Net (Expense) Revenue and Changes in Net Assets
		Charges for Services	Operating	Capital		
			Grants and Contributions	Grants and Contributions		
Primary government:						
Governmental activities:						
General government	\$ 3,214,020	\$ 2,983,292	\$ -	\$ -	\$ 2,983,292	\$ (230,728)
Building and planning	1,612,458	-	-	799,790	799,790	(812,668)
Police	4,907,469	49,654	60,437	-	110,091	(4,797,378)
Public works	3,400,812	988,305	-	1,023,762	2,012,067	(1,388,745)
Total governmental activities	\$ 13,134,759	\$ 4,021,251	\$ 60,437	\$ 1,823,552	\$ 5,905,240	(7,229,519)
General revenues:						
Taxes:						
Property taxes						7,048,222
Sales taxes						548,012
Motor vehicle in lieu						603,156
Other taxes						854,010
Total taxes						9,053,400
Investment earnings						101,561
Miscellaneous						66,178
Total general revenues						9,221,139
Change in net assets						1,991,620
Net assets - beginning of year						43,025,332
Net assets - end of year						\$ 45,016,952

See accompanying Notes to Basic Financial Statements.

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FUND FINANCIAL STATEMENTS

Governmental Fund Financial Statements
Proprietary Fund Financial Statements
Fiduciary Fund Financial Statements

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GOVERNMENTAL FUND FINANCIAL STATEMENTS

The General Fund - This Fund accounts for all general revenues of the Town that were not specifically levied or collected for other Town funds and the related expenditures.

Special Tax - This Fund is used to account for parcel tax assessments received from property owners to be used for the maintenance of streets and police services.

Library Fund - This Fund is used to account for the property tax funds dedicated to the Town's library operations.

Facilities Construction Fund - This Fund is used to account for the funds dedicated to facilities construction.

Town of Atherton
Balance Sheet
Governmental Funds
June 30, 2008

	Major Funds			
	General	Special Tax Special Revenue	Library Fund Special Revenue	Facilities Construction Capital Projects
ASSETS				
Cash and investments in treasury	\$ 8,838,884	\$ 1,261,809	\$ 3,156,259	\$ 1,825,464
Receivables:				
Accounts	209,599	-	-	-
Interest	128,871	-	-	-
Miscellaneous	8,635	-	-	-
Prepaid Expense	51,968	-	-	-
Due from other funds	57,370	-	-	-
Total assets	\$ 9,295,327	\$ 1,261,809	\$ 3,156,259	\$ 1,825,464
LIABILITIES AND FUND BALANCES				
Liabilities:				
Accounts payable	\$ 454,427	\$ 103,990	\$ 981	\$ -
Accrued payroll	311,843	-	-	-
Deposit payable	623,656	-	-	-
Deferred revenue	-	-	-	-
Claims payable	22,550	-	-	-
Due to other funds	-	-	-	-
Total liabilities	1,412,476	103,990	981	-
Fund Balances:				
Reserved for:				
Capital projects	-	-	-	1,805,144
Budget stabilization reserve	1,595,682	-	-	-
Emergency disaster reserve	1,595,682	-	-	-
Future building inspection	769,057	-	-	-
Compensated absences	737,806	-	-	-
Other Post-Employment Benefits - unfunded liability	500,000	-	-	-
Unreserved:				
Designated:				
Business License	817,000	-	-	-
Undesignated, reported in:				
General fund	1,867,624	-	-	-
Special revenue funds	-	1,157,819	3,155,278	-
Capital project funds	-	-	-	20,320
Total fund balances	7,882,851	1,157,819	3,155,278	1,825,464
Total liabilities and fund balances	\$ 9,295,327	\$ 1,261,809	\$ 3,156,259	\$ 1,825,464

See accompanying Notes to Basic Financial Statements.

Non-Major Governmental	
Funds	Total
\$ 1,645,038	\$ 16,727,454
521,756	731,355
-	128,871
-	8,635
-	51,968
-	57,370
<u>\$ 2,166,794</u>	<u>\$ 17,705,653</u>

\$ 107,965	\$ 667,363
-	311,843
-	623,656
470,000	470,000
-	22,550
57,370	57,370
<u>635,335</u>	<u>2,152,782</u>

-	1,805,144
-	1,595,682
-	1,595,682
-	769,057
-	737,806
-	500,000
-	817,000
-	1,867,624
1,218,867	5,531,964
312,592	332,912
<u>1,531,459</u>	<u>15,552,871</u>
<u>\$ 2,166,794</u>	<u>\$ 17,705,653</u>

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Town of Atherton
Reconciliation of the Governmental Funds Balance Sheet
to the Government-Wide Statement of Net Assets
June 30, 2008

Total Fund Balances - Total Governmental Funds \$ 15,552,871

Amounts reported for governmental activities in the Statement of Net Assets were reported differently because:

Capital assets used in governmental activities were not current financial resources and therefore were not reported in the Governmental Funds Balance Sheet.

Non depreciable assets (Land and construction in progress)	796,203
Depreciable buildings, property, equipment and infrastructure, net (less \$229,435 which was reported in the Internal Service Fund).	<u>27,976,924</u>
Total capital assets	<u>28,773,127</u>

Certain revenues are not available to pay for current-period expenditures and therefore are reported as deferred revenue in the fund financial statements. However, those revenues are considered earned and recognized as revenue in the government-wide statement of activities.

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Internal Service Fund was used by management to charge the costs of certain activities to individual funds. The assets and liabilities of the Internal Service Fund was included in governmental activities in the Government-Wide Statement of Net Assets.

958,760

Compensated absences payable were not due and payable in the current period. Therefore, they were not reported in the Governmental Funds Balance Sheet. The long-term liabilities were adjusted as follows:

Total compensated absences	<u>(737,806)</u>
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Net Assets of Governmental Activities \$ 45,016,952

Town of Atherton
Statement of Revenues, Expenditures and Changes in Fund Balances
Governmental Funds
For the year ended June 30, 2008

	Major Funds			
	General	Special Tax Special Revenue	Library Special Revenue	Facilities Construction Capital Projects
REVENUES:				
Property taxes	\$ 4,641,689	\$ -	\$ 600,000	\$ -
Special assessments	-	1,732,655	-	-
Sales taxes	258,459	-	-	-
Measure A grants	-	-	-	-
Other taxes	1,457,166	-	-	-
Permits and licenses	1,796,936	-	-	-
Fines and forfeitures	44,644	-	-	-
From other agencies	916,040	-	-	-
Service charges	917,872	-	-	-
Use of money and property	192,757	-	9,470	-
Road impact fees	-	-	-	-
Other revenue	48,913	-	-	-
Total revenues	<u>10,274,476</u>	<u>1,732,655</u>	<u>609,470</u>	<u>-</u>
EXPENDITURES:				
Current:				
General government	1,691,316	-	19,115	-
Building and planning	1,845,218	-	-	-
Police	4,920,505	-	-	-
Public works	2,216,331	485,548	-	49,127
Total expenditures	<u>10,673,370</u>	<u>485,548</u>	<u>19,115</u>	<u>49,127</u>
REVENUES OVER (UNDER) EXPENDITURES	<u>(398,894)</u>	<u>1,247,107</u>	<u>590,355</u>	<u>(49,127)</u>
OTHER FINANCING SOURCES (USES):				
Transfers in	250,000	-	-	1,805,144
Transfers (out)	(1,809,978)	(150,000)	-	-
Total other financing sources (uses)	<u>(1,559,978)</u>	<u>(150,000)</u>	<u>-</u>	<u>1,805,144</u>
REVENUES AND OTHER FINANCING SOURCES OVER (UNDER) EXPENDITURES AND OTHER FINANCING USES	<u>(1,958,872)</u>	<u>1,097,107</u>	<u>590,355</u>	<u>1,756,017</u>
FUND BALANCES:				
Beginning of year	9,841,723	60,712	2,564,923	69,447
End of year	<u>\$ 7,882,851</u>	<u>\$ 1,157,819</u>	<u>\$ 3,155,278</u>	<u>\$ 1,825,464</u>

See accompanying Notes to Basic Financial Statements.

Non-Major Governmental		
Funds		Total
\$ 73,878	\$	5,315,567
-		1,732,655
-		258,459
289,553		289,553
-		1,457,166
-		1,796,936
-		44,644
647,412		1,563,452
17,915		935,787
11,785		214,012
988,305		988,305
10,930		59,843
<u>2,039,778</u>		<u>14,656,379</u>
-		1,710,431
-		1,845,218
100,337		5,020,842
966,711		3,717,717
<u>1,067,048</u>		<u>12,294,208</u>
<u>972,730</u>		<u>2,362,171</u>
4,834		2,059,978
<u>(100,000)</u>		<u>(2,059,978)</u>
<u>(95,166)</u>		<u>-</u>
877,564		2,362,171
653,895		13,190,700
<u>\$ 1,531,459</u>	<u>\$</u>	<u>15,552,871</u>

Town of Atherton

Reconciliation of the Governmental Funds Statement of Revenues, Expenditures, and Changes in Fund Balances to the Government-Wide Statement of Activities and Changes in Net Assets For the year ended June 30, 2008

Net Change in Fund Balances - Total Governmental Funds \$ 2,362,171

Governmental activities in the Statement of Activities and Changes in Net Assets were reported differently because:

Governmental funds report capital outlay as expenditures. However, in the Government-Wide Statement of Activities and Changes in Net Assets, the cost of those assets is allocated over their estimated useful lives as depreciation expense. This is the amount of capital assets recorded in the current period net of Internal Service Fund capital asset additions of \$66,212 818,579

Depreciation expense on capital assets is reported in the Government-Wide Statement of Activities and Changes in Net Assets, but it does not require the use of current financial resources. Therefore, depreciation expense was not reported as expenditures in governmental funds. This is the amount of depreciation expense for the current period net of Internal Service Fund depreciation of \$85,502. (1,725,776)

Loss on the disposal of capital assets is reported in the Government-Wide Statement of Activities and Changes in Net Assets, but it does not require the use of current financial resources. Therefore, it is not reported as a loss in governmental funds. (7,442)

Certain revenues are not considered available revenue and are deferred in the governmental funds. However, those revenues are considered earned and recognized as revenue in the government-wide statement of activities. This amount represents current year's activities. 470,000

Compensated absences is reported in the Government-Wide Statement of Activities and Changes in Net Assets, but it does not require the use of current financial resources. Therefore, compensated absences expense was not reported as expenditures in governmental funds. (64,713)

Internal Service Fund are used by management to charge the costs of certain activities, such as insurance and fleet management, to individual funds. The change in net assets of the Internal Service Fund was reported with governmental activities. 138,801

Change in Net Assets of Governmental Activities \$ 1,991,620

PROPRIETARY FUND FINANCIAL STATEMENTS

Internal Service Fund - This fund is used to account for special activities and services performed by a designated Town department for other departments on a cost reimbursement basis.

Town of Atherton
Statement of Net Assets
Proprietary Funds
June 30, 2008

	Governmental Activities Internal Service Fund
<hr/> <hr/>	
ASSETS	
Current assets:	
Cash and investments	\$ 896,624
Noncurrent assets:	
Capital assets:	
Depreciable	749,353
Accumulated depreciation	(519,918)
Total assets	<u>1,126,059</u>
LIABILITIES	
Current liabilities:	
Accounts payable	35,543
Claims payable	131,756
Total liabilities	<u>167,299</u>
NET ASSETS	
Invested in capital assets, net of related debt	229,435
Unrestricted	729,325
Total net assets	<u>\$ 958,760</u>

See accompanying Notes to Basic Financial Statements.

Town of Atherton
Statement of Revenues, Expenses, and Changes in Net Assets
Proprietary Funds
For the year ended June 30, 2008

	Governmental Activities Internal Service Fund
OPERATING REVENUES:	
Service charges	\$ 797,551
Total operating revenues	<u>797,551</u>
OPERATING EXPENSES:	
Risk management	223,021
Depreciation	85,502
Supplies and maintenance	349,780
Total operating expenses	<u>658,303</u>
OPERATING INCOME (LOSS)	<u>139,248</u>
NONOPERATING REVENUES (EXPENSES):	
Interest expense	(447)
Total nonoperating revenues (expenses)	<u>(447)</u>
Change in net assets	138,801
NET ASSETS:	
Beginning of the year	<u>819,959</u>
End of the year	<u><u>\$ 958,760</u></u>

See accompanying Notes to Basic Financial Statements.

Town of Atherton
Statement of Cash Flows
Proprietary Funds
For the year ended June 30, 2008

	Governmental Activities Internal Service Fund
CASH FLOWS FROM OPERATING ACTIVITIES:	
Cash received from customers/other funds	\$ 797,551
Cash payments to suppliers for goods and services	(443,217)
Net cash provided (used) by operating activities	354,334
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:	
Acquisition fixed assets	(66,212)
Proceeds from sale of assets	4,963
Net cash provided (used) by capital and related financing activities	(61,249)
CASH FLOWS FROM INVESTING ACTIVITIES:	
Investment earnings	4,963
Net cash provided (used) by investing activities	4,963
Net increase (decrease) in cash and cash equivalents	293,085
CASH AND CASH EQUIVALENTS:	
Beginning of year	603,539
End of year	\$ 896,624
RECONCILIATION OF OPERATING INCOME TO NET	
CASH PROVIDED BY OPERATING ACTIVITIES:	
Operating income (loss)	\$ 139,248
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities:	
Depreciation	85,502
Changes in assets and liabilities:	
Accounts payable	15,499
Accrued payroll	(6,800)
Claims payable	120,885
Total adjustments	215,086
Net cash provided (used) by operating activities	\$ 354,334

See accompanying Notes to Basic Financial Statements.

FIDUCIARY FUND FINANCIAL STATEMENTS

Agency Funds are custodial in nature (assets equal liabilities) and do not involve measurement of results of operations. They are used to account for assets held in an agency capacity for others and therefore cannot be used to support the Town's programs.

Town of Atherton
Statement of Fiduciary Net Assets
Fiduciary Funds
June 30, 2008

	<u>Agency Funds</u>
ASSETS	
Cash and investments	\$ 167,395
Total assets	<u>\$ 167,395</u>
LIABILITIES	
Deposits payable	\$ 167,395
Total liabilities	<u>\$ 167,395</u>

See accompanying Notes to Basic Financial Statements.

Town of Atherton
Notes to the Basic Financial Statements
For the year ended June 30, 2008

1. SIGNIFICANT ACCOUNTING POLICIES

The basic financial statements of the Town of Atherton, California (Town) have been prepared in conformity with generally accepted accounting principles (GAAP) as applied to governmental agencies. The Governmental Accounting Standards Board (GASB) is the accepted standard setting body for establishing governmental accounting and financial reporting principles. The more significant of the Town's accounting policies are described below.

A. Financial Reporting Entity

The Town was incorporated in 1923 and is situated between the cities of Menlo Park and Redwood City on the Peninsula of the San Francisco Bay Area. The Town operates under the Mayor-Council-Manager form of government created by charter in 1923 and provides the following services: public safety (police), public works and streets, park services, building services and general administration services.

The Town is governed by a five-member council elected by Town residents. The Town is legally separate and fiscally independent, which means it can issue debt, set and modify budgets and fees and sue or be sued. The accompanying basic financial statements include the financial activities of the Town, the primary government, and its component units.

Component units are legally separate organizations for which the elected officials of the primary government are financially accountable. In addition, component units can be other organizations for which the primary government's exclusion would cause the reporting entity's financial statements to be misleading or incomplete.

The following is a brief review of the blended component unit included in the accompanying basic financial statements of the Town in which the Council functions as the governing board:

The Atherton Channel District - was established to assist in the maintenance and rehabilitation of the areas within the Town determined to be in the flood plain of the local stream. The District has all accounting and administrative functions performed by Town staff and the District receives advances from the Town to finance operations. The financial activities of the District have been included in the Atherton Channel District Capital Projects Fund in the accompanying basic financial statements.

The above component unit is included in the Town's basic financial statements using the blended method since the governing body of this component unit is substantially the same as the governing body of the Town and this component unit provides services entirely to the Town.

Discretely presented component units are reported in a separate column in the basic financial statements to emphasize that they are legally separate from the Town. The Town does not have any component units that are discretely presented. Financial information for the component unit may be obtained from the Town's Finance Department.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

1. SIGNIFICANT ACCOUNTING POLICIES, Continued

B. Basis of Accounting and Measurement Focus

The accounts of the Town are organized on the basis of funds, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund equity, revenues, and expenditures or expenses, as appropriate. Government resources are allocated to and accounted for in individual funds based upon the purposes for which they are to be spent and the means by which spending activities are controlled.

Government-Wide Financial Statements

The Town's government-wide financial statements include a Statement of Net Assets and a Statement of Activities and Changes in Net Assets. These statements present summaries of the governmental activities for the Town, the primary government, accompanied by a total column. Fiduciary activities of the Town are not included in these statements.

These financial statements are presented on an "*economic resources*" measurement focus and the accrual basis of accounting. Accordingly, all of the Town's assets and liabilities, including capital assets and related current year infrastructure asset additions and long-term liabilities, are included in the accompanying Statement of Net Assets. The Statement of Activities presents changes in net assets. Under the accrual basis of accounting, revenues are recognized in the period in which they are earned while expenses are recognized in the period in which a liability is incurred.

Certain types of transactions are reported as program revenues for the Town and are presented in the following three categories:

- Charges for services
- Operating grants
- Capital grants

Certain eliminations have been made as prescribed by GASB Statement No. 34 in regards to interfund activities, payables, and receivables. All internal balances in the Statement of Net Assets have been eliminated. The following interfund activities have been eliminated:

- Due to/from other funds
- Transfers in/out

The Town applies all applicable GASB pronouncements (including all NCGA Statements and Interpretations currently in effect) as well as the following pronouncements issued on or before November 30, 1989, unless those pronouncements conflict with or contradict GASB pronouncements: Financial Accounting Standards Board (FASB) pronouncements and Statements Interpretations, Accounting Principles Board (APB), and Accounting Research Bulletins (ARB) of the Committee on Accounting Procedure.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

1. SIGNIFICANT ACCOUNTING POLICIES, Continued

B. Basis of Accounting and Measurement Focus, Continued

Governmental Fund Financial Statements

Governmental fund financial statements include a Balance Sheet and a Statement of Revenues, Expenditures and Changes in Fund Balances for all major governmental funds and non-major funds aggregated. An accompanying schedule is presented to reconcile and explain the differences in net assets as presented in these statements to the net assets presented in the government-wide financial statements. The Town has presented all major funds that met the applicable criteria.

All governmental funds are accounted for on a spending or "*current financial resources*" measurements focus. Accordingly, only current assets and current liabilities generally are included on the balance sheets. The Statement of Revenues, Expenditures and Changes in Fund Balances presents increases (revenues and other financial sources) and decreases (expenditures and other financial uses) in net current assets. Under the modified accrual basis of accounting, revenues are recognized in the accounting period in which they become both measurable and available to finance expenditures of the current period.

Revenues are recorded when received in cash, except those revenues subject to accrual (generally 60 days after year-end) are recognized when due. The primary revenue sources, which have been treated as susceptible to accrual by the Town, are property taxes, charges for services, federal and state grants, sales tax, and interest. Expenditures are recognized in the accounting period in which the related fund liability is incurred.

Deferred revenues arise when potential revenues do not meet both the "measurable" and "available" criteria for recognition in the current period. Deferred revenues also arise when the government receives resources before it has a legal claim to them, as when grant monies are received prior to incurring qualifying expenditures. In subsequent periods when both revenue recognition criteria are met or when the government has a legal claim to the resources, the deferred revenue is removed from the balance sheet and revenue is recognized.

The Reconciliations of the Fund Financial Statements to the Government-Wide Financial Statements are provided to explain the differences created by the integrated approach of GASB Statement No. 34.

Proprietary Fund Financial Statements

Proprietary fund financial statements include a Statement of Net Assets, a Statement of Revenues, Expenses and Change in Net Assets, and a Statement of Cash Flows for all proprietary funds.

The Town's proprietary fund represents an internal service fund of which has been combined with the governmental activities in the government-wide financial statements.

Proprietary funds are accounted for using the "*economic resources*" measurement focus and the accrual basis of accounting. Accordingly, all assets and liabilities (whether current or noncurrent) are included on the Statement of Net Assets.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

1. SIGNIFICANT ACCOUNTING POLICIES, Continued

B. *Basis of Accounting and Measurement Focus, Continued*

Proprietary Fund Financial Statements, Continued

The Statement of Revenues, Expenses and Change in Net Assets presents increases (revenues) and decreases (expenses) in total net assets. Under the accrual basis of accounting, revenues are recognized in the period in which they are earned while expenses are recognized in the period in which the liability is incurred.

Operating revenues in the proprietary funds are those revenues that are generated from the primary operations of the fund. All other revenues are reported as non-operating revenues. Operating expenses are those expenses that are essential to the primary operations of the fund. All other expenses are reported as non-operating expenses.

Fiduciary Fund Financial Statements

Fiduciary fund financial statements normally include a Statement of Net Assets and a Statement of Changes in Fiduciary Net Assets. The Town's fiduciary funds represent agency funds. Agency funds are custodial in nature (assets equal liabilities) and do not involve measurement of results of operations. As a result, a statement of Changes in Fiduciary Net Assets is not presented in this report.

C. *Recognition of Interest Liability*

In government-wide financial statements, interest payable on long-term debt is recognized as the liability is incurred for governmental activities and business type activities.

In the fund financial statements, proprietary fund types recognize interest payable when the liability is incurred.

D. *Use of Restricted and Unrestricted Net Assets*

When an expense is incurred for purposes for which both restricted and unrestricted net assets are available, the Town's policy is to apply restricted net assets first.

E. *Cash, Cash Equivalents and Investments*

The Town pools cash and investments from all sources, for the purpose of increasing income through investment activities. Interest income on investments is allocated on the basis of average month-end cash and investment balances in each fund. Cash and cash equivalents represent cash and investments and restricted cash and investments with an original maturity term of three months or less.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

1. SIGNIFICANT ACCOUNTING POLICIES, Continued

E. Cash, Cash Equivalents and Investments, Continued

The Town invests in the California Local Agency Investment Fund (LAIF), which is operated by the California State Treasurer. The State's investment policy is consistent with the Town's policy. A portion of LAIF's investments are in structured notes and asset-backed securities. As of June 30, 2008 LAIF had invested 14.72 % of its funds in such securities as compared to 3.466% at June 30, 2007.

The Town also invests in the San Mateo County Investment Fund (SMCIP), which is operated by the San Mateo County Treasurer. The County's investment policy is consistent with the Town's policy.

LAIF and SMCIP determines fair value on its investment portfolio based on market quotations for these securities where market quotations are readily available, and on amortized cost or best estimate for those securities where market value is not readily available.

In accordance with GASB Statement No. 31, highly liquid money market investments with maturities of one year or less at time of purchased are stated at amortized cost. All other investments are stated at fair value. Market value is used as fair value for those securities for which market quotations are readily available.

In accordance with GASB Statement No. 40, *Deposit and Investment Disclosures (Amendment of GASB Statement No. 3)*, certain disclosure requirements, if applicable, for Deposits and Investment Risks are specified in the following areas:

- Interest Rate Risk
- Credit Risk
- Overall
- Custodial Credit Risk
- Concentrations of Credit Risk
- Foreign Currency Risk

In addition, other disclosures are specified including use of certain methods to protect deposits and investments, highly sensitive investments, credit quality at year end and other disclosures.

F. Capital Assets

Capital assets are valued at historical cost or estimated historical cost if actual historical cost was not available. Donated fixed assets are valued at their estimated fair market value on the date donated. The Town has set the capitalization threshold for reporting capital assets at \$5,000 and a half year of depreciation is recorded in the year of acquisition. Depreciation is recorded on a straight-line basis over estimated useful lives of the assets as follows:

Buildings	40 Years
Improvements other than buildings	20 Years
Machinery and equipment	5-20 Years
Infrastructure	20-50 Years

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

1. SIGNIFICANT ACCOUNTING POLICIES, Continued

F. Capital Assets, Continued

Assets are grouped by asset type into one of the following accounts - land, land improvements, infrastructure assets (e.g. roads, bridges, sidewalks, and similar items), buildings and improvements, machinery and equipment, lease improvements, software, and construction in progress.

GASB Statement No. 34 requires the inclusion of infrastructure capital assets in local governments' basic financial statements. In accordance with GASB Statement No. 34, the Town has included the value of all infrastructure assets in the basic financial statements.

The Town defines infrastructure as the basic physical assets that allow the Town to function. The assets include streets, sewer, and park lands. Each major infrastructure system can be divided into subsystems. For example the street system can be subdivided into pavement, curb and gutters, sidewalks, medians, streetlights, landscaping and land. These subsystems were not delineated in the basic financial statements. The appropriate operating department maintains information regarding the subsystems.

For all infrastructure systems, the Town elected to use the Basic Approach as defined by GASB Statement No. 34 for infrastructure reporting. Estimated historical costs were developed in one of three ways: (1) historical records; (2) standard unit costs appropriate for the construction/acquisition date; or (3) present cost indexed by a reciprocal factor of the price increase from the construction/acquisition date to the current date. The accumulated depreciation, defined as the total depreciation from the date of construction/acquisition to the current date on a straight-line cost method was computed using industry accepted life expectancies for each infrastructure subsystem. The book value was then computed by deducting the accumulated depreciation from the estimated historical cost.

G. Compensated Absences

Government-Wide Financial Statements

For governmental activities, compensated absences are accrued as incurred and charged to the various programs.

Fund Financial Statements

In governmental funds, compensated absences are recorded as expenditures in the years paid.

H. Property Taxes

San Mateo County assesses properties, bills, and collects property taxes for the Town. Secured and unsecured taxes are levied on the preceding March 1. Secured taxes are due in two installments on November 1 and February 1. If unpaid, such taxes become delinquent on December 10 and April 10, respectively, and a 10% penalty attaches to any delinquent payments. Unsecured taxes are due as of January 1 lien date and become delinquent if unpaid on August 31. A 10% penalty attaches to delinquent unsecured taxes. If unsecured taxes remain unpaid on October 31, an additional 1.5% attaches on the first day of each month until unpaid. The term "unsecured" refers to taxes on property not secured by liens on real property.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

1. SIGNIFICANT ACCOUNTING POLICIES, Continued

H. Property Taxes, Continued

Town property tax revenues are recognized when levied to the extent that they result in current receivables.

On October 12, 1993, the San Mateo County Board of Supervisors adopted and implemented the Alternative Method of Tax Apportionment (Teeter Plan). The Teeter Plan applies to secured taxes only and provides a predictable cash flow for taxes since they are apportioned to the Town as if the tax levy had been collected in full.

I. Post Employment Benefits Other than Pensions

The Town provides post-retirement health care benefits to all employee groups with 20 years of service as required by current agreements. The Town records premium payments on a "pay-as-you-go" basis.

J. Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires Town management to make estimates and assumptions that affect certain amounts and disclosures. Accordingly, actual results could differ from those estimates.

K. Net Assets

Government-Wide Financial Statements

In the government-wide financial statements, net assets are classified in the following categories:

Invested in Capital Assets, Net of Related Debt—This amount consists of capital assets net of accumulated depreciation and reduced by outstanding debt that attributed to the acquisition, construction, or improvement of the assets.

Restricted Net Assets—This amount is restricted by external creditors, grantors, contributors, or laws or regulations of other governments.

Unrestricted Net Assets—This amount is all net assets that do not meet the definition of "invested in capital assets, net of related debt" or "restricted net assets."

Fund Financial Statements

Reservations to fund balances of governmental funds and retained earnings of proprietary funds are created to either satisfy legal covenants, including State laws, that require a portion of the fund equity be segregated or identify the portion of the fund equity not available for future expenditures.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

1. SIGNIFICANT ACCOUNTING POLICIES, Continued

L. New Pronouncements

In 2008, the Town adopted new accounting standards in order to conform to the following GASB Statements:

- GASB Statement No. 48, *Sales and Pledges of Receivables and Future Revenues and Intra-Entity Transfers of Assets and Future Revenues* - This Statement establishes accounting and financial reporting standards for transactions in which a government receives, or is entitled to, resources in exchange for future cash flows generated by collecting specific receivables or specific future revenues. In addition, this Statement establishes accounting and financial reporting standards that apply to all intra-entity transfers of assets and future revenues.
- GASB Statement No. 50, *Pension Disclosures - An amendment of GASB Statements No. 25 and 27* - This Statement more closely aligns the financial reporting requirements for pensions with those for other postemployment benefits (OPEB) and, in doing so, enhances information disclosed in notes to financial statements or presented as required supplementary information (RSI).

2. CASH AND INVESTMENTS

The Town maintains a cash and investment pool, which includes cash balances and authorized investments of all funds, which the Town invests to enhance interest earnings. The pooled interest is allocated to the funds quarterly, based on average daily cash and investment balances in these funds.

A. Cash Deposits

At June 30, 2008, the carrying amount of the Town's bank deposits was \$1,011,397. Bank balances before reconciling items were \$1,138,919 at that date, the total amount of which was collateralized or insured with securities held by pledging financial institutions in the Town's name as discussed below.

The California Government Code requires California banks and savings and loan associations to secure the Town's cash deposits by pledging securities as collateral. This Code states that collateral pledged in this manner shall have the effect of perfecting a security interest in such collateral superior to those of a general creditor. Thus, collateral for cash deposits is considered to be held in the Town's name.

According to California law, the market value of pledged securities with banking institutions must equal at least 110% of the Town's cash deposits. California law also allows institutions to secure Town deposits by pledging first trust deed mortgage notes having a value of 150% of the Town's total cash deposits. The Town may waive collateral requirements for cash deposits, which are fully insured up to \$100,000 by the Federal Deposit Insurance Corporation. The Town, however, has not waived the collateralization requirements.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

2. CASH AND INVESTMENTS, Continued

A. Cash Deposits, Continued

The Town follows the practice of pooling cash and investments of all funds, except for funds required to be held by fiscal agents under provisions of bond indentures. Interest income earned on pooled cash and investments is allocated on a quarterly basis to the various funds based on average daily cash and investment balances. Interest income from cash and investments with fiscal agents is credited directly to the related fund.

B. Investments

The Town is authorized by State statutes and in accordance with the Town's Investment Policy (Policy) to invest in the following:

- San Mateo County Investment Pool (SMCIP)
- State Local Agency Investment Fund (LAIF)
- Insured and/or collateralized certificates of deposit

The Town's investments comply with the established policy.

In accordance with GASB Statement No. 31, *Accounting and Financial Reporting for Certain Investments and for External Pools*, investments were stated at fair value using the aggregate method in all funds and component units, resulting in the following investment income:

Realized gain/(loss) on matured/sold investments	\$	-
Unrealized gain/(loss) in changes in fair value of investments		(616,576)
		(616,576)
Net gain/(loss)		(616,576)
Interest income		830,544
		830,544
Total investment income	\$	213,968

In accordance with GASB Statement No. 31, the realized and unrealized gain/loss, for year-end reporting purposes, is recognized in the financial statements. Therefore, fund balance reflects the portfolio's change in value.

C. Summary of Cash and Investments

The following is a summary of cash and investments at June 30, 2008:

	Government-Wide Statement of Net Assets		Total
	Governmental Activities	Fiduciary Funds Statement of Net Assets	
Cash and investments	\$ 17,624,078	\$ 167,395	\$ 17,791,473

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

2. CASH AND INVESTMENTS, Continued

C. Summary of Cash and Investments, Continued

Deposits and investments were categorized as follows at June 30, 2008:

	Credit Quality Ratings	Fair Value	Days to Maturity
Town Treasury Deposits:			
Deposits	Not Rated	\$ 1,011,397	N/A
Petty cash	Not Rated	700	N/A
Total Town treasury deposits		<u>1,012,097</u>	
Town Treasury Investments:			
San Mateo County Investment Pool Funds	Not Rated	9,526,915	N/A
Local Agency Investment Funds	Not Rated	7,252,461	N/A
Total Town treasury investments		<u>16,779,376</u>	
Total cash and investments		<u>\$ 17,791,473</u>	

D. Risk Disclosures

Interest Rate Risk. As a means of limiting its exposure to fair value losses arising from rising interest rates, the Town's investment policy requires that at least 30% of the Town's investment portfolio mature in less than one year. Additional limitations are that the average maturity of the investment portfolio will not exceed three years, and no investment will have a maturity of more than five years from its date of purchase.

E. Investments in Local Agency Investment Funds (LAIF)

The Town's investments with LAIF at June 30, 2008, included a portion of the pool funds invested in Structured Notes and Asset-Backed Securities. These investments included the following:

Structured Notes are debt securities (other than asset-backed securities) whose cash flow characteristics (coupon rate, redemption amount, or stated maturity) depend upon one or more indices and/or have embedded forwards or options.

Asset-Backed Securities, the bulk of which are mortgage-backed securities, entitle their purchasers to receive a share of the cash flows from a pool of assets such as principal and interest repayments from a pool of mortgages (such as Collateralized Mortgage Obligations) or credit card receivables.

As of June 30, 2008, the Town had \$7,252,461 invested in LAIF, which had invested 14.72% of the pool investment funds in Structured Notes and Asset-Backed Securities.

The Town valued its investments in LAIF as of June 30, 2008, by multiplying its account balance with LAIF by a fair value factor determined by LAIF. This fair value factor was determined by dividing all LAIF participants' total aggregate fair value by total aggregate amortized cost resulting in a factor of .9999502190.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

2. CASH AND INVESTMENTS, Continued

F. Investments in San Mateo County Investment Pool

The Town invests in the San Mateo County Pooled Investment Fund (SMCIP), an external investment pool. The pool determines fair value on its investment portfolio based on market quotations for those securities where market quotations are readily available and based on amortized cost or best estimate for those securities where market value is not readily available.

As of June 30, 2008, the Town had \$9,526,915 invested in SMCIP. The Town valued its investments in SMCIP as of June 30, 2008, by multiplying its account balance with SMCIP by a fair value factor determined by SMCIP. This fair value factor was determined by dividing all SMCIP participants' total aggregate fair value by total aggregate amortized cost resulting in a factor of .99367. SMCIP held investments in Lehman Brothers, as a result the Town made an additional adjustment to the fair market values of \$552,009 for a subsequent decrease in value of the Lehman Brothers' holdings.

3. RECEIVABLES

A. Government-Wide and Fund Financial Statements

As of June 30, 2008, accounts receivable consisted of the following items:

Sales and use tax	\$	27,010
Measure A sales tax		17,625
Franchise fee		37,025
Grants		595,537
Other accounts receivable		54,158
Total accounts receivable	\$	731,355

As of June 30, 2008, interest receivable of \$128,871 consisted of \$41,506 from LAIF and \$87,365 from SMCIP.

4. CAPITAL ASSETS

In accordance with GASB Statement No. 34, the Town has reported all capital assets including infrastructure in the Government-Wide Statement of Net Assets. The Town has elected to use the basic approach as defined by GASB Statement No. 34 for depreciation of all infrastructure assets.

Capital assets include land, buildings, equipment, and infrastructure used in Town operations. Infrastructure includes roads, bridges, curbs, sidewalks, drainage systems, street and traffic lights, park improvements and other improvements used by all citizens.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

4. CAPITAL ASSETS, Continued

A. Government-Wide Financial Statements

The following is a summary of capital assets for governmental activities:

	Balance July 1, 2007	Additions	Retirements	Inventory Adjustments	Balance June 30, 2008
Governmental Activities:					
Capital assets, not being depreciated:					
Land	\$ 690,884	\$ -	\$ -	\$ -	\$ 690,884
Construction in progress	774,411	105,319	-	(774,411)	105,319
Total nondepreciable assets	<u>1,465,295</u>	<u>105,319</u>	<u>-</u>	<u>(774,411)</u>	<u>796,203</u>
Capital assets, being depreciated:					
Buildings	1,668,094	-	-	-	1,668,094
Other improvements	826,751	215,264	-	-	1,042,015
Vehicles	634,888	66,212	(25,050)	-	676,050
Equipment - computer	60,404	-	-	-	60,404
Software	-	151,425	-	-	151,425
Equipment - furniture/equipment	421,280	-	-	-	421,280
Infrastructure	48,942,648	346,571	(368,929)	774,411	49,694,701
Total depreciable assets	<u>52,554,065</u>	<u>779,472</u>	<u>(393,979)</u>	<u>774,411</u>	<u>53,713,969</u>
Accumulated Depreciation:					
Buildings	(695,956)	(37,391)	-	-	(733,347)
Other improvements	(523,715)	(33,631)	-	-	(557,346)
Vehicles	(433,752)	(73,664)	25,050	-	(482,366)
Equipment - computer	(24,792)	(9,995)	-	-	(34,787)
Software	-	(25,237)	-	-	(25,237)
Equipment - furniture/equipment	(371,287)	(10,311)	-	-	(381,598)
Infrastructure	(22,033,367)	(1,621,049)	361,487	-	(23,292,929)
Total accumulated depreciation	<u>(24,082,869)</u>	<u>(1,811,278)</u>	<u>386,537</u>	<u>-</u>	<u>(25,507,610)</u>
Depreciable assets, net	<u>28,471,196</u>	<u>(1,031,806)</u>	<u>(7,442)</u>	<u>774,411</u>	<u>28,206,359</u>
Governmental activities					
capital assets, net	<u>\$ 29,936,491</u>	<u>\$ (926,487)</u>	<u>\$ (7,442)</u>	<u>\$ -</u>	<u>\$ 29,002,562</u>

Depreciation expense for governmental activities for the year ended June 30, 2008 was as follows:

General government	\$ 1,641,340
General government, related to Internal Service	85,502
Public works	78,186
Police	6,250
Total depreciation expense	<u>\$ 1,811,278</u>

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

5. COMPENSATED ABSENCES

The Town’s compensated absences consist of accrued vacation pay, floating holiday pay for all regular employees and paid time off and floating holiday pay for management employees. Some employees are allowed to accrue compensatory time. The total amount of the accrued liability is recorded in the Government-Wide Financial Statements and charges for compensated absences expense is charged to the various program activities. The net activity for compensated absences for fiscal year 2008 was \$64,713.

Summary of changes in compensated absences for the year ended June 30, 2008 is as follows.

	Balance July 1, 2007	Additions	Deletions	Balance June 30, 2008
Governmental activities	\$ 673,093	\$ 467,380	\$ (402,667)	\$ 737,806
Total	<u>\$ 673,093</u>	<u>\$ 467,380</u>	<u>\$ (402,667)</u>	<u>\$ 737,806</u>

6. FUND BALANCES

The fund financial statements consist of reserved and unreserved amounts. Reserved fund balances represent that portion of a fund balance which has been appropriated for expenditure or is legally segregated for a specific future use. The remaining portion is unreserved and may be designated or undesignated.

Reservations and designations of fund balances are described as follows:

- Reserved for capital projects are funds set aside for capital projects.
- Reserved for budget stabilization are funds set aside for economic uncertainty, known or anticipated future obligations.
- Reserved for emergency disaster are funds set aside for unforeseen expenditures that are sudden and unexpected such as natural disaster or catastrophic accidents.
- Reserved for future building inspection are funds restricted for building code inspection activities.
- Reserved for compensated absences is the portion restricted for future payment of employee compensated absences.
- Reserved for Other Post-Employment Benefits- unfunded liability is the portion set aside for unfunded retiree healthcare costs.
- Designated for Business License is funds set aside to refund certain business license payments according to City Council’s resolution.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

6. FUND BALANCES, Continued

At June 30, 2008, the Town had a deficit Unreserved, Undesignated fund balance in its State Parks Grant Special Revenue fund in the amount of \$(141,285). The deficit was due to the fund incurring higher costs related to park work and associated contracts. The Town amended the Budget for FY 09 to accommodate this deficit.

7. EXCESS OF EXPENDITURES OVER APPROPRIATIONS

At June 30, 2008, the following funds had an excess of expenditures over appropriations, but had adequate fund balance to cover the excess:

General Fund	\$ 191,004
Special Revenue Funds:	
Tennis Fund	146
COPS Grant Fund	337
State Grants	<u>276,121</u>
Total	<u><u>\$ 276,604</u></u>

8. EMPLOYEE RETIREMENT PLANS

A. Plan Description

The Town contributes to the California Public Employees Retirement System (PERS), an agent multiple-employer public employee defined benefit pension plan. PERS provides retirement and disability benefits, annual cost-of-living adjustments and death benefits to plan members and beneficiaries. PERS acts as a common investment and administrative agent for participating public entities within the State of California. Benefit provisions and all other requirements are established by state statute and Town ordinance. Copies of PERS' annual financial report may be obtained from their Executive Office located at 400 P Street, Sacramento, CA 95814.

B. Funding Policy

Active plan members are required by state statute to contribute 7% for miscellaneous and 9% for safety employees of their annual covered salary. The Town makes the contributions required of Town employees on their behalf and for their account, which amounted to \$258,137 for the year ended June 30, 2008.

The Town, as employer, is required to contribute an actuarially determined payment that is reflected as a percentage of annual covered payroll for miscellaneous and safety employees. The contribution rate for the fiscal year 2008 was 13.497% for miscellaneous employees and 31.664% for safety employees.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

8. EMPLOYEE RETIREMENT PLANS, Continued

C. Annual Pension Cost

For the fiscal year 2008, the Town's annual pension cost of \$946,555 for PERS was equal to the Town's required contribution. The required contribution was determined as a part of the June 30, 2007 actuarial valuation using the entry age method. The actuarial assumptions included (a) 7.75% investment rate of return (net of administrative expenses), (b) projected salary increases that range from 3.25% to 14.45% for miscellaneous and safety employees depending on age, service and type of employment, and (c), 3.25% per year cost-of-living adjustments for retirees. Both (a) and (b) included an inflation component of 3.0%. The actuarial value of PERS assets was determined using techniques that smooth the effects of short-term volatility in the market value of investments over a three year period. The average remaining amortization period at June 30, 2007 was 16 years for miscellaneous and 16 years for safety employees for prior and current service unfunded liabilities.

Three-Year Trend Information for PERS

<u>Ending</u>	<u>Cost (APC)</u>	<u>APC Contributed</u>	<u>Obligation (Asset)</u>
6/30/2006	\$ 911,806	100%	\$ -
6/30/2007	927,301	100%	-
6/30/2008	946,555	100%	-

D. Funded Status as of the Most Recent Actuarial Date

The Town retirement plans for miscellaneous and safety employees are part of the CalPERS risk pool for cities and other government entities that have less than 100 active members. Actuarial valuations performed included other participants within the same risk pool. Therefore, standalone information of the schedule of the funding progress for the Town's miscellaneous and safety employees is no longer available.

9. RISK MANAGEMENT

A. Risk Pool

The Town belongs to ABAG Plan Corporation, which covers general liability claims in an amount up to \$5,000,000. The Town has a deductible or uninsured liability of up to \$25,000 per claim. Once the Town's deductible is met, the ABAG Plan becomes responsible for payment of all claims up to the limit. Other coverage includes Risk Property Coverage with a total insured value of \$1,922,254,713 with a deductible of \$5,000 for property damage and \$10,000 for auto/vehicle damage, and Public Official Bond insurance of \$1,000,000 with a deductible of \$5,000.

The Cities Group covers workers' compensation claims up to \$750,000 each and has coverage above that limit to a maximum of \$12,400,000. The Town has no deductible for the claims.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

9. RISK MANAGEMENT, Continued

A. Risk Pool, Continued

Each risk pool is governed by a board consisting of representatives from member municipalities. The board controls the operations of each risk pool, including selection of management and approval of operating budgets, independent of any influence by member municipalities beyond their representation on the board. The Town's contributions to each risk pool equal the ratio of the Town's payroll to the total payrolls of all entities participating in the same layer of each program, in each program year. Actual surpluses or losses are shared according to a formula developed from overall loss costs and spread to member entities on a percentage basis after a retrospective rating.

B. Liability for Uninsured Claims

Municipalities are required to record their liability of uninsured claims and to reflect the current portion of this liability as expenditure in their financial statements. As discussed above, the Town has coverage for such claims, but it has retained the risk for deductible or uninsured portions of these claims. The Town includes its claims liability amount as part of claims payable, since the amount is considered a current liability. The Town's liability for uninsured claims based on claims experience was computed as follows:

	Liability Balance July 1	Current Year Claims and Changes in Estimates	Claims Payments for Current and Prior Fiscal Years	Liability Balance June 30
2005-06	\$ 66,075	\$ 7,400	\$ (66,025)	\$ 7,450
2006-07	7,450	25,971	-	33,421
2007-08	33,421	117,979	2,906	154,306

10. JOINT VENTURES

The Town participates in several active joint ventures through formally organized and separate entities established under the Joint Exercise of Powers Act of the State of California. As separate legal entities, these entities exercise full powers and authorities within the scope of the related Joint Powers Agreement (JPA), including selection of management and approval of operating budgets, independent of any influences by each member beyond representation on each Board. Obligations and liabilities of these joint ventures are not the Town's responsibility, and the Town does not have an equity interest in the assets of each joint venture except upon dissolution.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

10. JOINT VENTURES, Continued

A. *Town/County Association of Governments (C/CAG)*

C/CAG was established under a 1990 Joint Exercise of Powers Agreement between the Town, the County and cities and towns within the County for the purpose of developing State mandated plans. Members of C/CAG pay their pro-rata share of the total annual contributions required based on the member's 1990 population. Financial statements for C/CAG may be obtained by mailing a request to the Town of San Carlos, 666 Elm Street, San Carlos, California 94070.

B. *South Bayside Waste Management Authority (Authority)*

The Authority is a joint powers agreement formed on October 13, 1999 for the purpose of joint ownership, financing and administration of the San Carlos Transfer Station and the San Mateo Recyclery; and the planning, administration, review, monitoring, enforcement and reporting of solid waste and recyclable material within the Authority's service area.

Members of the Authority include 11 municipalities located on the mid and lower Peninsula as well as certain unincorporated areas within the County. The Authority is controlled by a 12-member board consisting of one representative from each community. Through the operation of franchise agreements, BFI Waste Systems of North America Inc. provides refuse and recyclable materials collection and disposal services for the benefit of residents and businesses of each member agency.

C. *Alcohol Violation Temporary Housing Authority (AVTHA)*

AVTHA was established between the County and most of the cities and towns in the County to provide temporary housing and counseling to persons accused of alcohol related law violations. AVTHA contracts with an operator to provide such services. The costs of operating the temporary housing are allocated to each member based on alcohol related arrests occurring within each member's jurisdiction. Financial statements for AVTHA may be obtained by mailing a request to Redwood City, 801 Marshall Street, Suite 600, Redwood City, California 94063.

D. *Library Joint Powers Agreement*

In December 1998, the Town joined with the County and ten other municipalities in the County to coordinate and expand library services throughout the County, including those in the Town.

Property tax revenues in excess of the JPA's costs of maintaining the library are remitted to the Town and are deposited into the Library Special Revenue fund. Expenditures of this fund are subject to the approval of the Library JPA.

11. COMMITMENTS AND CONTINGENCIES

The Town is subject to litigation arising in the normal course of business. In the opinion of the Town's Attorney, there is no pending litigation which is likely to have a material adverse effect on the financial position of the Town.

Town of Atherton
Notes to the Basic Financial Statements, Continued
For the year ended June 30, 2008

12. SUBSEQUENT EVENTS

The Atherton Municipal Code authorizes collection of a business license tax up to the amount of \$250 each year from general contractors, \$150 each year from each sub-contractor with two or more employees, and \$100 from each sole operator sub-contractor. The Town has been collecting the business license tax only once at the time of issuance of a building permit based on a percent formula which in some cases has increased the amount of tax paid by some contractors. In accordance with the Town's review of the process, the excess is required to be refunded.

In December of 2008, the Town Council authorized claims for refunds for payments of the businesses license tax beginning December 17, 2006 through December 17, 2008, and has retained MuniServices, LLC to work with the building and finance departments to determine the amount of the refund. The business license tax to be refunded is estimated to be approximately \$817,000. The total amount has been designated in the General Fund's fund balance.

REQUIRED SUPPLEMENTARY INFORMATION

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Town of Atherton
Required Supplementary Information
For the year ended June 30, 2008

1. BUDGETARY PRINCIPLES

The Town follows these procedures in establishing the budgetary data reflected in the financial statements:

- By June 30, the Town Manager submits to the Town Council a proposed operating and capital budget for the year commencing July 1. The operating and capital budget includes proposed expenditures and the means of financing them. Continuing appropriations are rebudgeted by the Town Council as part of the adoption of subsequent year's budget.
- Public hearings are conducted to obtain taxpayer comments.
- The budget is legally enacted through passage of resolution during a Town Council meeting in the month of June.
- The Town Manager is authorized to transfer budgeted amounts within an activity, within any fund; however, any revisions that alter the total expenditures of any fund must be approved by the Town Council.
- Formal budgeting is employed as a management control device during the year for the general and certain special revenue funds. The Facilities Construction Capital Projects Fund, Supplemental Law Enforcement Services and Police on the Street special revenue funds are not budgeted.
- Budgets for the general and certain and special revenue funds are adopted on a basis consistent with generally accepted accounting principles (US GAAP).
- Budgets for capital projects funds are adopted on a project-life basis.

Budgeted amounts are as originally adopted or as amended by the Town Council.

Under encumbrance accounting, purchase orders, contracts, and other commitments for expenditures are recorded to reserve that portion of the applicable appropriation. Encumbrance accounting is employed as an extension of formal budgetary accounting. Since encumbrances do not yet constitute expenditures or liabilities, encumbrances outstanding at year-end are reported as reservations of fund balances.

2. FUNDED STATUS AS OF THE MOST RECENT ACTUARIAL DATE

The Town's retirement plans for miscellaneous and safety employees are part of the CalPERS risk pool for cities and other government entities that have less than 100 active members. Actuarial valuations performed included other participants within the same risk pool. Therefore, standalone information of the schedule of the funding progress for the Town's miscellaneous and safety employees is no longer available.

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Town of Atherton
Required Supplementary Information, Continued
For the year ended June 30, 2008

**Statement of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual -
Major Fund - General Fund**

	Budgeted Amounts		Actual	Variance with Final Budget
	Original	Final		
REVENUES:				
Property taxes	\$ 4,286,303	\$ 4,286,303	\$ 4,641,689	\$ 355,386
Sales taxes	147,756	147,756	258,459	110,703
Other taxes	1,162,774	1,162,774	1,457,166	294,392
Permits and licenses	1,768,188	1,768,188	1,796,936	28,748
Fines and forfeitures	35,000	35,000	44,644	9,644
From other agencies	190,500	190,500	916,040	725,540
Services charges	653,808	653,808	917,872	264,064
Use of money and property	489,478	489,478	192,757	(296,721)
Other revenue	229,000	229,000	48,913	(180,087)
Total revenues	8,962,807	8,962,807	10,274,476	1,311,669
EXPENDITURES:				
Current:				
General government	1,332,814	1,663,180	1,691,316	(28,136)
Building and planning	1,487,474	1,692,674	1,845,218	(152,544)
Police	4,886,587	4,905,087	4,920,505	(15,418)
Public works	2,217,325	2,221,425	2,216,331	5,094
Total expenditures	9,924,200	10,482,366	10,673,370	(191,004)
REVENUES OVER (UNDER) EXPENDITURES	(961,393)	(1,519,559)	(398,894)	1,120,665
OTHER FINANCING SOURCES (USES):				
Transfers in	1,800,000	250,000	250,000	-
Transfers (out)	-	(1,809,978)	(1,809,978)	-
Total other financing sources (uses)	1,800,000	(1,559,978)	(1,559,978)	-
REVENUES AND OTHER FINANCING SOURCES OVER (UNDER) EXPENDITURES AND OTHER FINANCING USES	\$ 838,607	\$ (3,079,537)	(1,958,872)	\$ 1,120,665
FUND BALANCE:				
Beginning of year			9,841,723	
End of year			<u>\$ 7,882,851</u>	

Town of Atherton
Required Supplementary Information, Continued
For the year ended June 30, 2008

**Statement of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual -
Major Fund - Special Tax Fund**

	Budgeted Amounts		Actual	Variance with Final Budget
	Original	Final		
REVENUES:				
Special assessments	\$ 1,858,000	\$ 1,858,000	\$ 1,732,655	\$ (125,345)
Total revenues	<u>1,858,000</u>	<u>1,858,000</u>	<u>1,732,655</u>	<u>(125,345)</u>
EXPENDITURES:				
Current:				
Public works	<u>1,506,535</u>	<u>1,506,535</u>	<u>485,548</u>	<u>1,020,987</u>
Total expenditures	<u>1,506,535</u>	<u>1,506,535</u>	<u>485,548</u>	<u>1,020,987</u>
REVENUES OVER (UNDER) EXPENDITURES	<u>351,465</u>	<u>351,465</u>	<u>1,247,107</u>	<u>895,642</u>
OTHER FINANCING SOURCES (USES):				
Transfers (out)	<u>(650,000)</u>	<u>(650,000)</u>	<u>(150,000)</u>	<u>500,000</u>
Total other financing sources (uses)	<u>(650,000)</u>	<u>(650,000)</u>	<u>(150,000)</u>	<u>500,000</u>
REVENUES AND OTHER FINANCING SOURCES OVER (UNDER) EXPENDITURES AND OTHER FINANCING USES	<u>\$ (298,535)</u>	<u>\$ (298,535)</u>	<u>1,097,107</u>	<u>\$ 1,395,642</u>
FUND BALANCE:				
Beginning of year			<u>60,712</u>	
End of year			<u>\$ 1,157,819</u>	

Town of Atherton
Required Supplementary Information, Continued
For the year ended June 30, 2008

**Statement of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual -
Major Fund - Library Fund**

	Budgeted Amounts		Actual	Variance with Final Budget
	Original	Final		
REVENUES:				
Property tax	\$ 284,000	\$ 284,000	\$ 600,000	\$ 316,000
Use of money and property	-	-	9,470	9,470
Total revenues	<u>284,000</u>	<u>284,000</u>	<u>609,470</u>	<u>325,470</u>
EXPENDITURES:				
Current:				
General government	<u>78,326</u>	<u>78,326</u>	<u>19,115</u>	<u>59,211</u>
Total expenditures	<u>78,326</u>	<u>78,326</u>	<u>19,115</u>	<u>59,211</u>
Net change in fund balance	<u>\$ 205,674</u>	<u>\$ 205,674</u>	<u>\$ 590,355</u>	<u>\$ 384,681</u>
FUND BALANCE:				
Beginning of year			<u>2,564,923</u>	
End of year			<u>\$ 3,155,278</u>	

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SUPPLEMENTARY INFORMATION

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NON-MAJOR GOVERNMENTAL FUNDS

Town of Atherton
Combining Balance Sheet
Non-Major Governmental Funds
June 30, 2008

	Special Revenue				
	Tennis	Transportation	Gas Tax	Supplement Law Enforcement Services	Police on the Street
ASSETS					
Cash and investments in treasury	\$ 41,936	\$ 121,521	\$ 140,652	\$ 135	\$ 4,499
Accounts Receivable (net of allowances)	-	17,625	34,131	-	-
Total assets	\$ 41,936	\$ 139,146	\$ 174,783	\$ 135	\$ 4,499
LIABILITIES AND FUND BALANCE					
Liabilities:					
Accounts payable	\$ 237	\$ -	\$ -	\$ -	\$ -
Deferred revenue	-	-	-	-	-
Due to other funds	-	-	-	-	-
Total liabilities	237	-	-	-	-
Fund Balance:					
Undesignated	41,699	139,146	174,783	135	4,499
Total fund balance	41,699	139,146	174,783	135	4,499
Total liabilities and fund balance	\$ 41,936	\$ 139,146	\$ 174,783	\$ 135	\$ 4,499

Special Revenue			Capital Project				Total
COPS Grant	Road Construction	State Grants	Capital Improvement	Storm Drainage	Channel Drainage District	Parks Well	Non-Major Governmental Funds
\$ 13,150	\$ 1,001,634	\$ -	\$ 183,797	\$ 39,859	\$ 86,020	\$ 11,835	\$ 1,645,038
-	-	470,000	-	-	-	-	521,756
<u>\$ 13,150</u>	<u>\$ 1,001,634</u>	<u>\$ 470,000</u>	<u>\$ 183,797</u>	<u>\$ 39,859</u>	<u>\$ 86,020</u>	<u>\$ 11,835</u>	<u>\$ 2,166,794</u>
\$ -	\$ 14,894	\$ 83,915	\$ 7,447	\$ -	\$ 1,472	\$ -	\$ 107,965
-	-	470,000	-	-	-	-	470,000
-	-	57,370	-	-	-	-	57,370
-	14,894	611,285	7,447	-	1,472	-	635,335
13,150	986,740	(141,285)	176,350	39,859	84,548	11,835	1,531,459
13,150	986,740	(141,285)	176,350	39,859	84,548	11,835	1,531,459
<u>\$ 13,150</u>	<u>\$ 1,001,634</u>	<u>\$ 470,000</u>	<u>\$ 183,797</u>	<u>\$ 39,859</u>	<u>\$ 86,020</u>	<u>\$ 11,835</u>	<u>\$ 2,166,794</u>

Town of Atherton
Combining Statement of Revenues, Expenditures and Changes in Fund Balances
Non-Major Governmental Funds
For the year ended June 30, 2008

	Special Revenue				
	Tennis	Transportation	Gas Tax	Supplemental Law Enforcement Services	Police on the Street
REVENUES:					
Property taxes	\$ -	\$ -	\$ -	\$ -	\$ -
Measure A grants	-	289,553	-	-	-
From other agencies	-	-	142,006	-	-
Service charges	17,915	-	-	-	-
Use of money and property	-	2,420	2,068	-	44
Road Impact Fees	-	-	-	-	-
Other revenues	-	-	-	-	-
Total revenues	17,915	291,973	144,074	-	44
EXPENDITURES:					
Current:					
Police	-	-	-	-	-
Public works	5,667	195,297	-	-	-
Total expenditures	5,667	195,297	-	-	-
REVENUES OVER (UNDER) EXPENDITURES	12,248	96,676	144,074	-	44
OTHER FINANCING SOURCES (USES):					
Operating transfers in	-	-	-	-	-
Operating transfers (out)	-	-	(100,000)	-	-
Total other financing sources (uses)	-	-	(100,000)	-	-
REVENUES AND OTHER FINANCING SOURCES OVER (UNDER) EXPENDITURES AND OTHER FINANCING USES	12,248	96,676	44,074	-	44
FUND BALANCES:					
Beginning of year	29,451	42,470	130,709	135	4,455
End of year	\$ 41,699	\$ 139,146	\$ 174,783	\$ 135	\$ 4,499

Special Revenue			Capital Projects				Total
COPS Grant	Road Construction	State Grants	Capital Improvement	Storm Drainage	Channel Drainage District	Park Wells	Non-Major Governmental Funds
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 73,878	\$ -	\$ 73,878
-	-	-	-	-	-	-	289,553
101,680	-	400,000	-	-	3,726	-	647,412
-	-	-	-	-	-	-	17,915
-	-	2,060	4,752	441	-	-	11,785
-	988,305	-	-	-	-	-	988,305
-	-	-	-	-	-	10,930	10,930
101,680	988,305	402,060	4,752	441	77,604	10,930	2,039,778
100,337	-	-	-	-	-	-	100,337
-	35,974	582,831	98,602	2,964	41,447	3,929	966,711
100,337	35,974	582,831	98,602	2,964	41,447	3,929	1,067,048
1,343	952,331	(180,771)	(93,850)	(2,523)	36,157	7,001	972,730
-	-	-	-	-	-	4,834	4,834
-	-	-	-	-	-	-	(100,000)
-	-	-	-	-	-	4,834	(95,166)
1,343	952,331	(180,771)	(93,850)	(2,523)	36,157	11,835	877,564
11,807	34,409	39,486	270,200	42,382	48,391	-	653,895
\$ 13,150	\$ 986,740	\$ (141,285)	\$ 176,350	\$ 39,859	\$ 84,548	\$ 11,835	\$ 1,531,459

Town of Atherton

Schedule of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual

Tennis Special Revenue Fund

For the year ended June 30, 2008

	Budget		Actual	Variance from Final Budget Favorable (Unfavorable)
	Original	Final		
REVENUES:				
Charges for services:				
Tennis Keys and classes	\$ 8,000	\$ 8,000	\$ 17,915	\$ 9,915
Total revenues	8,000	8,000	17,915	9,915
EXPENDITURES:				
Current:				
Public works	5,521	5,521	5,667	(146)
Total expenditures	5,521	5,521	5,667	(146)
Net change in fund balance	\$ 2,479	\$ 2,479	\$ 12,248	\$ 9,769
FUND BALANCE:				
Beginning of year			29,451	
End of year			\$ 41,699	

Town of Atherton

Schedule of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual

Transportation Special Revenue Fund

For the year ended June 30, 2008

	Budget		Actual	Variance from Final Budget Favorable (Unfavorable)
	Original	Final		
REVENUES:				
Measure A grants	\$ 265,000	\$ 265,000	\$ 289,553	\$ 24,553
Use of money and property	-	-	2,420	2,420
Total revenues	265,000	265,000	291,973	26,973
EXPENDITURES:				
Current:				
Public works	229,500	229,500	195,297	34,203
Total expenditures	229,500	229,500	195,297	34,203
Net change in fund balance	\$ 35,500	\$ 35,500	\$ 96,676	\$ 61,176
FUND BALANCE:				
Beginning of year			42,470	
End of year			\$ 139,146	

Town of Atherton

Schedule of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual

Gas Tax Special Revenue Fund

For the year ended June 30, 2008

	Budget		Actual	Variance from Final Budget Favorable (Unfavorable)
	Original	Final		
REVENUES:				
From other agencies:				
Gas tax 2105	\$ -	\$ 56,080	\$ 44,223	\$ (11,857)
Gas tax 2106	-	-	36,499	36,499
Gas tax 2107	150,000	150,000	59,284	(90,716)
Gas tax 2107.5	-	-	2,000	2,000
Use of money and property	-	-	2,068	2,068
Total revenues	<u>150,000</u>	<u>206,080</u>	<u>144,074</u>	<u>(62,006)</u>
EXPENDITURES:				
Current operating:				
Public works	45,000	45,000	-	45,000
Total expenditures	<u>45,000</u>	<u>45,000</u>	<u>-</u>	<u>45,000</u>
REVENUES OVER (UNDER) EXPENDITURES	<u>105,000</u>	<u>161,080</u>	<u>144,074</u>	<u>(17,006)</u>
OTHER FINANCING SOURCES (USES):				
Operating transfers out	(100,000)	(100,000)	(100,000)	-
Total other financing sources (uses)	<u>(100,000)</u>	<u>(100,000)</u>	<u>(100,000)</u>	<u>-</u>
Net change in fund balance	<u>\$ 5,000</u>	<u>\$ 61,080</u>	44,074	<u>\$ (17,006)</u>
FUND BALANCE:				
Beginning of year			130,709	
End of year			<u>\$ 174,783</u>	

Town of Atherton

Schedule of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual

COPS Grant Special Revenue Fund

For the year ended June 30, 2008

	Budget		Actual	Variance from Final Budget Favorable (Unfavorable)
	Original	Final		
REVENUES:				
From other agencies:				
Grants	\$ 100,000	\$ 100,000	\$ 101,680	\$ 1,680
Total revenues	<u>100,000</u>	<u>100,000</u>	<u>101,680</u>	<u>1,680</u>
EXPENDITURES:				
Current:				
Police	100,000	100,000	100,337	(337)
Total expenditures	<u>100,000</u>	<u>100,000</u>	<u>100,337</u>	<u>(337)</u>
Net change in fund balance	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 1,343</u>	<u>\$ 1,343</u>
FUND BALANCE:				
Beginning of year			11,807	
End of year			<u>\$ 13,150</u>	

Town of Atherton

Schedule of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual Road Construction Special Revenue Fund For the year ended June 30, 2008

	Budget		Actual	Variance from Final Budget Favorable (Unfavorable)
	Original	Final		
REVENUES:				
Use of money and property	\$ -	\$ -	\$ -	\$ -
Road impact fees	1,132,102	1,132,102	988,305	(143,797)
Total revenues	1,132,102	1,132,102	988,305	(143,797)
EXPENDITURES:				
Current:				
Public works	1,000,000	1,000,000	35,974	964,026
Total expenditures	1,000,000	1,000,000	35,974	964,026
Net change in fund balance	\$ 132,102	\$ 132,102	\$ 952,331	\$ 820,229
FUND BALANCE:				
Beginning of year			34,409	
End of year			\$ 986,740	

Town of Atherton

Schedule of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual

State Grants Special Revenue Fund

For the year ended June 30, 2008

	Budget		Actual	Variance from Final Budget Favorable (Unfavorable)
	Original	Final		
REVENUES:				
From other agencies:				
Grants	\$ 104,800	\$ 104,800	\$ 400,000	\$ 295,200
Use of money and property	-	-	2,060	2,060
Total revenues	104,800	104,800	402,060	297,260
EXPENDITURES:				
Current:				
Public works	306,710	306,710	582,831	(276,121)
Total expenditures	306,710	306,710	582,831	(276,121)
Net change in fund balance	\$ (201,910)	\$ (201,910)	\$ (180,771)	\$ 21,139
FUND BALANCE:				
Beginning of year			39,486	
End of year			\$ (141,285)	

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FIDUCIARY FUND FINANCIAL STATEMENTS

Town of Atherton
Statement of Fiduciary Net Assets
Fiduciary Funds - Agency Funds
June 30, 2008

	Evans Creative Design Fund	Lindenwood Gate Trust	H-P Park Improvement Fund	Tree Committee	Total
ASSETS					
Cash and investments	\$ 120,033	\$ 244	\$ 5,717	\$ 41,401	\$ 167,395
Total assets	\$ 120,033	\$ 244	\$ 5,717	\$ 41,401	\$ 167,395
LIABILITIES					
Deposits payable	\$ 120,033	\$ 244	\$ 5,717	\$ 41,401	\$ 167,395
Total liabilities	\$ 120,033	\$ 244	\$ 5,717	\$ 41,401	\$ 167,395

Town of Atherton
Statement of Changes in Assets and Liabilities
Fiduciary Funds - Agency Funds
For the year ended June 30, 2008

	Balance July 1, 2007	Additions	Deductions	Balance June 30, 2008
<u>Evans Creative Design Fund</u>				
Assets:				
Cash and investments	\$ 121,919	\$ 9,657	\$ (11,543)	\$ 120,033
Total assets	\$ 121,919	\$ 9,657	\$ (11,543)	\$ 120,033
Liabilities:				
Deposits payable	\$ 121,919	\$ 9,657	\$ (11,543)	\$ 120,033
Total liabilities	\$ 121,919	\$ 9,657	\$ (11,543)	\$ 120,033
<u>Lindenwood Gate Trust</u>				
Assets:				
Cash and investments	\$ 250	\$ 2	\$ (8)	\$ 244
Total assets	\$ 250	\$ 2	\$ (8)	\$ 244
Liabilities:				
Deposit payable	\$ 250	\$ 2	\$ (8)	\$ 244
Total liabilities	\$ 250	\$ 2	\$ (8)	\$ 244
<u>H-P Park Improvement Fund</u>				
Assets:				
Cash and investments	\$ 5,851	\$ 42	\$ (176)	\$ 5,717
Total assets	\$ 5,851	\$ 42	\$ (176)	\$ 5,717
Liabilities:				
Deposits payable	\$ 5,851	\$ 42	\$ (176)	\$ 5,717
Total liabilities	\$ 5,851	\$ 42	\$ (176)	\$ 5,717

(Continued)

Town of Atherton
Statement of Changes in Assets and Liabilities
Fiduciary Funds - Agency Funds, Continued
For the year ended June 30, 2008

	Balance July 1, 2007	Additions	Deductions	Balance June 30, 2008
<u>Tree Committee</u>				
Assets:				
Cash and investments	\$ 41,520	\$ 2,698	\$ (2,817)	\$ 41,401
Total assets	\$ 41,520	\$ 2,698	\$ (2,817)	\$ 41,401
Liabilities:				
Deposits payable	\$ 41,520	\$ 2,698	\$ (2,817)	\$ 41,401
Total liabilities	\$ 41,520	\$ 2,698	\$ (2,817)	\$ 41,401
<u>All Agency Funds</u>				
Assets:				
Cash and investments	\$ 169,540	\$ 12,399	\$ (14,544)	\$ 167,395
Total assets	\$ 169,540	\$ 12,399	\$ (14,544)	\$ 167,395
Liabilities:				
Deposits payable	\$ 169,540	\$ 12,399	\$ (14,544)	\$ 167,395
Total liabilities	\$ 169,540	\$ 12,399	\$ (14,544)	\$ 167,395

(Concluded)

**INDEPENDENT AUDITORS' REPORT ON COMPLIANCE AND ON INTERNAL CONTROL OVER
FINANCIAL REPORTING BASED ON AN AUDIT OF BASIC FINANCIAL STATEMENTS
PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

To the Honorable Mayor and Members of the Town Council
of the Town of Atherton
Atherton, California

We have audited the accompanying financial statements of governmental activities, each major fund, and the aggregate remaining fund information of the Town of Atherton, California (Town), as of and for the year ended June 30, 2008, and have issued our report thereon dated August 7, 2009. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control over Financial Reporting

In planning and performing our audit, we considered the Town's internal control over financial reporting as a basis for designing our audit procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Town's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Town's internal control over financial reporting.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis.

A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the Town's financial statements that is more than inconsequential will not be prevented or detected by the Town's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the Town's internal control.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. However, we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

To the Honorable Mayor and Members of the Town Council
of the Town of Atherton
Atherton, California
Page 2

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Town's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The result of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

This report is intended solely for the information and use of management, the Town Council, others within the entity, and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.

Capricci & Carlson

Oakland, California
August 7, 2009

TOWN OF ATHERTON

MASTER FEE SCHEDULE

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TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Administrative Fees

Service	Fee
ADMINISTRATIVE FEES	
Photocopying and/or Printing	\$0.10 per page
Digital Transmission of Files	\$0
Returned Checks (Non-Sufficient Funds)	\$35 per check
Stop-payment Check & Lost Check Replacement	\$35 per check
Tape Duplication - Per Tape	\$64
Notarize - Per Signature	\$10
Certified Copies - Per Copy	\$32
Special Event Application Review	\$218
Copy of Municipal Code	Free via website or see Photocopying and Printing charge
Copy of General Plan	Free via website or see Photocopying and Printing charge
Copy of Zoning Ordinance	Free via website or see Photocopying and Printing charge
Copy of Budget	Free via website or see Photocopying and Printing charge
Copy of Subdivision Ordinance	Free via website or see Photocopying and Printing charge
List of All Businesses in Atherton	Free via website or \$69
Install and Remove Banner	\$387
Business License Processing Fee	\$25 Pass Through

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Administrative Fees

Service	Fee
ADMINISTRATIVE FEES	
Duplicate Business License Processing Fee	\$25 Pass Through
Code Enforcement (Administrative)	Billed hourly; reference hourly rates

For Services Requested of Town Staff which have no fee listed in this Master Fee Schedule, the City Manager or the City Manager's designee shall determine the appropriate fee based on the following hourly rates for staff time involved in the service or activity:

Administration Department Staff:	\$129 per hour
Finance Department Staff:	\$166 per hour

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Building Fees

BUILDING FEES

Building Permit Fees

Total Valuation	Building Permit Fee	Plan Review Fee
\$1.00 to \$500	\$155	65% of Building Permit Fee
\$501 to \$2,000	\$155 for the first \$500, plus \$3.05 for each add'l \$100, or fraction thereof, to and including \$2,000	65% of Building Permit Fee
\$2,001 to \$25,000	\$201 for the first \$2,000, plus \$14.00 for each add'l \$1,000, or fraction thereof, to and including \$25,000	65% of Building Permit Fee
\$25,001 to \$50,000	\$523 for the first \$25,000, plus \$10.10 for each add'l \$1,000, or fraction thereof, to and including \$50,000	65% of Building Permit Fee
\$50,001 to \$100,000	\$775 for the first \$50,000, plus \$7.00 for each add'l \$1,000, or fraction thereof, to and including \$100,000	65% of Building Permit Fee
\$100,001 to \$500,000	\$2,777 for the first \$100,000, plus \$3.02 for each add'l \$1,000, or fraction thereof, to and including \$500,000	45% of Building Permit Fee
\$500,001 to \$1,000,000	\$3,986 for the first \$500,000, plus \$3.84 for each add'l \$1,000, or fraction thereof, to and including \$1,000,000	45% of Building Permit Fee
\$1,000,001 and up	\$5,906 for the first \$1,000,000, plus \$3.84 for each add'l \$1,000, or fraction thereof	45% of Building Permit Fee

Permitted Value of Construction

New Habitable Construction	\$350 per square foot
Remodeled Habitable Construction	\$300 per square foot
New or Remodeled Non-Habitable Construction	\$200 per square foot

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Building Fees

Service	Fee
BUILDING FEES	
Other Building Fees	
Plumbing, Mechanical, Electrical Permit (First Appliance)	\$100
Plumbing, Mechanical, Electrical Permit (Each Additional Appliance)	\$60
Demolition Permit Fee	\$300
Landscape Screening Permit Fee	\$289
Water Well Permit Fee	\$599
Solar Panels Permit Fee	\$250
Heritage Tree Removal - Staff Level (First Tree)	\$100
Heritage Tree Removal - Staff Level (Each Additional Tree)	\$41
Unauthorized Heritage Tree Removal/Damage	\$165 per hour
Excavation Permit	\$496
Re-Inspection Fee	\$100
Special Inspection or Consultation Inspection Fee	\$83 per half hour
Revision Fee	\$165 per hour
Address Change	\$165 per hour or consultant costs
Permit Search	\$20 plus photocopying and/or printing costs
Reactivation of an Expired Permit	Up to one-half the amount required for a new permit for such work
Work Commencing Without a Permit	Up to twice the applicable building permit fee, subject to the Building Official's discretion
Code Enforcement (Administrative)	Billed hourly; reference hourly rates

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Building Fees

Service	Fee
BUILDING FEES	
Second Utility Deposit: Deposit Administrative Fee	\$10,000 \$165
Landscape Screening Deposit: Deposit Administrative Fee	\$10,000 \$165
Temporary Occupancy Deposit: Deposit Administrative Fee	\$10,000 \$165
Excavation Road Deposit: Deposit Administrative Fee	\$10,000 \$165
Recycling Deposit For issuance of any construction permit with a project cost estimated above \$50,000 or will generate more than ten tons of construction or demolition debris.	\$1,000 minimum and \$500 minimum for Re-Roof Permits
SMIP Fee	
SMIP - Residential (California Department of Conservation Mandated Fee)	Valuation Amount X 0.0001
SMIP - Commercial (California Department of Conservation Mandated Fee)	Valuation Amount X 0.00021
Road Impact Fee	
Road Impact Fee To be collected at the time of application of a building permit by the Building Department.	0.71% (71 tenths of one percent) of the project valuation shall be paid for all construction projects

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Building Fees

Service	Fee
BUILDING FEES	
Building Standards Administration Special Revolving Fund (Senate Bill No. 1473 State Mandated) Permit Valuation \$1-25,000 \$25,001-50,000 \$50,001-75,000 \$75,001-100,000 Every \$25,000 or fraction thereof above \$100,000	\$1 \$2 \$3 \$4 Add \$1
For Services Requested of Town Staff which have no fee listed in this Master Fee Schedule, the City Manager or the City Manager's designee shall determine the appropriate fee based on the following hourly rates for staff time involved in the service or activity:	
Building Division Staff:	\$165 per hour

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Planning Fees

Service	Fee
PLANNING FEES	
Conditional Use Permit	Billed per hour with \$1,963 minimum, plus \$2,000 deposit
Variance	Billed per hour with \$2,289 minimum, plus \$2,000 deposit
Heritage Tree Removal Permit	Billed per hour with \$2,293 minimum, plus \$2,000 deposit
Exception Review	Billed per hour with \$1,963 minimum, plus \$2,000 deposit
Excessive Height	Billed per hour with \$1,963 minimum, plus \$2,000 deposit
Lot Line Redesignation	Billed per hour with \$2,289 minimum, plus \$2,000 deposit
Lot Line Adjustment	Billed per hour with \$1,636 minimum, plus \$2,500 deposit
Tentative Parcel Map	Billed per hour with \$2,289 minimum, plus \$2,500 deposit
Final Parcel Map	Billed per hour with \$1,310 minimum, plus \$2,500 deposit
Appeal	\$750
School Master Plan	\$750
Initial Review/Negative Declaration	Billed per hour with \$3,595 minimum, plus \$2,000 deposit
Zoning Ordinance Amendment	Billed per hour with \$3,595 minimum, plus \$2,500 deposit
General Plan Amendment	Billed per hour with \$3,595 minimum, plus \$2,500 deposit
Zoning Review for Home Occupation Business	\$82
Pre-Application Review	Billed hourly; reference hourly rates
Street Easement Vacation	Billed hourly; reference hourly rates
Code Enforcement (Administrative)	Billed hourly; reference hourly rates

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Planning Fees

Service	Fee
PLANNING FEES	
Initial Review (2 reviews for fee amount; additional reviews billed hourly):	
a. Fence	\$164
b. Accessory Structures (includes pools)	\$328
c. Accessory Buildings	\$655
d. Additions	\$818
e. New Construction	\$1,308
Revisions to Previously Approved Plans	Billed hourly; reference hourly rates

Many of the above-listed fees are applied on an hourly basis and are structured to recover the full cost of service for each activity type. The Town will apply the prevailing hourly rates against recorded staff time to determine the fee amount owed by each applicant. Hourly rates from other departments outside the Planning Department, including the City Attorney's Office, may also apply if staff from those other departments perform work on a specific application. Additionally, the Town will pass-through to the applicant any discrete costs incurred from the use of external service providers if required to process the specific application.

For Services Requested of Town Staff which have no fee listed in this Master Fee Schedule, the City Manager or the City Manager's designee shall determine the appropriate fee based on the following hourly rates for staff time involved in the service or activity:

Town Planner:	\$226 per hour
Deputy Town Planner:	\$178 per hour
Senior Planner:	\$169 per hour
Assistant Planner:	\$136 per hour
Planning Administrative Staff:	\$120 per hour

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Parks Program Fees

Service	Fee
PARKS PROGRAM FEES	
Weddings/Receptions or Social Functions	
One Building Rental	
1 - 100 Guests	\$2,000
101 - 200 Guests	\$2,250
Additional Hour	\$100 per hour
Additional Attendant	\$50 per hour
Two Building Rental	
1 - 100 Guests	\$4,000
101 - 200 Guests	\$4,500
Additional Hour	\$100 per hour
Additional Attendant	\$50 per hour
Deposit	
Security Deposit:	\$1,000
Amount refundable if cancelled more than nine months in advance	\$750
Amount refundable if cancelled seven to nine months in advance	\$500
Amount refundable if cancelled six months or less in advance	\$0

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Parks Program Fees

Service	Fee
PARKS PROGRAM FEES	
Meetings	
The Main House	
Half Day (Mon. - Fri.) (Four hours)	\$300
Full Day/Evening (Mon. - Fri.)	\$400; plus \$50 per hour after 5:00 p.m.
Additional Hour	\$50 per hour
Carriage House	
Weekday, Half Day (Mon. - Fri.) (Four hours)	\$200
Weekday, Full Day (Mon. - Fri.) (8:00 a.m. - 5:00 p.m.)	\$250
Weekend, Full Day (Sat. - Sun.) (9:00 a.m. - 4:00 p.m.)	\$250; plus \$25 per hour
Weekend Evening (Fri. - Sun.) (5:00 p.m. - 11:00 p.m.)	\$500
Additional Hour or Additional Attendant	\$25 per hour
Jennings Pavilion	
1 - 100 Guests	
Half Day (Mon. - Fri.) (Four hours)	\$400
Full Day/Evening (Mon. - Fri.)	\$500; plus \$50 per hour after 5:00 p.m.
Additional Hour or Additional Attendant	\$50 per hour
101 - 200 Guests	
Half Day (Mon. - Fri.)	\$500
Full Day/Evening (Mon. - Fri.)	\$600; plus \$100 per hour after 5:00 p.m.
Additional Hour or Additional Attendant	\$100 per hour
Town Related Organizations	
	40% discount for Main House meeting rentals; 20% discount for Carriage House and Jennings Pavilion meeting rentals
Security Deposit (1)	
	\$250
Other	
Day Use Permit (Exclusive Use of Picnic Facilities)	\$100 per day
Code Enforcement (Administrative)	Billed hourly; reference hourly rates

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Parks Program Fees

Service	Fee
PARKS PROGRAM FEES	

For Services Requested of Town Staff which have no fee listed in this Master Fee Schedule, the City Manager or the City Manager's designee shall determine the appropriate fee based on the following hourly rates for staff time involved in the service or activity:

Program Director, for services related to facility use:	\$272 per hour
Facility Maintenance Staff, for services related to facility use:	\$256 per hour
Facility Attendant, for services related to facility use:	\$122 per hour

(1) Security deposit not required for Town Related Organizations.

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Public Works Fees

Service	Fee
PUBLIC WORKS FEES	
Encroachment Permits	
Driveway Connection to Street - Asphalt/Pavers:	
Without Driveway Culvert (up to 3 inspections)	
i. Application	\$300
ii. Plan Check	\$400
iii. Inspection	\$599
Total	\$1,299
iv. Additional Plan Check	\$400
v. Additional Inspection	\$200
With Driveway Culvert (up to 4 inspections)	
i. Application	\$300
ii. Plan Check	\$499
iii. Inspection	\$799
Total	\$1,598
iv. Additional Plan Check	\$499
v. Additional Inspection	\$200
Driveway Connection to Street - Concrete:	
Without Driveway Culvert (up to 4 inspections)	
i. Application	\$300
ii. Plan Check	\$499
iii. Inspection	\$799
Total	\$1,598
iv. Additional Plan Check	\$499
v. Additional Inspection	\$200

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Public Works Fees

Service	Fee
PUBLIC WORKS FEES	
Driveway Connection to Street - Concrete (cont. from previous page):	
With Driveway Culvert (up to 5 inspections)	
i. Application	\$300
ii. Plan Check	\$499
iii. Inspection	\$999
Total	\$1,798
iv. Additional Plan Check	\$499
v. Additional Inspection	\$200
Right-of-Way Landscaping, Fence, Etc. - Minor Construction (up to 2 inspections)	
i. Application	\$200
ii. Plan Check	\$100
iii. Inspection	\$200
Total	\$500
iv. Additional Plan Check	\$100
v. Additional Inspection	\$200
Right-of-Way Landscaping, Fence, Etc. - Standard (up to 2 inspections)	
i. Application	\$300
ii. Plan Check	\$200
iii. Inspection	\$400
Total	\$900
iv. Additional Plan Check	\$200
v. Additional Inspection	\$200

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Public Works Fees

Service	Fee
PUBLIC WORKS FEES	
Connection to Storm Drain or Atherton Channel: <ul style="list-style-type: none"> i. Application (Per Application) ii. Plan Check (Per Application) iii. Inspection <ul style="list-style-type: none"> a. In-Pavement (up to 5 inspections) <ul style="list-style-type: none"> i. Trench (per linear foot) ii. Bored pit (per pit) b. Outside Pavement (up to 4 inspections) <ul style="list-style-type: none"> i. Trench (per linear foot) ii. Bored pit (per pit) Total iv. Additional Plan Check v. Additional Inspection <ul style="list-style-type: none"> a. In-Pavement <ul style="list-style-type: none"> i. Trench (per linear foot) ii. Bored pit (per pit) b. Outside Pavement <ul style="list-style-type: none"> i. Trench (per linear foot) ii. Bored pit (per pit) 	<ul style="list-style-type: none"> \$300 \$599 \$48 \$1,199 \$28 \$699 varies \$599 \$10 \$240 \$7 \$175

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Public Works Fees

Service	Fee
PUBLIC WORKS FEES	
Utility Main: <ul style="list-style-type: none"> i. Application (Per Application) ii. Plan Check (Per Application) iii. Inspection <ul style="list-style-type: none"> a. In-Pavement (up to 7 inspections) <ul style="list-style-type: none"> i. Trench (per linear foot) ii. Bored pit (per pit) b. Outside Pavement (up to 6 inspections) <ul style="list-style-type: none"> i. Trench (per linear foot) ii. Bored pit (per pit) Total iv. Additional Plan Check v. Additional Inspection <ul style="list-style-type: none"> a. In-Pavement <ul style="list-style-type: none"> i. Trench (per linear foot) ii. Bored pit (per pit) b. Outside Pavement <ul style="list-style-type: none"> i. Trench (per linear foot) ii. Bored pit (per pit) 	\$300 \$999 \$40 \$999 \$27 \$599 varies \$999 \$6 \$143 \$4 \$100
Telecommunication Installation Permit: <ul style="list-style-type: none"> i. Without Trenching ii. With Trenching 	\$100 See utility connect fee

TOWN OF ATHERTON
MASTER FEE SCHEDULE
Schedule of Public Works Fees

Service	Fee
PUBLIC WORKS FEES	
Property Improvement Permits and Reviews	
Grading and Drainage	Actual consultant cost plus town overhead
Detention System Annual Report Filing	\$120
Detention System Annual Report - Submittals Out of Compliance	\$300
Other	
Stop Work Order	50% of permit fee
Code Enforcement (Administrative)	Billed hourly; reference hourly rates

At the discretion of the Public Works Director, additional fees may apply for projects requiring in excess of 8 hours. For Services Requested of Town Staff which have no fee listed in this Master Fee Schedule, the City Manager or the City Manager's designee shall determine the appropriate fee based on the following hourly rates for staff time involved in the service or activity:

Public Works/Engineering Staff:	\$200 per hour
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RESOLUTION NO. 09-32

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
ADOPTING A MASTER FEE SCHEDULE FOR THE TOWN OF ATHERTON**

WHEREAS, the City Council commissioned NBS to prepare a Cost Allocation, Cost Recovery, and Comprehensive Fee Study to establish a Master Fee Schedule for the Town;

WHEREAS, the Comprehensive Fee Study provides the necessary data to substantiate that the proposed fees will not exceed the estimated reasonable cost of providing the services for which the fees are to be levied;

WHEREAS, the City Council has reviewed the Comprehensive Fee Study and determined that all of the proposed fees will not exceed the estimated reasonable cost of providing the services for which the fees are to be levied;

WHEREAS, none of the fees outlined in the Master Fee Schedule are Development Impact Fees (fees imposed as a condition of approval of a development project) subject to state law requirements pertaining to such fees;

WHEREAS, in accordance with state law, the Comprehensive Fee Study was made available for public review at least 10 days prior to the meeting at which the Master Fee Schedule was adopted; and

WHEREAS, in compliance with relevant provisions of the Mitigation Fee Act (Government Code sections 66000 et seq.), the City Council held a noticed public hearing on the proposed Master Fee Schedule at special meetings on June 10, 2009 and June 25, 2009 and at a regular meeting on August 19, 2009, and published notice in accordance with Government Code section 6062a.

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

Section 1. Findings.

The City Council declares that the above recitations are true and correct.

Section 2. Amount of Fee.

The City Council hereby approves and adopts the Master Fee Schedule as set forth in Exhibit A to this Resolution, attached hereto and incorporated by this reference.

Section 3. Waiver of Fee.

The City Council is hereby authorized to waive any of the fees outlined in Exhibit A. If such a waiver occurs, the City Manager or his/her designee will ensure that any fee category for which a waiver was granted does not exceed the estimated reasonable cost of providing the service.

Section 4. Environmental Clearance.

The adoption of the Master Fee Schedule is not subject to the California Environmental Quality Act (CEQA) in that the establishment of such a funding mechanism is not a "project." Specifically, in accordance with CEQA Guidelines section 15378(b)(4), the creation of government funding mechanisms that do not involve any commitment to any specific project that may cause a significant effect on the environment is not deemed to be a "project" under CEQA.

Section 5. Severability.

If any action, subsection, sentence, clause or phrase of this Resolution or the fees levied by this Resolution shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Resolution or the fees levied by this Resolution that can be given effect without the invalid provisions.

Section 6. Effective date.

Pursuant to Government Code section 66017(a), the fees identified in Exhibit A shall take effect 60 days following the adoption of this Resolution by the Town Council.

* * * * *

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 this 19th day of August 2009, by the following vote:

*AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:*

Jerry Carlson, MAYOR
TOWN OF ATHERTON

ATTEST:

Theresa DellaSanta, Deputy City Clerk

APPROVED AS TO FORM:

Wynne Furth, City Attorney



ITEM 29

DATE: CITY COUNCIL MEETING OF AUGUST 19, 2009

TO: THE CITY COUNCIL

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER
WYNNE FURTH, CITY ATTORNEY

SUBJECT: ORDINANCE ADOPTING TITLE 17 TO THE ATHERTON MUNICIPAL CODE - A COMPREHENSIVE ZONING ORDINANCE UPDATE

RECOMMENDATION

Staff recommends that the City Council conduct the public hearing and introduce the attached Zoning Code Update Ordinance based on the following finding for the reasons outlined in this staff report:

1. The proposed amendment is required to achieve the objectives of the Zoning Plan and the General Plan.

Basis for finding: The Zoning Code update is compliant with state law, is internally consistent and is consistent with the General Plan. The Zoning code update implements the land use policies of the General Plan with regulations protecting the Town's predominate single family land use pattern.

BACKGROUND

The City Council authorized PMC to complete a comprehensive zoning code update. Through this process, several public workshops were held and the draft code was reviewed by the General Plan Committee at several meetings. The Planning Commission started its review of the draft zoning code at its October 22, 2008 meeting and at its July 24, 2009 meeting, recommended the City Council adopt the comprehensive zoning code update.

ANALYSIS

The draft zoning code provides a comprehensive update to the Town's zoning regulations, addressing changes to state and federal law, reorganization for easier reading and revisions for internal consistency.

The draft zoning code does not change the zoning designation of any property, does not increase the height limits and does not change the setbacks. The zoning code update also clarifies provisions for height determination, provides regulations for dormers, and allows certain small structures to be located in the front yard. Substantive changes to the code include the following;

- Changes to the floor area requirements to exempt trellis structures and allow additional outdoor patio covered space to be exempt from the floor area calculations.
- Remove the limitation on the number of kitchens in the main building and number of bathrooms in accessory structures.

- Allow increased sidewall height for tower elements on the main building (does not change the overall main building height).
- Allow fountains, sculptures and small accessory structures to be located in the front yard.
- Allows bay windows on the main building in the R1-B zoning district to encroach two feet into the required side yard.
- Allows basement light wells to encroach into required side and rear yards for main buildings located in the R1-B zoning district. The maximum size of the encroachment is limited to 25% of the required setback; with an area no larger than 100 square feet and the length a maximum 25% of the length of the building.
- Requires 20' setback for entry gates
- Eliminates the Exception Review Process
- Require all exterior lighting over 10' from grade on main buildings to be shielded or down lit.
- Allow interior fences up to a height of 8'

Staff does not recommend the addition of a limitation on main building lighting to the zoning code at this time. Staff is concerned that this new requirement is over-restrictive and would create a large number of non-conforming situations as most of the existing exterior lighting on main buildings is not shielded or down lit. Staff is also not supportive of the change to allow eight foot tall fences. The building code exempts fences 6' in height or less from requiring a building permit. By increasing the allowed height of interior fences to up to 8', the Town would now require a building permit, property boundary survey and consent from neighboring property owners (which may involve multiple properties). This new process will increase staff time to review. The current building and zoning code exemption for 6' tall fences was intended to keep the Town out of neighbor to neighbor fence and property line disputes.

The General Plan Committee recommended that the City Council consider further review reducing the allowed basement area for main buildings, as large basements may lead to excessive energy consumption.

The draft zoning code has been updated to coordinate with State and Federal laws. The document also incorporates comments from City Attorney Wynne Furth.

CONCLUSION:

It is Planning Staff's professional opinion that the proposed comprehensive zoning code update is consistent with the General Plan and will represent the Town's development regulations.

ALTERNATIVES:

The City Council could adopt the Zoning Code Update in its entirety as recommended by the Planning Commission or could request Staff incorporate revisions to the document.

FISCAL IMPACT:

The City Council authorized PMC consultant expenses for the preparation of the draft zoning code update. Costs associated with the implementation of the zoning code will be borne by applicants.

ENVIRONMENTAL IMPACT:

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Sections 15061(B)(3); the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. When it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Staff determined through the preparation of an initial study that the proposed zoning code update would not have any adverse impact on the environment.

FORMAL MOTION:

I move that the City Council introduce Ordinance adopting the Comprehensive Zoning Code Update based on the finding listed in the staff report for the reasons listed in the staff report.

Lisa Costa Sanders, Deputy Town Planner

Jerome D. Gruber, City Manager

Attachments:

1. Ordinance adopting a Comprehensive Zoning Code Update
2. Planning Commission Resolution 2009-02

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
ADOPTING A COMPREHENSIVE ZONING ORDINANCE UPDATE REPLACING
TITLE 17 OF THE ATHERTON MUNICIPAL CODE**

WHEREAS, the last comprehensive update to the zoning code was completed in 1985. The City Council authorized PMC, planning consultants, to complete a comprehensive update to the Zoning Code for internal consistency and compliance with any changes to State Law,

WHEREAS, PMC and Town staff conducted three town-wide public workshops on the zoning code update;

WHEREAS, the General Plan Committee reviewed the draft zoning code update and forwarded the document to the Planning Commission with a favorable recommendation;

WHEREAS, the Planning Commission conducted a duly noticed public hearing on the comprehensive zoning code update on June 24, 2009 at which time all individuals desiring to comment on the document were heard and the Planning Commission recommended that the City Council adopt the Comprehensive Zoning Code update replacing Title 17 in its entirety;

WHEREAS, the City Council conducted a duly noticed public hearing on the comprehensive zoning code update on August 19, 2009 at which time all individuals desiring to comment on the document were heard;

WHEREAS, the Zoning Code update is consistent with the Atherton General Plan.

NOW THEREFORE BE IT RESOLVED that the City Council of the Town of Atherton does ordain as follows:

SECTION 1: Title 17 of the Atherton Municipal Code shall hereby be replaced in its entirety with the Comprehensive Zoning Code Update attached hereto as EXHIBIT A.

SECTION 2: CEQA Exemption. This ordinance is determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15061(B)(3), as the proposed zoning code update will not have any adverse impact on the environment.

SECTION 3: That the City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions on this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not effect the validity of the remaining parts of this Ordinance.

SECTION 4: This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced this 19th day of August, 2009

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the ___ day of _____, 2009, by the following vote

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

Jerry Carlson
MAYOR, Town of Atherton

ATTEST

Theresa DellaSanta
Deputy City Clerk

APPROVED AS TO FORM:

Wynne Furth
City Attorney

Town of Atherton
Zoning Code

Title 17 of the Atherton Municipal Code

Town of Atherton
Zoning Code

Title 17 of the Atherton Municipal Code
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Draft Dated July 2009

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Title 17 - Zoning

Article I Administration and Permit Procedures

Chapter 17.04	Purpose and Applicability
Chapter 17.06	Zoning Code Administration and Permit Provisions (<i>Previously 17.12 and 17.64</i>)
Chapter 17.08	Zoning Clearance (<i>New chapter</i>)
Chapter 17.10	Zoning Code Interpretations (<i>New chapter</i>)
Chapter 17.12	Conditional Use Permit (<i>Previously 17.52</i>)
Chapter 17.15	Special Structure Permit (<i>New chapter</i>)
Chapter 17.16	Variances (<i>Previously 17.56</i>)
Chapter 17.17	Accessibility (<i>New chapter</i>)
Chapter 17.18	Zoning Code Amendment (<i>Previously 17.60</i>)
Chapter 17.20	Front/Rear Lot Line Redesignation (<i>Previously 17.60</i>)
Chapter 17.22	Prezoning (<i>Previously 17.06.010</i>)
Chapter 17.23	General Plan Amendment (<i>New chapter</i>)
Chapter 17.24	Enforcement (<i>Previously 17.68</i>)
Chapter 17.26	Nonconforming Uses, Buildings, and Structures (<i>Previously 17.44</i>)

Revisions:

The following revisions have been made to article I of title 17:

Date of Adoption	Ordinance Number	Subject	Section	Page Number

Chapter 17.04 Purpose and Applicability**Sections:**

- 17.04.010 Purpose
- 17.04.020 Compliance Required
- 17.04.030 Applicability

17.04.010 Purpose

The purpose of this title is to establish a zoning plan and regulations implementing the general plan and regulating land use within the town and certain unincorporated areas that may be rezoned pursuant to the California Government Code. This title divides the Town of Atherton into zoning districts consistent with general plan land use designations. It further provides regulations for uses, height, bulk, setbacks, open spaces, size of buildings and structures, and population densities. These regulations are necessary for the orderly use of land, for the provision of adequate light and air, to prevent overconcentration of population, to provide adequate community facilities and utilities, and to promote the public health, safety, and general welfare. (Ord. 407 § 1-1 (part), 1985)

17.04.020 Compliance Required

No building or structure shall be erected, reconstructed, or structurally altered in any manner, nor shall any building or land be used for any purpose other than as permitted by and in conformance with this title and all other ordinances, laws, and maps referred to in this title. (Ord. 407 § 1-1 (part), 1985)

17.04.030 Applicability

The provisions of this title shall apply to all persons and the Town of Atherton. It shall apply to other governmental entities to the extent the law allows. (Ord. 407 § 1-1 (part), 1985)

Chapter 17.06 Zoning Code Administration and Permit Provisions (*Previously 17.12 and 17.64*)**Sections:**

- 17.06.010 Zoning Code Administration (*New section*)
- 17.06.020 Planning Permits and Entitlements (*New section*)
- 17.06.030 Application Submittal (*Previously 17.52.020*)
- 17.06.040 Fees (*Previously 17.12.030*)
- 17.06.050 Complete Application (*New section*)
- 17.06.060 Application Review (*New section*)
- 17.06.070 Approval Authority (*New section*)
- 17.06.080 Public Notices (*Previously 17.12.030*)
- 17.06.090 Public Hearings (*Previously 17.52.030 and 17.52.040*)
- 17.06.100 Appeals (*Previously 17.64*)
- 17.06.110 Effective Date (*New section*)
- 17.06.120 Revocation, Suspension, and Transferability (*Previously 17.52.080*)
- 17.06.130 Administration Procedures Timeline (*New section*)

17.06.010 Zoning Code Administration (*New section*)

The purpose of this chapter is to establish the administration of this title and to set forth the basic responsibilities of the officials and bodies charged with its administration.

- A. Composition of the Atherton Planning Agency. California Government Code Section 65100 requires each jurisdiction to establish a planning agency to carry out the land use and planning functions of the jurisdiction. The planning agency for the Town of Atherton shall be the following bodies:
 - 1. City council
 - 2. Planning commission
 - 3. General plan committee
 - 4. Town planner

The duties and responsibilities of these bodies are described in sections B through E below. In the absence of an assignment of a particular duty or responsibility, the city council shall have the assignment.

- B. Responsibilities of the City Council. The city council has the following planning and land use responsibilities:
 - 1. Appoint members of the planning commission.
 - 2. Hear and decide applications for zoning and general plan amendments. If an application for a general plan amendment or zoning plan amendment is accompanied by a request for other land use approvals, the city council shall be the decision-making body for the other land use approvals.

3. Hear and decide appeals of the decisions of the planning commission and town planner.
 4. Direct planning-related policy amendments and special studies as necessary or desired.
 5. Exercise such other powers and duties as are prescribed by state law or local ordinance.
- C. Responsibilities of the Planning Commission. The planning commission has the following planning and land use responsibilities:
1. Hear and make recommendations to the city council on applications or proposals for general plan amendments.
 2. Hear and make recommendations to the city council on applications or proposals for amendments to this title.
 3. Initiate studies of amendments to this title and make recommendations to the city council for amendments to this title.
 4. Hear and decide applications for planning permits as described in Table 17.06.070-1 (Approval Authority).
 5. Exercise such other powers and duties as are prescribed by state law, local ordinance, or as directed by the city council.
- D. Responsibilities of the General Plan Committee. The general plan committee has the planning and land use responsibilities established by city council resolution and as may be amended from time to time.
- E. Responsibilities of the Town Planner. The town planner has the responsibility and authority to administer and enforce this title as follows:
1. Maintain the sections of this title, the zoning plan, and all records of zoning actions and interpretations.
 2. Interpret the zoning code and maintain a record of zoning code interpretations.
 3. Decide staff-level permits, including zoning clearance. See section 17.60 for definition of staff-level decisions.
 4. Conduct administrative functions authorized by this title, including distribution and receipt of permit applications, application review and public notice, and preparation of staff reports with recommendations, proposed findings, and proposed conditions for quasi-judicial and legislative actions by the planning commission and city council.
 5. Oversee planning-related policy amendments and special studies as necessary.

6. Exercise such other powers and duties as are prescribed by state law or local ordinance or as directed by the city manager.

17.06.020 Planning Permits and Entitlements (*New section*)

- A. The following are all planning and zoning-related permits and actions required and regulated by the town. Each permit is described in subsequent chapters of this article, as listed below. General application submittal, review, noticing/hearing, and appeal provisions are listed in this chapter and in the related permit chapters listed below.
 1. Zoning clearance (chapter 17.08)
 2. Zoning code interpretation (chapter 17.10)
 3. Conditional use permits (chapter 17.12)
 4. Special structures permit (chapter 17.15)
 5. Variances (chapter 17.16)
 6. Reasonable accommodations for accessibility (chapter 17.17)
 7. Zoning code amendments (chapter 17.18)
 8. Front/rear lot line redesignations (chapter 17.20)
 9. Prezoning (chapter 17.22)
 10. General plan amendment (chapter 17.23)
 11. Home occupations (chapter 17.48)
- B. Table 17.06.070-1 identifies what type of approval each permit or decision is. The three types of approvals are staff-level, quasi-judicial, and legislative as defined below:
 1. Staff-level decisions require limited interpretation or exercise of policy or legal judgment in evaluating approval criteria because the decision is made according to specific criteria where no discretion is involved. Examples include zoning clearance as part of an application for a building permit.
 2. Quasi-Judicial decisions typically involve some level of discretion or policy determination on the part of the approval authority and involve making a set of findings as part of the approval process. A public hearing is held, evidence is weighed, and conclusions are drawn. The approval authority uses this information as the basis for its decision.
 3. Legislative decisions must be made by the city council. Legislative land use decisions apply to the general population and prescribe policy and

require the greatest amount of discretion and evaluation of subjective approval criteria. A public hearing is required.

17.06.030 Application Submittal (*Previously 17.52.020*)

An application for a permit may be applied for by the owner of record of the property for which the permit is sought or by the owner's agent as authorized in writing. The application shall be filed with the town planner on a prescribed form, together with all fees, plans, maps, and any other information required by the office of the town planner. Necessary submittal materials are listed on the form for each permit type.

If an application has been denied by the final approval authority, the application may not be presented in substantially the same form for a period of at least one (1) year from the date the application was denied.

17.06.040 Fees (*Previously 17.12.030*)

Nonrefundable fees to cover the costs of processing the application shall be required for all planning permits, appeals, amendments, and other applications in an amount as shall be established from time to time by resolution of the city council. (Ord. 407 §14-1, 1985)

17.06.050 Complete Application (*New section*)

- A. Application Completeness for Quasi-Judicial Permits and Legislative Actions. Within thirty (30) days of submittal of an application for a quasi-judicial permit or legislative action, the town planner shall determine whether or not the application is complete. The town planner shall notify the applicant that either:
1. All the submittal requirements have been satisfied and the application has been accepted as complete; or
 2. Specific information is still necessary to complete the application. The town planner may also identify preliminary information regarding the issues in which the submitted plans are not in compliance with town standards and requirements.
- B. Application Completeness for Staff-Level Permits. In order to expedite the determination of completeness for staff-level permits and actions issued by the town planner (zoning clearance), staff-level permit applications shall be deemed complete within ten (10) working days, unless the applicant is otherwise notified in writing within that time period of additional information necessary to complete the application.
- C. Incomplete Application. If additional information or submittals are required and the application is not made complete within six (6) months of the date of the completeness determination letter, the application shall be deemed by the town to have been withdrawn, and no action will be taken on the application. Unexpended fees, as determined by the town planner, will be returned to the applicant. If the applicant subsequently wishes to pursue the project, a new application, including fees, plans, exhibits, and other materials, must then be filed in compliance with this title.

- D. Right to Appeal. The applicant may appeal the determination that the application is incomplete in accordance with section 17.06.100 (Appeals) and the Permit Streamlining Act (California Government Code Section 65943).

17.06.060 Application Review (*New section*)

After an application is accepted as complete, the project shall be reviewed in accordance with the California Environmental Quality Act (CEQA). The town planner will consult with other departments as appropriate regarding compliance with all provisions of the Atherton Municipal Code and other adopted policies and plans. The town planner will prepare a report to the designated approval authority (planning commission and/or city council as described in Table 17.06.070-1) describing the project, along with a recommendation to approve, conditionally approve, or deny the application.

17.06.070 Approval Authority (*New section*)

- A. Table 17.06.070-1 (Approval Authority) identifies the decision making body, or "approval authority," for the various planning permits and decisions in the town. An approval authority is the decision-making body that takes action on a permit, as designated in the table with a "D". In some instances, the approval authority receives a recommendation from a "recommending body" prior to making a decision, as indicated with a "R."
- B. When a proposed project requires more than one permit with more than one approval authority, all of the permits shall be heard and decided together by the highest approval authority. The recommending body(s) shall make a recommendation to the approval authority prior to approval authority action.
- C. Actions of the approval authority may be appealed pursuant to the procedures set forth in section 17.06.100 (Appeals).

**Table 17.06.070-1
Approval Authority**

Planning Permit or Decision	Approval Type	Designated Approval Authority "R" symbolizes the "Recommending Body" "D" symbolizes the "Decision-Making Body"		
		Town Planner	Planning Commission	City Council
Zoning Clearance	Staff-Level	D		
Zoning Code Interpretation	Staff-Level	D		
Reasonable Accommodations for Accessibility	Staff-Level	D ²		
Heritage Tree Removal ¹	Quasi-Judicial	R	D	
Conditional Use Permit	Quasi-Judicial	R	D	
Special Structures Permit	Quasi-Judicial	R	D	
Variance	Quasi-Judicial	R	D	
Front/Rear Lot Line Redesignation	Quasi-Judicial	R	D	
Tentative Parcel Map ³	Quasi-Judicial	R	D	
Tentative Subdivision Map ³	Quasi-Judicial	R	D	
Zoning Code Amendments	Legislative	R	R	D
Prezoning	Legislative	R	R	D
General Plan Amendment	Legislative	R	R	D

Notes:

1. See chapter 8.10 (Removal Of And Damage To Heritage Trees)
2. See section 17.17.040
3. See Title 16 (Subdivisions)

17.06.080 Public Notices (Previously 17.12.030)

- A. **Public Hearing Required.** The following procedures shall govern the notice and public hearing, where required, for consideration of a permit. In accordance with the Planning and Zoning Law, the Subdivision Map Act, and the California Environmental Quality Act, public hearings shall be required for all quasi-judicial permits (e.g., variance, conditional use permit) and legislative actions of the town (e.g., zoning amendments and general plan amendments). The hearing(s) shall be held before the designated approval authority as identified in this title.
- B. **Notice of Hearing.** Pursuant to California Government Code Section 65091, not less than ten (10) days before the scheduled date of a hearing, public notice shall be given of such hearing in the manner listed below. The notice shall state the date, time, and place of hearing; identify the hearing body; provide a general explanation

of the matter to be considered; and provide a general description of the real property (text or diagram), if any, which is the subject of the hearing.

1. Except as otherwise provided herein, notice of the public hearing shall be mailed, postage prepaid, to the owners and tenants of property within a radius of five hundred (500) feet of the exterior boundaries of the property involved in the application, using for this purpose that last known name and address of such owners as shown upon the current tax assessor's records. If the number of owners exceeds one thousand (1,000), the town may, in lieu of mailed notice, provide notice by placing notice of at least 1/8 page in one newspaper of general circulation within the town.
 2. Notice of the public hearing shall be mailed, postage prepaid, to the owner of the subject real property or the owner's authorized agent.
 3. Notice of the public hearing shall be provided to each local agency expected to provide water, sewage, streets, roads, schools, or other essential functions or services to the project whose ability to provide those facilities and services may be affected.
 4. If the notice is mailed or delivered as identified in subsection 17.06.080(B)(1), the notice shall also be either:
 - a. Published in at least one (1) newspaper of general circulation within the town; or
 - b. Posted at town hall on the official town bulletin boards and in at least two other public places within the boundaries of the town, including one place in the area directly affected by the proceeding.
- C. **Requests for Notification.** Any person who requests to be on a mailing list for notice of hearings on a development project or projects shall submit such request in writing to the city clerk. The town may impose a reasonable fee for the purpose of recovering the cost of such notification.
- D. **Failure to Receive Notice.** Failure of any person or entity to receive any properly issued notice required by law for any hearing required by this title shall not constitute grounds for any court to invalidate the actions of a designated approval authority for which the notice was given.

17.06.090 Public Hearings (Previously 17.52.030 and 17.52.040)

- A. **Hearing Procedure.** Hearings as provided for in this chapter shall be held at the date, time, and place for which notice has been given as required in this chapter. The designated approval authority shall conduct the public hearing and hear testimony. The summary minutes shall be prepared and made part of the permanent file of the case. Any hearing may be continued. If the hearing is not continued to a specific date/time, then the hearing shall be re-noticed.

- B. For projects found to be exempt from the California Environmental Quality Act (CEQA) or for which a Negative Declaration or Mitigated Negative Declaration has been adopted, the approval authority (planning commission and/or city council as described in Table 17.06.070-1) shall approve or deny the project within sixty (60) days from the date of the determination or adoption of the environmental document.
- C. For projects for which an Environmental Impact Report (EIR) has been certified, the approval authority (planning commission and/or city council as described in Table 17.06.070-1) shall approve or deny the project within one hundred eighty (180) days from the date of certification of the EIR.
- D. The designated approval authority (planning commission and/or city council as described in Table 17.06.070-1) shall hold a public hearing on all planning permits and render a decision within forty (40) days of the date of acceptance of the complete application, unless the town and the applicant agree to waive the requirement.
- E. The designated approval authority (planning commission and/or city council as described in Table 17.06.070-1) shall make a decision on all planning permits within sixty (60) days following the closing of the public hearing.

17.06.100 Appeals (*Previously 17.64*)

- A. **Purpose.** This section identifies the procedures for filing and processing an appeal consistent with California Government Code Section 65900 et. seq. The appeal provisions of this section shall govern appeals of all planning and zoning matters, and other entitlement procedures in this title.
- B. **Appeal Applicability and Authority.** Any person dissatisfied with a determination or action of the town planner or planning commission made pursuant to this title may appeal such action to the city council within ten (10) days from the date of the action. Actions by the city council are final and no further administrative appeals are available.
- C. **Filing an Appeal.** All appeals shall be submitted in writing, identifying the determination or action being appealed and specifically stating the basis or grounds of the appeal. Appeals shall be filed with the city clerk within ten (10) days following the date of determination or action for which an appeal is made and be accompanied by a filing fee established by city council resolution. The filing of an appeal shall stay the issuance of any necessary subsequent permit(s) associated with any right or entitlement that will be the subject of the appeal (e.g., building permits).
- D. **Notice and Schedule of Appeal Hearings.** Unless otherwise agreed upon by the person filing the appeal and the applicant, appeal hearings should be conducted within forty (40) days from the date of appeal submittal. Notice of hearing for the appeal shall be provided pursuant to the noticing requirements of section 17.06.080 (Public Notices).
- E. **Appeal Hearing and Action.** Each appeal shall be considered a de novo (new) hearing and the city council may reverse, modify, or affirm the decision in whole or in part. In taking its action on an appeal, the city council shall state the basis for its

action. The city council may modify, delete, or add such conditions as it deems necessary. The city council may also refer the matter back to the original approval authority (as described in Table 17.06.070-1) for further action. The action of the city council is final on the date of decision and, unless otherwise expressly provided by the title may not be further appealed. A person may seek judicial review of a final decision of the town in accordance with applicable Sections of the California Government Code or Code of Civil Procedure.

17.06.110 Effective Date (*New section*)

All permits shall take effect ten (10) days following the date of the decision unless an appeal is filed as provided pursuant to section 17.06.100 (Appeals) of this title. No building permit may be issued until the expiration of this period or determination of all appeals, whichever occurs last.

17.06.120 Revocation, Suspension, and Transferability (*Previously 17.52.080*)

A. Revocation

1. Purpose. The purpose of this section is to provide for the revocation of any permit or entitlement (e.g., variance, conditional use permit) granted under this title.
2. Grounds for Revocation. In the event a permit holder or the permit holder's successor in interest, fails to comply with any or all conditions of permit approval, a revocation proceeding may be initiated if it is determined that there is substantial likelihood that any of the following situations exist:
 - a. The permit was obtained or extended by false, misleading, or incomplete information;
 - b. One or more conditions of approval have not been implemented or have been violated; or
 - c. The activities, or the use itself, are substantially different from what was approved.
3. Initiation of Action. The revocation of a permit may be initiated by the town planner or city council. The designated planning agency shall specify in writing to the permittee the basis upon which the action to revoke the permit is to be evaluated during the hearing to revoke.
4. Revocation Hearing.
 - a. A public hearing is required for any action to revoke a permit. The hearing shall be held by the original approval authority for the subject permit. The hearing shall be noticed in the same manner required for the granting of the original permit pursuant to section 17.06.080 (Public Notices).

- b. At its discretion, the designated approval authority (town planner, planning commission, and/or city council as described in Table 17.06.070-1) may modify or delete the conditions of approval or add new conditions of approval in lieu of revoking a permit in order to address the issues raised by the revocation hearing. The action on the revocation is subject to appeal in accordance with the provisions of section 17.06.100 (Appeals).

B. Time Limits

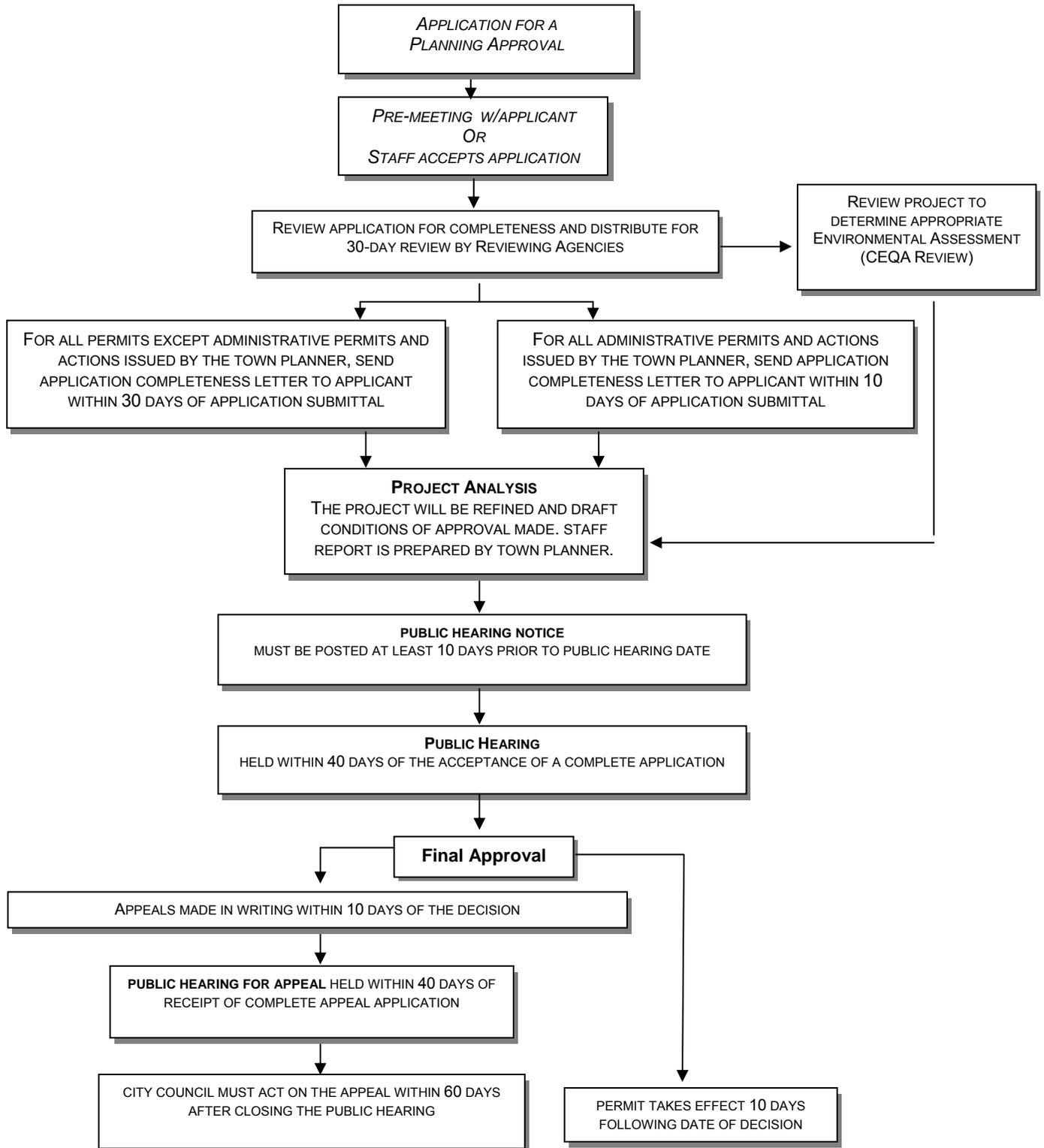
1. Time Limits Conditioned. As part of the conditions of approval, the designated approval authority (planning commission and/or city council as described in Table 17.06.070-1) may establish a time limit for exercising a permit.
2. Exercising Permits. The exercise of a permit occurs when the property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon such permit(s). Such exercise of a permit constitutes the vested right to complete the work authorized by the permit. A permit may be otherwise exercised by a condition of the permit or corresponding legal agreement that specifies that other substantial efforts or expenditures constitute exercising of the permit. Unless otherwise provided, permits that have not been exercised prior to a zoning amendment, which would make the permitted use or structure nonconforming, shall automatically be deemed invalid on the effective date of the zoning amendment.
3. Permit Extensions. The same approval authority that granted the original permit (planning commission and/or city council as described in Table 17.06.070-1) may extend the period within which the exercise of a permit must occur. An application for extension shall be filed not less than thirty (30) days prior to the expiration date of the permit, along with appropriate fees and necessary submittal materials listed in this title. The approval of an extension extends the expiration date for one (1) year from the original permit date. The permit, as extended, may require compliance with any development standards that may have been enacted since the permit was initially approved. The extension may be granted only when the designated approval authority (planning commission and/or city council as described in Table 17.06.070-1) finds that the original permit findings can be made and that there are changed circumstances or that there has been diligent pursuit to exercise the permit that warrants such extension.

- C. Permit to Run With Land. Unless otherwise conditioned, land use and development permits and approvals granted pursuant to the provisions of this title shall be transferable upon a change of ownership of the site, business, service, use, or buildings or structures, provided that the use and conditions of the original permit or approval are fully complied with, and the project is not modified or enlarged/expanded.

17.06.130 Administration Procedures Flowchart (*New section*)

The following figure 17.06.130-1 illustrates the steps and flowchart of the procedures discussed in the preceding sections. The intent of this figure is to help the reader understand the steps in the process and is not meant to supersede the provisions in sections 17.06.050 through 17.06.110. The figure is meant for illustrative purposes only.

**Figure 17.06.130-1
Illustrative Procedures Flowchart**



Chapter 17.08 Zoning Clearance (*New chapter*)**Sections:**

- 17.08.010 Purpose and Applicability (*New section*)
- 17.08.020 Approval Authority (*New section*)
- 17.08.030 Process (*New section*)

17.08.010 Purpose and Applicability (*New section*)

The purpose of the zoning clearance is to ensure that permits for new and modified uses and structures comply with this title, using staff-level plan check procedures. Zoning clearance is required for all structures that require a building permit. It is also required for all business licenses.

17.08.020 Approval Authority (*New section*)

The designated approval authority for zoning clearance is the town planner. The town planner approves, conditionally approves, or denies the zoning clearance in accordance with the requirements of this title.

17.08.030 Process (*New section*)

- A. No application form is necessary for zoning clearance. This process will be conducted by the town planner as part of the building permit application review. Building permits shall not be issued without approval of zoning clearance.
- B. Zoning clearance shall be granted only when the town planner finds the proposal to be in conformance with all applicable provisions of this title. The town planner may require the applicant to modify plans in whole or in part, or may apply conditions of approval to ensure compliance with town standards.

Chapter 17.10 Zoning Code Interpretations (*New chapter*)**Sections:**

- 17.10.010 Purpose (*New section*)
- 17.10.020 Applicability and Authority for Interpretations (*New section*)
- 17.10.030 Rules of Interpretation (*New section*)
- 17.10.040 Record of Interpretation (*New section*)
- 17.10.050 Appeals (*New section*)

17.10.010 Purpose (*New section*)

The purpose of this chapter is to specify the authority and procedures for clarification of ambiguity in the regulations of this title in order to provide consistent interpretation and application.

17.10.020 Applicability and Authority for Interpretations (*New section*)

If ambiguity arises concerning the meaning or applicability of any of the provisions of this title, it shall be the responsibility of the town planner to review pertinent facts, determine the intent of the provision, and issue an interpretation of the relevant provision(s) as specified in this title.

17.10.030 Rules of Interpretation (*New section*)

- A. Terminology. When used in this title, the following rules apply to all provisions of this title.
 - 1. Language. The words "shall," "must," "will," "is to," and "are to" are always mandatory. "Should" is not mandatory but is strongly recommended and "may" is permissive.
 - 2. Tense and number. The present tense includes the past and future tense, and the future tense includes the present. The singular number includes the plural number and the plural the singular, unless the natural construction of the words indicates otherwise.
 - 3. Conjunctions. "And" indicates that all connected items or provisions shall apply. "Or" indicates that the connected items or provisions may apply singly or in any combination. "Either...or" indicates that the connected items and provisions shall apply singly but not in combination. "Includes" and "including" shall mean "including but not limited to..."
- B. Zoning Regulations. Any list of any items, including zones or uses, is exclusive. If a use or other item is not listed, it is not permitted.
- C. Number of Days. Whenever the number of days is specified in this title, or in any permit, condition of approval, or notice issued or given as provided in this title, the number of days shall be construed as calendar days. When the last of the specified number of days falls on a weekend or town holiday, time limits shall extend to the end of the next working day.

- D. Minimum Requirements. When interpreting and applying the regulations of this title, all provisions shall be considered to be minimum requirements, unless specifically stated otherwise.

17.10.040 Record of Interpretation (*New section*)

Interpretations shall be in writing and shall cite the provisions being interpreted, together with an explanation of the meaning or applicability of the provision(s) in the particular or general circumstances that caused the need for interpretation. The town planner shall maintain a complete record of all interpretations made pursuant to this chapter and make the record available for public review. Interpretations that would benefit from codification in this title should be amended into the zoning code as part of an annual review and update.

17.10.050 Appeals (*New section*)

Interpretations by the town planner may be appealed to the designated appeal authority pursuant to chapter 17.06 (Zoning Code Administration and Permit Provisions).

Chapter 17.12 Conditional Use Permit (Previously 17.52)**Sections:**

- 17.12.010 Purpose and Applicability (Previously 17.52.010)
- 17.12.020 Approval Authority (New section)
- 17.12.030 Findings (Previously 17.52.050)
- 17.12.040 Conditions and Restrictions (Previously 17.52.060)

17.12.010 Purpose and Applicability (Previously 17.52.010)

The purpose of the conditional use permit is for the individual review of uses, typically having unusual site development features or operating characteristics, to assure compatibility with surrounding areas and uses. A conditional use permit is required for all uses specifically identified as requiring a conditional use permit in article II or III of this title.

17.12.020 Approval Authority (New section)

The designated approval authority for a conditional use permit is the planning commission. The town planner provides a recommendation and the planning commission approves, conditionally approves, or denies the conditional use permit in accordance with the requirements of this title as described in section 17.06.070 (Approval Authority) and Table 17.06.070-1 (Approval Authority).

17.12.030 Findings (Previously 17.52.050)

Conditional use permits shall be granted only when the approval authority determines that the proposed use or activity complies with all of the following findings:

- A. The proposed use is consistent with the general plan and all applicable provisions of this title; and
- B. The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case (location, size, design, and operating characteristics), be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the neighborhood of such use, or the general welfare of the town.

17.12.040 Conditions and Restrictions (Previously 17.52.060)

In granting a conditional use permit, the designated approval authority may impose such reasonable conditions or restrictions, including, but not limited to, time limits, review of performance, and performance standards, as it deems necessary to secure the purpose of this title and to assure operation of the use or the construction of improvements in a manner compatible with existing and potential uses of adjoining properties and in the general vicinity, and may require guarantees and evidence that such conditions are being or will be complied with. (Ord. 407 § 14-3(D) (part), 1985)

Chapter 17.15 Special Structures Permit (*New chapter*)**Sections:**

- 17.15.010 Purpose
- 17.15.020 Applicability
- 17.15.030 Approval Authority
- 17.15.040 Findings
- 17.15.050 Conditions and Restrictions

17.15.010 Purpose

The purpose of the special structures permit process is to assure special buildings and structures are compatible with surrounding areas and uses.

17.15.020 Applicability

A special structures permit shall be required for the following buildings and structures as identified throughout this title:

- A. Authorization to exceed the height limit for main buildings in the R-1A zoning district as provided in section 17.32.040.A.1;
- B. Accessory buildings and structures as provided in chapter 17.40;
- C. Authorization for basements located under the footprint of accessory buildings outside of the main building area as provided in section 17.44.030.B;
- D. Exemptions to the floor area calculations for basements on hillside lots as provided in section 17.44.040;
- E. Retaining walls that are taller than six (6) feet in height or located less than twenty (20) feet from other retaining walls on the same property as provided in chapter 17.46;
- F. Additions to legal nonconforming main buildings beyond the main building area in the R-1B zoning district as provided in section 17.26.040.E.1(a); and
- G. As otherwise provided in this title.

17.15.030 Approval Authority

The designated approval authority for special structures permit is the planning commission. The town planner provides a recommendation and the planning commission approves, conditionally approves, or denies the special structures permit in accordance with the requirements of this title as described in section 17.06.070 (Approval Authority) and Table 17.06.070-1 (Approval Authority).

17.15.040 Findings

Special structure permits shall be granted only when the approval authority determines that the proposed building or structure complies with all of the following:

- A. The proposed building or structure will not negatively impact neighboring properties with respect to privacy and view;
- B. The proposed building or structure complies with other development standards, restrictions, or limitations for the proposed building or structure, such as height and landscaping screening; and
- C. The granting of the special structure permit is consistent with the objectives of the general plan and this title.

17.15.050 Conditions and Restrictions

In granting a special structures permit, the approval authority may impose such reasonable conditions or restrictions as it deems appropriate or necessary to protect the public health, safety, or general welfare, and to secure the purposes of this title and may require guarantees and evidence that such conditions are being, or will be, complied with.

Chapter 17.16 Variances (Previously 17.56)**Sections:**

- 17.16.010 Purpose and Applicability (*New section*)
- 17.16.020 Approval Authority (*Previously 17.56.010*)
- 17.16.030 Findings (*Previously 17.56.050*)
- 17.16.040 Conditions and Restrictions (*Previously 17.56.060*)

17.16.010 Purpose and Applicability (New section)

In accordance with California Government Code Section 65906, a variance request allows the town to grant exceptions to the development standards and provisions of this title in cases where, because of special circumstances applicable to the property, the strict application of this title deprives such property of privileges enjoyed by other property in the vicinity and under identical land use zoning districts. A variance approval is required to grant exception from any of the development standards and provisions of this title. Variance applications may not be granted for uses or activities not otherwise permitted by zoning district regulations.

17.16.020 Approval Authority (Previously 17.56.010)

The designated approval authority for variances is the planning commission. The town planner provides a recommendation and the planning commission approves, conditionally approves, or denies the variance in accordance with the requirements of this title as described in section 17.06.070 (Approval Authority) and Table 17.06.070-1 (Approval Authority).

17.16.030 Findings (Previously 17.56.050)

A variance may be granted from site development, height, floor area, setback, or other requirements of this title applicable within any district, other than allowed use provisions only if, the designated approval authority makes the following findings:

- A. There are special circumstances applicable to the property, including size, shape, topography, location, or surroundings, such that the strict application of this title deprives such property of privileges enjoyed by other property owners in the vicinity and under identical land use zoning district classifications.
- B. Granting the variance does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and land use zoning district in which such property is located.
- C. Granting the variance will not adversely affect the interest of the public or the interest of residents and property owners in the vicinity of the premises in question.
- D. The granting of the variance is consistent with the objectives of the general plan and this title.

17.16.040 Conditions and Restrictions (Previously 17.56.060)

In granting a variance, the designated approval authority may impose such reasonable conditions or restrictions as it deems appropriate or necessary to protect the public health, safety, or general welfare, and to secure the purposes of this title and may require guarantees

and evidence that such conditions are being, or will be, complied with. (Ord. 407 § 14-4(D) (part), 1985)

Chapter 17.17 Accessibility (*New chapter*)**Sections:**

- 17.17.010 Purpose and Intent
- 17.17.020 Requesting Reasonable Accommodations
- 17.17.030 Required Information
- 17.17.040 Approval Authority and Approval Process
- 17.17.050 Group Homes
- 17.17.060 Required Findings for Reasonable Accommodations
- 17.17.070 Appeals

17.17.010 Purpose and Intent

This chapter provides a process for individuals with disabilities to make requests for reasonable accommodation for relief from the various land use, zoning, or rules, policies, practices, and/or procedures of the town. It is the policy of the town, pursuant to the Federal Fair Housing Act (as amended), to provide people with disabilities reasonable accommodation in rules, policies, and procedures that may be necessary to ensure equal access to housing.

17.17.020 Requesting Reasonable Accommodations

- A. In order to make specific housing available to an individual with a disability, a disabled person or representative may request reasonable accommodation relating to the various land use, zoning, or rules, policies, practices, and/or procedures of the town.
- B. If an individual needs assistance in making the request for reasonable accommodation or appealing a determination regarding reasonable accommodation, the town planner will endeavor to provide the assistance necessary to ensure that the process is accessible to the applicant or representative.
- C. A request for reasonable accommodation with regard to town regulations, rules, policies, practices, and/or procedures may be filed on an application form provided by the town planner at the time that the accommodation may be necessary to ensure equal access to housing.

17.17.030 Required Information.

The applicant shall provide the following information when requesting reasonable accommodation.

- A. A completed town application indicating, among other things, the applicant's name, address, and telephone;
- B. The address of the property for which the request is being made;
- C. The current actual use of the property;
- D. The zoning code provision, regulation, or policy from which reasonable accommodation is being requested;

- E. The basis for the claim that the person(s) for whom the reasonable accommodation is sought is/are considered disabled under the Fair Housing Act and why the accommodation is reasonably necessary to make specific housing available to the person(s); and
- F. Such other relevant information as may be requested by the town planner or his or her designee.

17.17.040 Approval Authority and Approval Process.

- A. Notwithstanding any other provision of this zoning code, the town planner shall have the authority to consider and take action on requests for reasonable accommodation. When a request for reasonable accommodation is filed with the planning department, it will be referred to the town planner for review and consideration as staff-level action unless determined otherwise by the town planner. A request for reasonable accommodation shall be considered staff-level in nature when it is related to a physical improvement that cannot be constructed to conform to the town's setbacks or design standards. Typical improvements considered to be "staff-level" in nature include ramps, walls, handrails, or other physical improvements necessary to accommodate a person's disability. The town planner shall issue a written determination of his or her action within thirty (30) days of the date of receipt of a completed application and may:
 - 1. Grant or deny the accommodation request; or
 - 2. Grant the accommodation request subject to specified nondiscriminatory condition(s); or
 - 3. Forward the request to the planning commission for consideration as a conditional use permit and subject to the findings stated in section 17.17.060 (Required Findings for Reasonable Accommodations).
- B. In the event the town planner determines that the request for reasonable accommodation(s) is not staff-level in nature, such request shall be forwarded to the planning commission in accordance with chapter 17.12. (Conditional Use Permit) and shall be subject to the findings stated in section 17.17.060 (Required Findings for Reasonable Accommodations).
- C. All written determinations of actions of the town planner shall give notice of the right to appeal and the right to request reasonable accommodation on the appeals process (e.g., requesting that town staff attempt to schedule an appeal hearing as soon as legally and practically possible), if necessary. The notice of action shall be sent to the applicant by mail.
- D. If necessary to reach a determination or action on the request for reasonable accommodation, the town planner may request further information from the applicant consistent with the planning department specifying in detail what information is required. In the event a request for further information is made, the thirty (30) day period to issue a written determination shall be stayed until the applicant fully and sufficiently responds to the request.

17.17.050 Group Homes.

All requests for reasonable accommodation relating to increased occupancy of a group home shall be filed first with the town planner. At his/her discretion, the town planner may either act upon the request as described in section 17.17.040 (Approval Authority and Approval Process) or forward the request to the planning commission as described in section 17.17.040 (Approval Authority and Approval Process). If a request is forwarded to the planning commission, it shall be processed as a conditional use permit and shall be subject to the findings stated in section 17.17.060 (Required Findings for Reasonable Accommodations).

17.17.060 Required Findings for Reasonable Accommodations.

In making a determination regarding the reasonableness of a requested accommodation, the approval authority shall make the following findings:

- A. The housing that is the subject of the request for reasonable accommodation will be used for an individual protected under the Fair Housing Act.
- B. The request for reasonable accommodation is necessary to make specific housing available to an individual protected under the Fair Housing Act.
- C. The requested reasonable accommodation does not impose an undue financial or administrative burden on the town and does not fundamentally alter town zoning, development standards, policies, or procedures.

17.17.070 Appeals.

Appeal of the town planner or planning commission action on the request for reasonable accommodation shall be made in accordance with the procedures specified in section 17.06.100 (Appeals).

Chapter 17.18 Zoning Code Amendment (Previously 17.60)**Sections:**

- 17.18.010 Purpose (New section)
- 17.18.020 Initiation of Amendment (Previously 17.60.010)
- 17.18.030 Approval Authority (New section)
- 17.18.040 Findings
- 17.18.050 Conditions and Restrictions
- 17.18.060 Action/Adoption

17.18.010 Purpose (New section)

The purpose of a zoning amendment is to allow modifications to any provisions of this title (including the adoption of new regulations or deletion of existing regulations) or to change the zoning designation on any parcel(s).

17.18.020 Initiation of Amendment (Previously 17.60.010)

Amendments may be initiated by:

- A. A petition to the City council by an owner or owners of record in the town that would be affected by the proposed amendment, provided that the applicant agrees to pay all costs associated with processing and deciding the request (e.g., staff time, hearing notices);
- B. Resolution of intention by the planning commission; or
- C. Resolution of intention by the city council directing the planning commission to consider a proposed amendment. (Ord. 407 § 14-6(A), 1985)

17.18.030 Approval Authority (New section)

The designated approval authority for zoning amendments is the city council. The town planner and planning commission provide recommendations and the city council approves, conditionally approves, or denies zoning amendments in accordance with the requirements of this title as described in section 17.06.070 (Approval Authority) and Table 17.06.070-1 (Approval Authority).

17.18.040 Findings (New section)

Zoning amendments shall be granted only when the approval authority makes the finding that the proposed zoning amendment (text or plan) is consistent with the general plan goals, policies, and implementation programs.

17.18.050 Conditions and Restrictions

When considering rezoning applications, the city council has the authority to impose restrictions on property including the restriction of use.

17.18.060 Action/Adoption

Adoption of the zoning amendment by the city council shall constitute final action and approval of the amendment. Authorization for construction or occupancy in accordance with the amendment may only be granted upon or after the effective date of the action.

Chapter 17.20 Front/Rear Lot Line Redesignation (*Previously 17.60*)**Sections:**

- 17.20.010 Purpose (*Previously 17.60.050*)
- 17.20.020 Approval Authority (*New section*)
- 17.20.030 Findings and Conditions (*Previously 17.60.080*)
- 17.20.040 Recordation (*Previously 17.60.090*)

17.20.010 Purpose (*Previously 17.60.050*)

The purpose of the front/rear lot line redesignation is to provide a process for the property owner to request a different front or rear lot line. While the front lot line is generally the narrowest portion of the lot fronting a street, a property owner may apply for a front/rear lot line redesignation in order to have a different line designated as the front line.

17.20.020 Approval Authority (*New section*)

The designated approval authority for front/rear lot line redesignation is the planning commission. The town planner provides a recommendation and the planning commission approves, conditionally approves, or denies the redesignation as described in section 17.06.070 (Approval Authority) and Table 17.06.070-1 (Approval Authority).

17.20.030 Findings and Conditions (*Previously 17.60.080*)

- A. The approval authority may grant a front/rear lot line redesignation pursuant to this article if, from the application or the facts presented at the time of consideration, it finds:
 - 1. The proposed redesignation will not be detrimental or injurious to persons, property, or improvements in the vicinity and will not be detrimental to the public health, peace, safety, comfort, or general welfare, or movement of vehicles, people, and goods in and around the subject property;
 - 2. The proposed redesignation will be in accord with the general plan and the purposes of that plan and this title;
- B. The approval authority may impose such reasonable conditions or restrictions as it deems necessary to secure the purpose of this title. (Ord. 407 § 14-7(C), 1985)

17.20.040 Recordation (*Previously 17.60.090*)

Subsequent to any front/rear lot line redesignation approved by the planning commission, the city clerk shall record the location of the newly designated front lot line in the offices of the County Recorder of San Mateo County. Costs for such recordation shall be borne by the applicant, and the effective date of the redesignation shall be the date of recordation. (Ord. 407 § 14-7(D), 1985)

Chapter 17.22 Prezoning (*Previously 17.06.010*)***Sections:***

- 17.22.010 Purpose (New section)
- 17.22.020 Process (Previously 17.06.010)

17.22.010 Purpose (*New section*)

The purpose of prezoning is to establish the designation of land use by zoning district for unincorporated property adjoining the town, within the sphere of influence.

17.22.020 Process (*Previously 17.06.010*)

The method of accomplishing prezoning shall be the same as for zoning code amendments as provided in chapter 17.18 (Zoning Code Amendments) of this title. Such zoning shall become effective at the time annexation becomes effective. (Ord. 407 § 1-5, 1985)

Chapter 17.23 General Plan Amendment (*New chapter*)**Sections:**

- 17.23.010 Purpose
- 17.23.020 Approval Authority
- 17.23.030 Frequency of Amendment
- 17.23.040 Initiation of Amendment
- 17.23.050 Findings for General Plan Amendment (Text or Map)
- 17.23.060 Adoption

17.23.010 Purpose

The purpose of a general plan amendment is to allow for modifications to the general plan text (e.g., goals, policies, or implementation programs) or to change the general plan land use designation on any parcel(s).

17.23.020 Approval Authority

The designated approval authority for general plan amendments is the city council. The town planner, general plan committee, and planning commission provide recommendations and the city council approves, conditionally approves, or denies the general plan amendment in accordance with the requirements of this title as described in section 17.06.070 (Approval Authority) and Table 17.06.070-1 (Approval Authority).

17.23.030 Frequency of Amendment

Pursuant to Government Code Section 65358, no mandatory element of the general plan may be amended more frequently than four (4) times during any calendar year. Subject to that limitation, an amendment may be made at any time and may include more than one change to the general plan.

17.23.040 Initiation of Amendment

A general plan amendment may be initiated by motion of the planning commission or city council, by application by property owner(s) of parcel(s) to be affected by a general plan amendment, or by recommendation of the town planner to clarify text, address changes mandated by State law, maintain internal general plan consistency, address boundary adjustments affecting land use designation(s), or for any other reason beneficial to the town.

17.23.050 Findings for General Plan Amendment (Text or Map)

In the event that a general plan amendment is requested by a private property owner, the applicant shall demonstrate to the city council that there is a substantial public benefit to be derived from such amendment.

17.23.060 Adoption

Adoption of the general plan amendment by the city council shall constitute final action and approval of the amendment. Authorization for construction or occupancy in accordance with the amendment may only be granted upon or after the effective date of the action.

Chapter 17.24 Enforcement (*Previously 17.68*)**Sections:**

- 17.24.010 Enforcement Authority (Previously 17.68.010)
- 17.24.020 Violation – Deemed Nuisance (Previously 17.68.020)

17.24.010 Enforcement Authority (*Previously 17.68.010*)

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

17.24.020 Violation – Deemed Nuisance (*Previously 17.68.020*)

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

Chapter 17.26 Nonconforming Uses, Buildings, and Structures (Previously 17.44)**Sections:**

- 17.26.010 Purpose (*New section*)
- 17.26.020 Definitions (*Previously 17.08.240 and 17.08.250*)
- 17.26.030 Continuation and Abandonment of Nonconforming Land Uses (*Previously 17.44.020 and 17.44.030*)
- 17.26.040 Nonconforming Structures and Buildings Regulations (*Previously 17.44.050*)

17.26.010 Purpose (*New section*)

This chapter provides regulations for nonconforming land uses, buildings, and structures that were lawful before the adoption or amendment of this zoning code, but which would be prohibited, regulated, or restricted differently under the current terms of this zoning code or future amendments.

17.26.020 Definitions (*Previously 17.08.240 and 17.08.250*)

Terms that are relevant to this chapter are defined in chapter 17.60, Definitions.

17.26.030 Continuation and Abandonment of Nonconforming Land Uses (*Previously 17.44.010, 17.44.020, 17.44.030, and 17.44.040*)

- A. Continuation of Legal Nonconforming Use. The lawful use of land, structures, or buildings existing at the time of adoption of the ordinance codified in this title may be continued, although such use becomes nonconforming by adoption of the ordinance codified in this title.
- B. Restrictions on Nonconforming Uses. Lawful nonconforming uses shall not be:
 - 1. Enlarged or increased.
 - 2. Changed to any other nonconforming use.
 - 3. Extended to occupy greater land area.
 - 4. Moved to another portion of the lot.
- C. If a nonconforming use of land or a nonconforming use of a conforming structure or building is abandoned for a continuous period of six (6) months or more, rights to legal nonconforming status shall terminate.

17.26.040 Nonconforming Structures and Buildings Regulations (*Previously 17.44.050*)

- A. Continuation of Legal Nonconforming Structure and Buildings. Structures and buildings that were legal at the time of their establishment but that no longer conform to the provisions of this title shall be deemed legal nonconforming structures and buildings. As such, they may continue to be legally used.

- B. Maintenance and Repair. Legal nonconforming buildings and structures may be maintained and repaired, provided the repairs and alterations will not increase the degree of nonconformity.
- C. General Regulations for Modifications and Expansion of Nonconforming Buildings and Structures. Generally, legal nonconforming buildings and structures may only be moved, altered, enlarged, reconstructed, or voluntarily removed, when the work being completed is in conformance with all current zoning and building regulations. However, under certain circumstances, the town permits the reconstruction, alteration, or addition to legal nonconforming buildings and structures, provided they comply with the following provisions:
1. Any legal nonconforming main building that is damaged or destroyed by fire, explosion, earthquake, or other accidental occurrence, may be restored within the building envelope that existed immediately prior to the accidental occurrence; provided that all such reconstruction must meet current building codes. The burden of proving the extent of the building envelope existing immediately prior to the accidental occurrence shall be upon the party seeking to reconstruct the structure.
 2. Alterations or additions to legal nonconforming main buildings may be permitted so long as no more than fifty (50) percent of the existing floor area and no more than fifty (50) percent of nonconforming exterior walls are rebuilt, either as a single project or cumulatively over five (5) years or less. Alterations or additions of more than fifty (50) percent are required to meet current zoning and building code requirements. This subsection does not apply to interior alterations.
 3. Alterations or additions to legal nonconforming accessory buildings may be permitted so long as the alteration or addition is made to the conforming portion of the accessory building or is made to the nonconforming portion so as to bring that portion into conformity.
 4. Addition of solar facilities to an existing structure or building will not be seen as increasing the nonconforming standards of a structure or building.
- D. Special Provisions for Nonconforming Main Building in Residential District R-1A. An addition to a legal nonconforming main building in the R-1A zoning district may:
1. Maintain the building's existing setback lines, provided the building does not encroach by more than twenty (20) percent into the current R-1A setbacks; and
 2. Maintain the existing building height, provided no portion of the building is taller than 30 feet.

- E. Special Provisions for Nonconforming Main Buildings in Residential District R-1B.
 - 1. An addition to a legal nonconforming main building in the R-1B zoning district shall be permitted only within the main building area:
 - a. Proposed additions to legal nonconforming main buildings beyond the main building area may be permitted upon issuance of a special structures permit.

Title 17 - Zoning

Article II Districts and Development Standards

Chapter 17.30	Use Districts Designated (<i>Previously 17.16</i>)
Chapter 17.32	Residential District R-1A (<i>Previously 17.20</i>)
Chapter 17.33	Residential District R-1B (<i>Previously 17.24</i>)
Chapter 17.34	Park and Open Space District (POS) (<i>Previously 17.28</i>)
Chapter 17.36	Public Facilities and Schools District (PFS) (<i>Previously 17.32</i>)
Chapter 17.38	Side Yard Requirements (<i>Previously 17.40</i>)

Revisions:

The following revisions have been made to article II of title 17:

Date of Adoption	Ordinance Number	Subject	Section	Page Number

Chapter 17.30 Use Districts Designated (*Previously 17.16*)**Sections:**

- 17.30.010 Designation of Districts (*Previously 17.16.010*)
- 17.30.020 Zoning Plan (*Previously 17.16.020*)
- 17.30.030 Allowed Uses Generally (*New section*)
- 17.30.040 Similar Use Determination (*Previously 17.36.010*)
- 17.30.050 Certain Commercial Uses Prohibited (*17.36.015*)
- 17.30.060 Interpretation of District Boundaries (*Previously 17.16.030*)
- 17.30.070 Nonconforming Lots (*New section*)

17.30.010 Designation of Districts (*Previously 17.16.010*)

For the purposes of this title, the town is divided into the following classes of districts as show on the maps hereinafter included by reference:

- A. Residential district R-1A.
- B. Residential district R-1B.
- C. Parks and open space district (POS District).
- D. Public facilities and school district (PFS District). (Ord. 407 § 1-2, 1985)

17.30.020 Zoning Plan (*Previously 17.16.020*)

The designations, locations, and boundaries of the districts established are delineated on the map entitled "Atherton Zoning Plan," dated as amended from time to time. This zoning map and all notations and information thereon are made a part of this chapter by reference. (Ord. 407 § 1-3, 1985)

17.30.030 Allowed Uses Generally (*New section*)

Land use provisions are established in this title by the zoning district applied to a site. The uses of land allowed in each zoning district are listed in tables by zoning district category in subsequent chapters of this article. Permitted or conditional uses listed in the various district regulations are specific and no other uses shall be allowed.

17.30.040 Similar Use Determination (*Previously 17.36.010*)

When a use is not specifically listed in this title, the planning commission may determine that the use is similar to a listed use by following the conditional use procedure specified in chapter 17.12 (Conditional Use Permits). Such similar use shall be categorized as a conditional use. In making such a determination, the planning commission shall make all of the following findings:

- A. The proposed use will be consistent with the general plan.
- B. The proposed use will be consistent with the purposes of the applicable zoning district.

- C. The characteristics of and activities associated with the proposed use are equivalent to one or more of the listed uses and will not have a higher level of activity or population density than the uses listed in the district.

17.30.050 Certain Commercial-Residential Uses Prohibited (*Previously 17.36.015*)

No new commercial-residential uses are permitted anywhere in the Town of Atherton. Such prohibited uses include hotels, motels, boardinghouses, and transient guest quarters, including "bed and breakfasts". (Ord. 446 § 1, 1989)

17.30.060 Interpretation of District Boundaries (*Previously 17.16.030*)

Whenever any uncertainty exists as to the boundary of any district shown on the zoning plan, it shall be the responsibility of the town planner to interpret the boundaries of the district. In making such a determination, the following rules shall apply:

- A. When a boundary line is indicated as following a street or similar right-of-way, it shall be interpreted as following the centerline of that right-of-way.
- B. Where a boundary line is indicated as approximately following a lot line, the boundary line shall be interpreted to follow that lot line.
- C. Where a boundary line divides a lot or crosses unsplit property, the location of such boundary shall be interpreted as being the closest lot line. (Ord. 407 § 1-4, 1985)

17.30.070 Legal Lots (*New section*)

Any existing lot, legally created, may be used for uses allowed in the district even if it does not meet the current building site area or dimension standards established in title 16 (Subdivisions). All new lots shall be consistent with the development standards in chapter 16.24 (Design). No subdivision shall be approved that would increase the nonconformity of an existing parcel or any nonconforming use on the parcel.

Chapter 17.32 Residential District R-1A (Previously 17.20)

Sections:

- 17.32.010 Purpose (Previously 17.20.010)
- 17.32.020 Characteristics of the District (New section)
- 17.32.030 Allowed Uses and Permit Requirements (Previously 17.20.020 and 030)
- 17.32.040 Development Standards (Previously 17.20.040)

17.32.010 Purpose (Previously 17.20.010)

This chapter identifies the allowed use and permit requirements and development standards for the residential district R-1A. The intent of this district is to implement the residential land use categories of the town's general plan. It is designed to designate land for the development of residential uses consistent with the development regulations set forth in this title.

17.32.020 Characteristics of the District (New section)

Residential district R-1A provides for the development of single family residential uses at a density of one (1) dwelling unit per lot. It allows for new subdivisions with a minimum lot size of one (1) acre. Second dwelling units are permitted, consistent with the development standards of this title. Home occupations are also appropriate for this district, consistent with the development standards of this title. Other uses, including churches and public utilities and facilities, may be allowed upon issuance of a conditional use permit.

17.32.030 Allowed Uses and Permit Requirements (Previously 17.20.020 and .030)

Table 17.32.030-1 (Allowed Uses and Permit Requirements for Residential District R-1A) identifies the allowed uses in the R-1A zoning district subject to the development standards of this chapter and all other provisions of this title. Allowed use provisions are symbolized in the table as follows:

P = Land use permitted by right

CUP = Land use permitted with approval of a conditional use permit

Note: Table consolidates permit requirements from existing sections 17.20.020 and 17.20.03.)

**Table 17.32.030-1
Allowed Uses and Permit Requirements for Residential District R-1A**

Land Use	Zoning District
	R-1A
Single-family dwelling ¹	P
Second dwelling unit ²	P
Home occupations	P
Churches and places of worship	CUP
Public utilities or facilities	CUP

Notes:

1. Includes associated accessory uses, accessory buildings, and accessory structures (Note: Garages are accessory buildings).

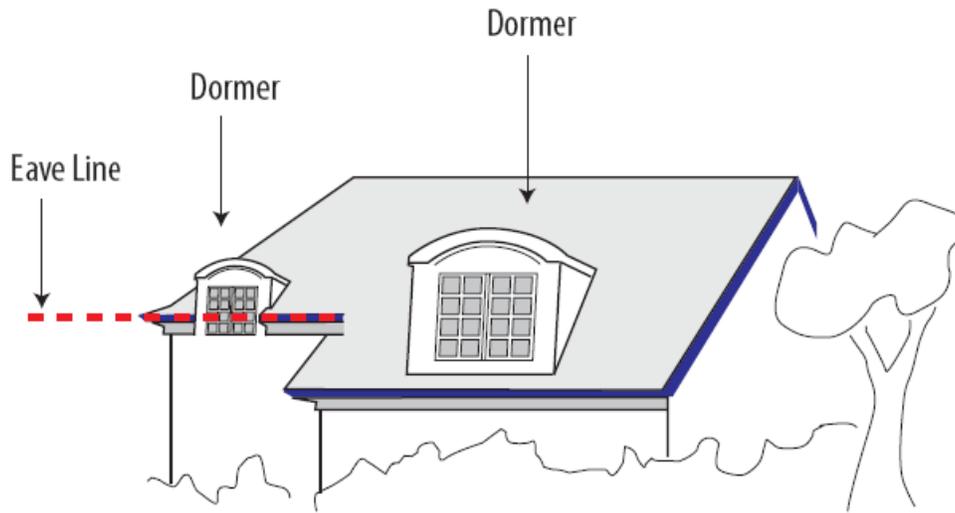
2. Subject to compliance with section 17.32.040 (Development Standards) and section 17.52 (Second Dwelling Units).

17.32.040 Development Standards (*Previously 17.20.040*)

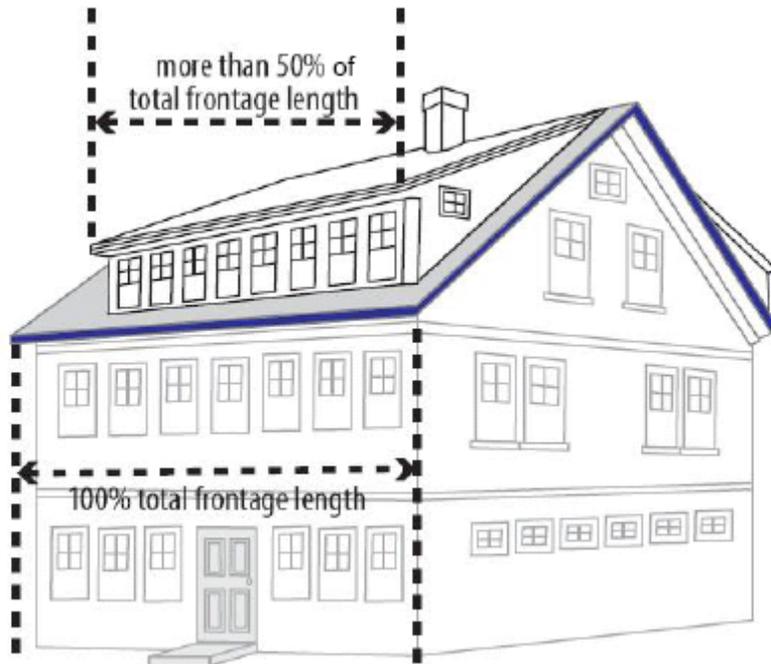
The following minimum and maximum requirements shall apply in the R-1A district. The town planner will review development applications against these standards to determine compliance with applicable zoning regulations.

- A. Height. The maximum building heights permitted are provided below. See also chapter 17.42 for height measurement.
 1. The standard maximum height for main buildings shall be thirty (30) feet; provided that vertical sidewalls and columns may not exceed twenty-two (22) feet, and provided further that these standard maximum heights may be increased, but in no event to exceed thirty-four (34) feet for main buildings nor to exceed twenty-eight (28) feet for vertical sidewalls and columns, under any of the following circumstances:
 - a. The main building, vertical sidewalls, and columns height may be increased in any case where the front, rear, and side yards are increased above the standard setbacks by a ratio of at least five (5) feet for each one (1) foot increase of height.
 - b. Increased height for a main building (but not to exceed thirty-four (34) feet) or for vertical sidewalls or columns (but not to exceed twenty-eight (28) feet) shall be permitted upon approval of a special structure permit.
 2. Accessory structures: see chapter 17.40.
 3. Detached garages: see chapter 17.40.
 4. Consistent with the sidewall height limit for the R-1A zone, dormers that exceed or are otherwise built above the sidewall height limit for the structure, as measured from the extension of the eave line across the width of the dormer, shall be developed consistent with the following standards (see figures 17.32.040-1a (Dormers) and 17.32.040-1b (Excessive Dormers)).
 - i. The maximum combined length of all dormers on a side or elevation of a building shall not exceed fifty (50) percent of the total length of the respective side or elevation of the building to which they are associated (see figure 17.32.040-1b (Excessive Dormers)).

**Figure 17.32.040-1a
Dormers**

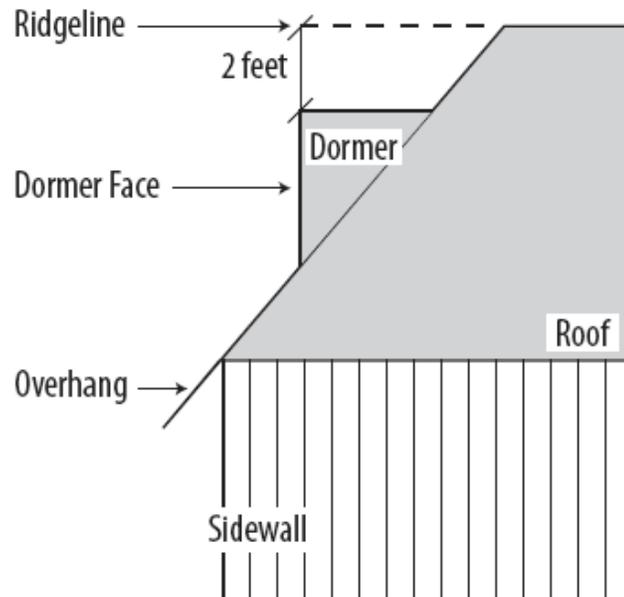


**Figure 17.32.040-1b
Excessive Dormers**



- ii. The face of the dormer shall be a minimum of two (2) feet below the ridge line (see figure 17.32.040-2 (Dormer Height and Placement)).

**Figure 17.32.040-2
Dormer Height and Placement**



- B. Lot Size Requirements. New lots created in the R-1A district shall be consistent with the lot size requirements established in section 16.24.050 (Lot Size Requirements).
- C. Maximum Floor Area Ratio. The maximum floor area ratio shall be eighteen (18) percent of the lot size except for those lots smaller than forty-three thousand five hundred sixty (43,560) square feet (one acre), which shall be determined by the following equation:

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

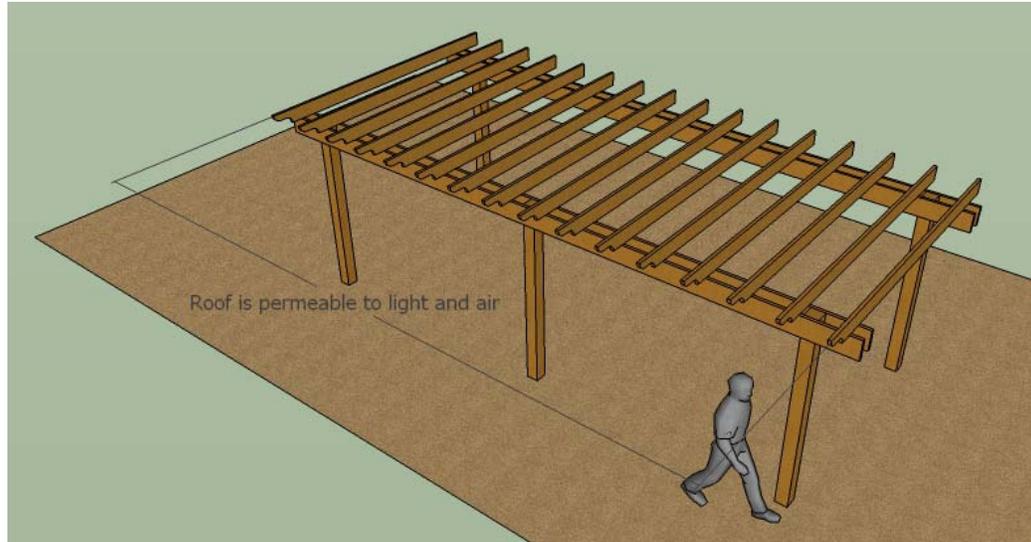
The floor area above the first floor of the main building for all lots shall not exceed seven and one-half (7.5) percent of the lot size.

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

1. Structures, open on all sides, with substantially open roofs (e.g., trellis) (see figure 17.32.040-4 (Substantially Open Roof)), with the following provisions:
 - a. No more than one side of the structure shall be attached to the main building and no more than one side of the structure may be enclosed by small structural features (e.g., outdoor kitchens/b-b-qs, fire pits/ fireplaces, cabinets), provided that on the side with the structural feature at least fifty (50) percent of the

side is still open (see figure 17.40.040-2 (Attached Trellis Exempt from Floor Area Requirement); or

**Figure 17.32.040-4
Substantially Open Roof**



- b. No more than two sides shall be partially enclosed with small structural features (e.g., outdoor kitchens/b-b-qs, fire pits/fireplaces, cabinets), provided that at least fifty (50) percent of both sides are still open and the other two sides are completely open; and
 2. Roofed areas completely open on two or more sides up to five (5) percent of the maximum allowed floor area for the lot plus five hundred (500) square feet (e.g., awning, patio cover, covered walk).
- D. Front and Rear Yards. Minimum front and rear yard requirements are:
 1. Main building, interior, and corner lots: sixty (60) feet minimum; provided, however, on lots of record prior to adoption of Ordinance No. 146 (April 16, 1946) with a depth of less than two hundred (200) feet, the front and rear yards shall each be thirty (30) percent of the lot depth with a minimum of thirty (30) feet; provided further, where main building heights are between thirty (30) feet and thirty-four (34) feet, the front and rear yards shall be increased by a ratio of five (5) feet for each one (1) foot increase in height (Ord. 146, §, April 16, 1946).
 2. Accessory structures: as provided in chapter 17.40.
 3. The property owned by the City and County of San Francisco, known as the Hetch Hetchy property, over which the owner of adjacent property with contiguous frontage has reserved surface rights, may be utilized by the adjacent property owner for setback calculation purposes. The

adjacent property owner may calculate setbacks to the original property line prior to the acquisition by the City and County of San Francisco, or in the case of properties subdivided after that date, to the centerline of the Hetch Hetchy property.

- E. Side Yards. Minimum side yard requirements are as shown in table 17.38.010; provided, however, where main building heights are between thirty (30) feet and thirty-four (34) feet with the issuance of a special structure permit, the side yards shall be increased by a ratio of five (5) feet for each one (1) foot increase in height.
 - 1. The property owned by the City and County of San Francisco, known as the Hetch Hetchy property, over which the owner of adjacent property with contiguous frontage has reserved surface rights, may be utilized by the adjacent property owner for setback calculation purposes. The adjacent property owner may calculate setbacks to the original property line prior to the acquisition by the City and County of San Francisco, or in the case of properties subdivided after that date, to the centerline of the Hetch Hetchy property.
- F. Accessory Structure Area. Maximum area permitted for all accessory structures, exclusive of pools, tennis courts, garages, carports, drives, and other paved surfaces, on a building site shall not exceed the ratio of one thousand two hundred (1,200) square feet of accessory structure for each forty-three thousand five hundred sixty (43,560) square feet of lot area.
- G. Eaves. Roof eaves may encroach into any yard not to exceed a maximum of four (4) feet on the main building and not to exceed one (1) foot on an accessory building.
- H. Kitchens.
 - 1. There is no limitation on the maximum number of kitchens for the main dwelling.
 - 2. One kitchen may be within an approved second dwelling unit that is located within the main dwelling building setback lines.
- I. Lighting. Exterior lighting on main dwellings located in side and rear yards and more than ten (10) feet above grade shall be shielded and downlit so as not to create glare or spill onto neighboring property. Shielding material shall be opaque.

Chapter 17.33 Residential District R-1B (Previously 17.24)

Sections:

- 17.33.010 Purpose (Previously 17.24.010)
- 17.33.020 Characteristics of the District (New section)
- 17.33.030 Allowed Uses and Permit Requirements (Previously 17.24.020 and 030)
- 17.33.040 Development Standards (Previously 17.24.040)

17.33.010 Purpose (Previously 17.24.010)

This chapter identifies the allowed use and permit requirements and development standards for the residential district R-1B. The intent of this district is to implement the residential land use categories of the town's general plan. It is designed to designate land for the development of residential uses consistent with the development regulations set forth in this title.

17.33.020 Characteristics of the District (New section)

The Residential district R-1B provides for the development of single family residential uses at a density of one (1) dwelling unit per lot. It allows for new subdivisions with a minimum lot size of one (1) acre. Second dwelling units are permitted, consistent with the development standards of this title. Home occupations are also appropriate for this district, consistent with the development standards of this title. Other uses, including churches and public utilities and facilities, may be allowed upon issuance of a conditional use permit.

17.33.030 Allowed Uses and Permit Requirements (Previously 17.24.020 and 030)

Table 17.33.030-1 (Allowed Uses and Permit Requirements for Residential District R-1B) identifies the allowed uses in the R-1B zoning district subject to the development standards of this chapter and all other provisions of this title. Allowed use provisions are symbolized in the table as follows:

- P = Land use permitted by right
- CUP = Land use permitted with approval of a conditional use permit

**Table 17.33.030-1
Allowed Uses and Permit Requirements for Residential District R-1B**

Land Use	Zoning District
	R-1B
Single-family dwelling ¹	P
Second dwelling unit ²	P
Home occupations	P
Churches and places of worship	CUP
Public utilities or facilities	CUP

Notes:

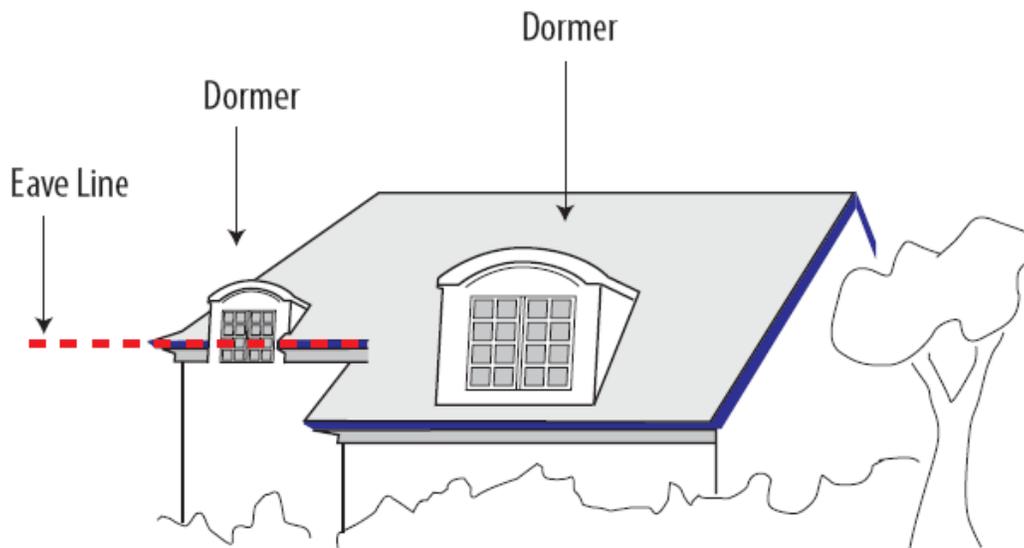
1. Includes associated accessory uses, accessory buildings, and accessory structures (Note: Garages are accessory structures).
2. Subject to compliance with section 17.33.040 (Development Standards) and section 17.52 (Second Dwelling Units).

17.33.040 Development Standards (Previously 17.24.040)

The following minimum and maximum requirements shall apply in the R-1B district. The town planner will review development applications against these standards to determine compliance with applicable zoning regulations.

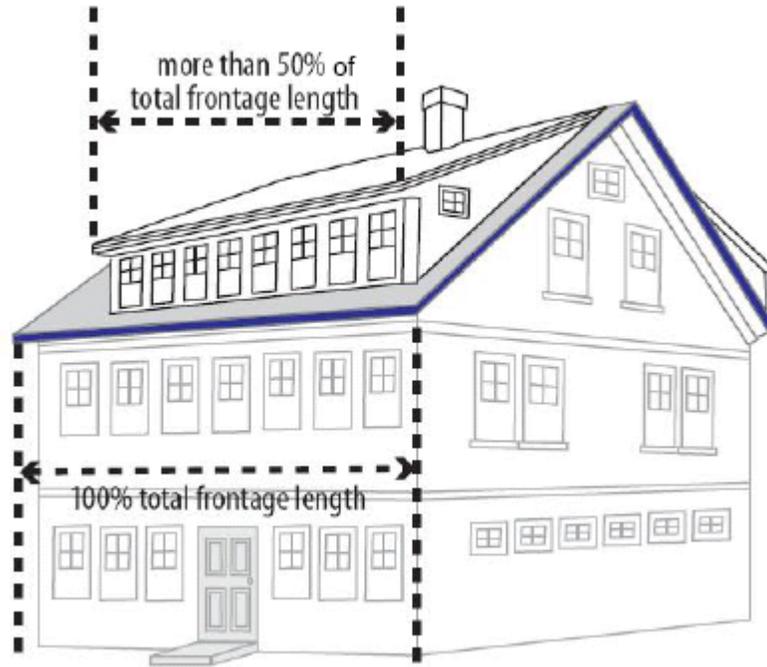
- A. Height. The maximum building heights permitted are provided below. See also chapter 17.42 for height measurement.
1. Main buildings: twenty-eight (28) feet, provided that neither vertical side walls or columns exceed eighteen (18) feet. End walls shall be perpendicular to the lot depth;
 2. Accessory structures: see chapter 17.40.
 3. Detached garages: see chapter 17.40.
 4. Consistent with the sidewall height limit for the R-1B zone, dormers that exceed or are otherwise built above the sidewall height limit for the structure, as measured from the extension of the eave line across the width of the dormer, shall be developed consistent with the following standards (see figures 17.33.040-1a (Dormers) and 17.33.040-1b (Excessive Dormers)).

**Figure 17.33.040-1a
Dormers**



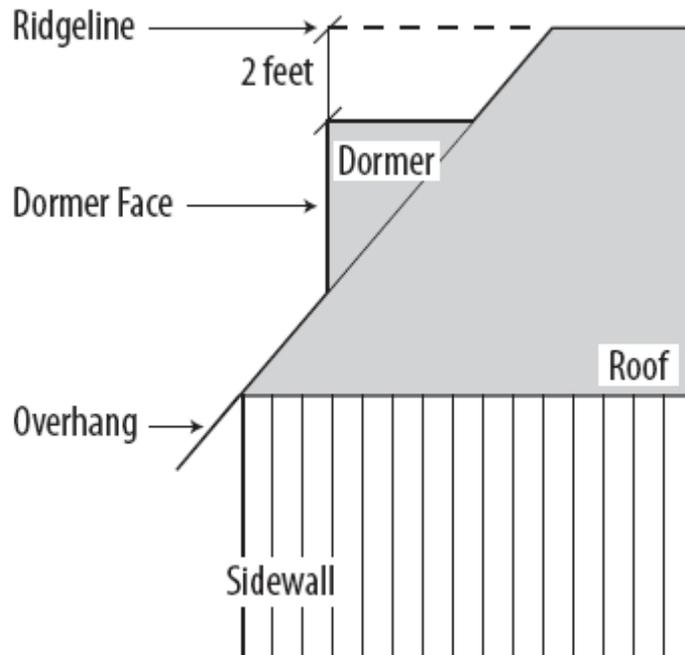
- i. The maximum combined length of all dormers on a side or elevation of a building shall not exceed fifty (50) percent of the total length of the respective side or elevation of the building to which they are associated (see figure 17.33.040-1b (Excessive Dormers)).

**Figure 17.33.040-1b
Excessive Dormers**



- ii. The face of the dormer shall be a minimum of two (2) feet below the ridge line (see figure 17.33.040-2 (Dormer Height and Placement)).

**Figure 17.33.040-2
Dormer Height and Placement**



- B. Lot Size Requirements. New lots created in the R-1B district shall be consistent with the lot size requirements established in section 16.24.050 (Lot Size Requirements).
- C. Maximum Floor Area Ratio. The maximum floor area ratio shall be eighteen (18) percent of the lot size except for those lots smaller than forty three thousand five hundred sixty (43,560) square feet (one acre), which shall be determined by the following equation:

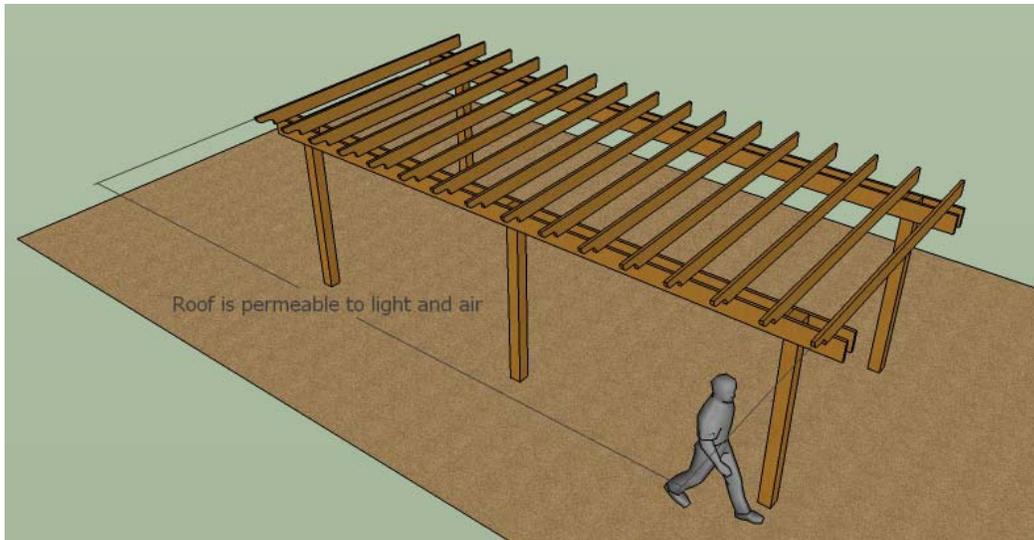
$$\text{Floor area in square feet} = (\text{lot size in square feet} \times 0.165) + 1,500 \text{ square feet.}$$

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

1. Structures, open on all sides, with substantially open roofs (e.g., trellis) (see figure 17.33.040-4 (Substantially Open Roof)), with the following provisions:
2. Roofed areas open on two or more sides not exceeding five (5) percent of the maximum allowed floor area for the lot plus five hundred (500) square feet (e.g., awning, patio cover, covered walk).

- a. No more than one side of the structure shall be attached to the main building and no more than one side of the structure may be enclosed by small structural features (e.g., outdoor kitchens/b-b-qs, fire pits/ fireplaces, cabinets), provided that on the side with the structural feature at least fifty (50) percent of the side is still open (see figure 17.40.040-2 (Attached Trellis Exempt from Floor Area Requirement); or

**Figure 17.33.040-4
Substantially Open Roof**



- b. No more than two sides shall be partially enclosed with small structural features (e.g., outdoor kitchens/b-b-qs, fire pits/ fireplaces, cabinets), provided that at least fifty (50) percent of both sides are still open and the other two sides are completely open.
- D. Front and Rear Yards. Minimum front and rear yard requirements are:
1. Main buildings, interior and corner lots: thirty (30) feet minimum; provided, however, on lots of record prior to adoption of Ordinance No. 277 (October 30, 1967) with a depth less than one hundred sixty (160) feet, the front and rear yards shall each be eighteen (18) percent of the lot depth with a minimum of twenty (20) feet; and
 2. Accessory structures, as provided in chapter 17.40.
- E. Side Yards. Minimum side yard requirements are as shown in Table 17.38.010.
- F. Eaves. Roof eaves may encroach into any yard not to exceed a maximum of four (4) feet on the main building and not to exceed one (1) foot on an accessory building.
- G. Kitchens.

1. There is no limitation on the maximum number of kitchens for the main dwelling.
 2. One kitchen may be within an approved second dwelling unit that is located within the main dwelling building setback lines.
- H. Lighting. Exterior lighting on main dwellings located in side and rear yards and more than ten (10) feet above grade shall be shielded and downlit so as not to create glare or spill onto neighboring property. Shielding material shall be opaque.

(Ord. 497 §§ 8, 9, 1998; Ord. 480 § 1(D), 1994; Ord. 476 § 1(A), (C), 1993; Ord. 456 § 5, 1990; Ord. 443 §§ 1, 2, 1989; Ord. 434 § 11, 1988; Ord. 407 § 2-2(C), 1985)

Provisions of 17.22.040.I and 17.24.040.I moved to 17.46.040

Chapter 17.34 Park and Open Space District (POS) (Previously 17.28)**Sections:**

- 17.34.010 Purpose (Previously 17.28.010)
- 17.34.020 Characteristics of the District (New section)
- 17.34.030 Permitted Uses (Previously 17.34.020 and 17.28.030)
- 17.34.040 Development Standards (Previously 17.28.040)

17.34.010 Purpose (Previously 17.28.010)

The purpose of this chapter is to implement the open space element of the general plan and provisions of the California Government Code related to open space zoning. This district is designed to designate open space for the preservation of natural resources, uses for the managed production of resources, for outdoor recreation, and for public health and safety. Compliance with the California Government Code requirements for an open space zoning code is achieved through use of this district.

The regulations set forth in this chapter shall apply in all park and open space (POS) districts and shall be subject to the provisions of this title. (Ord. 407 § 2-3 (part), 1985)

17.34.020 Characteristics of the District (New section)

The POS district provides for the establishment of parks, recreation, and open space uses. Other recreational and natural preservation uses, such as country clubs, watershed protection lands, and similar uses, may be permitted.

17.34.030 Permitted Uses (Previously 17.34.020 and 17.28.030)

Table 17.34.030-1 (Allowed Uses and Permit Requirements for POS district) identifies the allowed uses in the POS district subject to the development standards of this chapter and all other provisions of this title. Allowed use provisions are symbolized in the table as follows:

P = Land use permitted by right

CUP = Land use permitted with approval of a conditional use permit

**Table 17.34.030-1
Allowed Uses and Permit Requirements for POS District**

Land Use	Zoning District
	POS
Agriculture	P
Ecologic study	P
Public park, recreation, or open space uses	P
Uses of historic and cultural value	P
Watershed land and groundwater recharged land	P
Country clubs	CUP
Home occupation	CUP
Public utilities and facilities uses and structures	CUP
Caretaker housing	CUP

17.34.040 Development Standards (Previously 17.28.040)

Table 17.34.040-1 (Development Standards for POS District) identifies the development standards for the POS district. All building and structures located in the POS district shall be considered as main buildings and not as accessory structures.

**Table 17.34.040-1
Development Standards for POS District**

Development Standard	Zoning District
	POS
Height, maximum	34 ft
Lot coverage, aggregate, maximum	20% gross lot area
Front and rear yard, minimum	60 ft
Side yard, minimum	See chapter 17.38

Chapter 17.36 Public Facilities and Schools District (PFS) (Previously 17.32)**Sections:**

- 17.36.010 Purpose (Previously 17.32.010)
- 17.36.020 Characteristics of the District (New section)
- 17.36.030 Allowed Uses and Permit Requirements (Previously 17.32.020 and 030)
- 17.36.040 Development Standards (Previously 17.32.040)
- 17.36.050 Guidelines for School Master Plans (Previously 17.32.050)

17.36.010 Purpose (Previously 17.32.010)

This chapter establishes the allowed use provisions and development standards for uses located in the public facilities and schools district. It is the intent of this chapter to implement the land use categories outlined in the general plan by providing appropriate locations for public facilities and school uses.

17.36.020 Characteristics of the District (New section)

The public facilities and schools (PFS) district provides for the development of public uses (e.g., town hall, town corporation yard, public utilities, etc.) and schools (both public and private), consistent with the town's general plan. Other appropriate uses may include churches, country clubs, and other assembly and civic uses upon issuance of a conditional use permit. It does not provide for the development of residential uses except for convent housing, teacher housing, student housing, and other residential uses when associated with primary non-residential use of the same property with a conditional use permit.

17.36.030 Allowed Uses and Permit Requirements (Previously 17.32.020 and 17.32.030)

Table 17.36.030-1 (Allowed Uses and Permit Requirements for PFS District) identifies the allowed uses in the PFS district subject to the development standards of this chapter and all other provisions of this title. Allowed use provisions are symbolized in the table as follows:

P = Land use permitted by right

CUP = Land use permitted with approval of a conditional use permit

**Table 17.36.030-1
Allowed Uses and Permit Requirements for PFS District**

Land Use	Zoning District
	PFS
Public library	P
Public school	P
Town corporation yard	P
Town hall and associated community uses	P
Churches and places of worship	CUP
Convents	CUP
Country clubs	CUP
Residential associated with primary non-residential use of property on same site ¹	CUP
Private schools	CUP ^{2, 3}
Public utilities and facilities, uses, and structures	CUP
Transportation terminal facilities	CUP

Notes:

1. Examples include dorms or teacher housing associated with school site, convent when associated with religious institutions, etc.
2. Where a master plan for a private school has been prepared and filed with the town for public record, any application for a conditional use permit shall be compared to the master plan for consistency with that document. All building and/or facility changes, improvements, or new construction shall require a conditional use permit. To that end, all conditional use permit applications shall include the following:
 - a. Maps and diagrams showing the proposal in relation to the master plan layout;
 - b. History of student and faculty growth and projections of future growth, including an analysis of that growth's consistency with the master plan projections;
 - c. A traffic and parking analysis of the proposal and comparison to the master plan projections;
 - d. A circulation plan showing how the traffic and pedestrian circulation will function upon implementation of the proposals; and
 - e. Other information that might be required for specific proposals, such as noise analyses, lighting plans, landscape screening plans, heritage tree locations, and other similar information.
3. In addition to other conditions of approval, the planning commission shall require the following items where relevant:
 - a. Identification of the approved uses and hours of operation, and

- b. Clustering of high intensity or noise intense structures and uses (such as gymnasiums, theaters, athletic facilities) away from neighboring residential uses, where possible.

17.36.040 Development Standards (Previously 17.32.040)

Table 17.36.030 (Development Standards for PFS District) identifies the development standards for the PFS district, except the buildings, structures, or land used for governmental purposes by the United States of America, State of California, or Town of Atherton. All buildings and structures located in the PFS district shall be considered as main buildings and not as accessory structures.

**Table 17.36.030
Development Standards for PFS District**

Development Standard	Zoning District
	PFS
Height, maximum	34 ft
Lot coverage, aggregate, maximum	40% gross lot area
Front yard, minimum	60 ft
Side yard, minimum, adjacent to residential	50 ft when building height ≤22 ft 75 ft when building height >22 ft
Side yard, minimum, all others	See chapter 17.38
Rear yard, minimum, adjacent to residential	60 ft when building height ≤22 ft 75 ft when building height >22 ft
Rear yard, minimum, all others	60 ft

Notes:

1. The setbacks for the PFS district properties in the vicinity of Ashfield Road and Station Way containing the town administration building, town hall, library, and other uses shall be as provided in section 17.33.040 (Development Standards) of the R1-B residential district.

17.36.050 Guidelines for School Master Plans (Previously 17.32.050)

It is the city council's policy to request the preparation of master plans for all private schools located in the PFS district. Where such master plans are prepared, they should be general enough to allow flexibility and adjustment of the facilities' locations but shall have specific projections such as enrollment or floor space proposed. It is further requested that the schools involve interested neighbors, residents, town representatives, and others in the preparation of such master plans. Suggested content of master plans include:

- A. Land uses, their location, and extent;
- B. Circulation patterns;
- C. Locations for parking and parking standards;
- D. Current enrollment projections and maximum enrollment anticipated;
- E. A list of possible facilities to be developed;

- F. A schedule or priority of development;
- G. Identification of historic or other unique facilities, heritage trees, and their disposition;
- H. Identification of uses and their days and hours of operation, including evenings; and
- I. Identification of other institutions or uses at the facility.

Where master plans have been prepared and adopted by schools, it is requested that they be filed with the office of the town planner for public record. The town planner shall report annually to the planning commission at a regular meeting on the status of school master plans, their availability, and contents. Each private school in Atherton shall report to the planning commission meeting to provide input on the status of master plan preparation and implementation. In addition, the annual meeting shall be noticed to all property owners within five hundred (500) feet of the boundaries of the schools. (Ord. 518 § 1, 2000)

Chapter 17.38 Side Yard Requirements (*Previously 17.40*)

Sections:

17.38.010 Minimum Side Yards (*Previously 17.40.010*)

17.38.010 Minimum Side Yards (*Previously 17.40.010*)

Minimum side yards shall be required on each side of a lot as specified in Table 17.38.010-1 (Minimum Side Yard Requirements).

**Table 17.38.010-1
Minimum Side Yard Requirements**

Lot Width		Minimum Side Yard
From	To, But Not Including	
200' or over		50'
197' 0"	200' 0"	49' 6"
194' 0"	197' 0"	49' 0"
191' 6"	194' 0"	48' 6"
189' 0"	191' 6"	48' 0"
186' 6"	189' 0"	47' 6"
184' 0"	186' 6"	47' 0"
181' 6"	184' 0"	46' 6"
179' 0"	181' 6"	46' 0"
176' 6"	179' 0"	45' 6"
174' 0"	176' 6"	45' 0"
171' 6"	174' 0"	44' 6"
169' 0"	171' 6"	44' 0"
166' 6"	169' 0"	43' 6"
164' 0"	166' 6"	43' 0"
161' 6"	164' 0"	42' 6"
159' 0"	161' 6"	42' 0"
156' 6"	159' 0"	41' 6"
154' 0"	156' 6"	41' 0"
151' 6"	154' 0"	40' 6"
149' 0"	151' 6"	40' 0"
146' 6"	149' 0"	39' 6"
144' 0"	146' 6"	39' 0"
141' 6"	144' 0"	38' 6"
139' 0"	141' 6"	38' 0"
136' 6"	139' 0"	37' 6"
134' 0"	136' 6"	37' 0"
131' 6"	134' 0"	36' 6"
129' 0"	131' 6"	36' 0"
126' 6"	129' 0"	35' 6"
124' 0"	126' 6"	35' 0"
121' 6"	124' 0"	34' 6"
119' 0"	121' 6"	34' 0"

Lot Width		Minimum Side Yard
From	To, But Not Including	
116' 6"	119' 0"	33' 6"
114' 0"	116' 6"	33' 0"
111' 6"	114' 0"	32' 6"
109' 0"	111' 6"	32' 0"
106' 6"	109' 0"	31' 6"
104' 0"	106' 6"	31' 0"
101' 6"	104' 0"	30' 6"
99' 6"	101' 6"	30' 0"
96' 6"	99' 6"	29' 0"
94' 0"	96' 6"	28' 0"
91' 6"	94' 0"	27' 0"
89' 0"	91' 6"	26' 0"
86' 6"	89' 0"	25' 0"
84' 0"	86' 6"	24' 0"
81' 6"	84' 0"	23' 0"
79' 0"	81' 6"	22' 0"
76' 6"	79' 0"	21' 0"
74' 0"	76' 6"	20' 0"
71' 6"	74' 0"	19' 0"
69' 0"	71' 6"	18' 0"
66' 6"	69' 0"	17' 0"
64' 0"	66' 6"	16' 0"
61' 6"	64' 0"	15' 0"
59' 0"	61' 6"	14' 0"
56' 6"	59' 0"	13' 0"
54' 0"	56' 6"	12' 0"
51' 6"	54' 0"	11' 0"
20' or under	51' 6"	10' 0"

Title 17 - Zoning

Article III General Regulations

Chapter 17.40	Accessory Buildings and Structures (<i>Previously 17.36</i>)
Chapter 17.42	Building Height and Measurement (<i>New chapter</i>)
Chapter 17.44	Basements (<i>Previously 17.36</i>)
Chapter 17.46	Fences and Walls (<i>Previously 17.36</i>)
Chapter 17.48	Home Occupations (<i>Previously 17.48</i>)
Chapter 17.50	Landscape Screening (<i>Previously 17.50</i>)
Chapter 17.52	Second Dwelling Units (<i>Previously 17.36</i>)
Chapter 17.54	Yard Measurement and Projections (<i>New chapter</i>)
Chapter 17.56	Special Events (<i>Previously 17.38</i>)

Revisions:

The following revisions have been made to article III of title 17:

Date of Adoption	Ordinance Number	Subject	Section	Page Number

Chapter 17.40 Accessory Buildings and Structures (*Previously 17.36*)**Sections:**

- 17.40.010 Purpose (*New section*)
- 17.40.020 Definitions (*Previously 17.080.20, 042, 050, and 272*)
- 17.40.030 Permit Requirements and Exceptions (*Previously 17.36.025, 040 through 140, and 165*)
- 17.40.040 General Development Standards (*Previously 17.36.025, 040 through 140, and 165*)
- 17.40.050 Development Standards for Specific Types of Accessory Structure (*Previously 17.36.025, 040 through 140, and 165*)

17.40.010 Purpose (*New section*)

The purpose of this chapter is to permit the construction or exterior alterations of accessory buildings and structures subject to regulations necessary to prevent unreasonable interference with views, light, and air, an unreasonable invasion of privacy, or adverse impacts upon the aesthetic character of neighboring residential structures. This chapter establishes a set of criteria, objectives, and procedures to be followed with respect to the review of any proposed accessory structure, or addition or alteration thereto, and to assure that the new development occurs in a manner that is consistent with the objectives of this chapter.

17.40.020 Definitions (*Previously 17.08.020, 042, 050, and 272*)

Terms that are relevant to this chapter are defined in chapter 17.60 (Definitions).

17.40.030 Permit Requirements and Exceptions (*Previously 17.36.025, 040 through 140, and 165*)

Unless otherwise provided below, all accessory buildings and structures shall require zoning clearance at the time of building permit review or prior to development/installation to ensure compliance with the applicable regulations of this chapter.

- A. Special Structure Permit Required. The following specific structures shall require the issuance of a special structure permit from the designated approval authority (planning commission as described in Table 17.06.070-1) prior to development/installation:
 - 1. Athletic courts that are located outside the required setback area (see section 17.40.050.A).
 - 2. All inflatable covers (see section 17.40.050.G).
 - 3. Roof-mounted antenna taller than the height limit of the structure to which it is attached. The antenna must be capable of being retracted to a height less than that allowed for the type of building on which it is mounted when it is not in use.
 - 4. Satellite dishes larger than one (1) meter in any dimension, either ground- or building-mounted. Note, the designated approval authority (planning commission as described in Table 17.06.070-1) shall not have the

- discretion to deny such permit, but shall review each application for conformity to the requirements of this chapter.
5. Arbors and trellises larger than specified in section 17.40.050.B (Development Standards for Specific Types of Accessory Structures).
 6. A pool or spa, exclusive of equipment, when located outside of the area generally allowed, described in section 17.40.040 (General Development Standards) and figure 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures for Interior Lots). See also section 17.40.050.E.
- B. Exempt Accessory Buildings and Structures. No zoning clearance or a special structure permit is required for the following buildings and structures.
1. Accessory buildings with a floor area that is less than one hundred twenty (120) square feet in size with no portion of the structure more than eight (8) feet in height with the following conditions.
 - a. Structures shall not be located in a required front yard except as otherwise provided.
 - b. In order to maintain necessary fire breaks, accessory buildings shall be set back a minimum of ten (10) feet from side and rear property lines with a minimum eight (8) foot separation from the main building.
 2. Bridges and walkways over private ponds, creeks, and other features, when located on private property.
 3. Mailboxes, flagpoles, outside lighting on poles not over three (3) feet tall, and benches to be used for seating. (*Previously 17.08.320.B*)
 4. Driveways, walkways, patios, and other flat wood, concrete, or asphalt work or other similar materials not over six (6) inches above grade. (*Previously 17.08.320.C*)
 5. A well, located less than six (6) inches above grade, exclusive of tanks, controls, separator discharge plumbing, or other equipment located outside of the well casing, may be constructed in required side or front yards. In no event shall a well be closer than ten (10) feet to any property line. (*Previously 17.08.320.D*)
 6. Seat walls not over twenty-four (24) inches in height.
 7. Antenna maintained by the town in connection with public safety activities.
 8. Satellite dishes measuring not more than one (1) meter in any dimension when attached to a building or placed on the ground and located within the buildable area for a main building or accessory building or structure.

9. Arbors and trellises, consistent with the standards of section 17.40.050.B.
10. Driveways that also function as basketball courts.
11. Bird baths or pedestals with a shallow basin filled with water for birds to bathe in and drink from.
12. Air conditioners and emergency generators located within the buildable area of the lot and enclosed or otherwise screened to mitigate noise and comply with the town noise ordinance. The location of the equipment shall not impact existing trees. Equipment may be located next to existing buildings consistent with building code requirements. May be located underground when the size is limited to the minimum area needed for the equipment and access and working space, but may not exceed six (6) inches above grade.
13. Fountains and art work not over six (6) feet in height.
14. Solar facilities are exempt from the minimum ten (10) foot side yard setback requirement unless the building official has determined that the placement therein will have a specific, adverse impact upon the public health or safety, as defined in State law.

17.40.040 General Development Standards (Previously 17.36.025, 040 through 140, and 165)

The following development standards/provisions apply to all accessory buildings and structures.

- A. Location and Required Setbacks. Accessory buildings and structures may be located within required yard areas in compliance with the development standards in Table 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures). Figure 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures) illustrates where accessory buildings and structures are generally allowed.

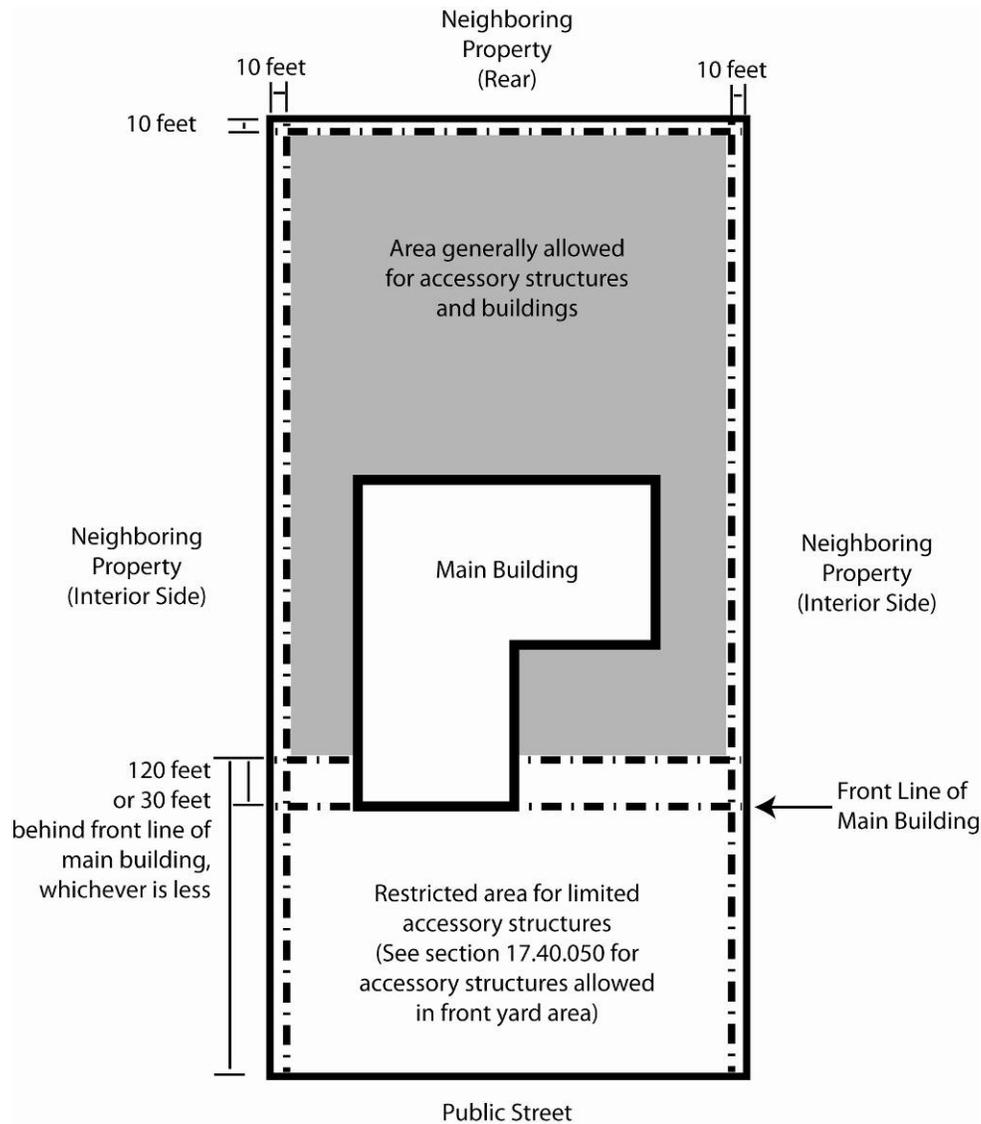
**Table 17.40-040-1
General Minimum Setback Standards for Accessory Buildings and Structures**

Location	Setback
Front	120 ft, or 30 ft behind front line of main structure, whichever is less ^{1, 2}
Side, interior	10 ft
Side, street side	See Table 17.38.010
Rear	10 ft
Rear, abutting street	30 ft ^{3, 4}
Between structures and buildings	8 ft ⁵

Notes:

1. See special front yard location and setback standards for athletic courts (section 17.40.050.A), arbors and trellises (section 17.40.050.B), and artwork and fountains (section 17.40.050.G)
2. On flag lots, the front setback for accessory buildings and structures shall be consistent with the front yard setback of the main residence upon issuance of a special structure permit.
3. For structures that are less than three (3) feet in height, the minimum setback shall be ten (10) feet.
4. When the rear property line abuts the town boundary, the minimum setback shall be ten (10) feet.
5. Stables shall not be located within forty (40) feet of any building intended or used for human habitation on the same lot, shall not be located within forty (40) feet of any property line, and shall not be located within eighty (80) feet of any building intended or used for human habitation on an adjoining lot.

Figure 17.40-040-1
General Setback Standards for Accessory Buildings and Structures for Interior Lots

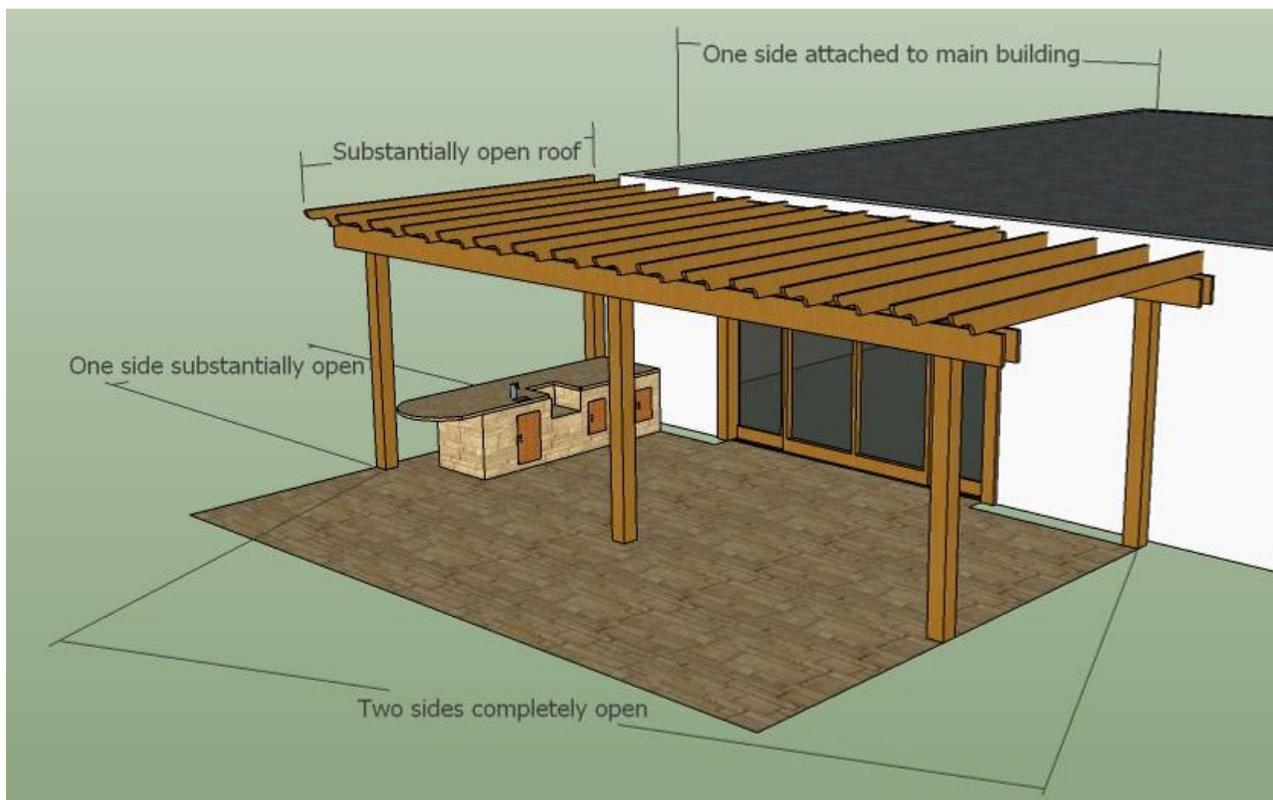


- B. Height. Unless otherwise specified, the maximum height for all accessory buildings and structures is fifteen (15) feet or one story. Vertical sidewalls or columns shall not exceed eleven (11) feet. No other use of structure shall be located above the first story (i.e., no roof decks, spas, etc.). See chapter 17.42 Building Height and Measurement.
1. Exception for vertical projections. Vertical architectural projections on accessory buildings and structures (e.g., cupolas, spires, towers) may exceed the maximum height by up to two (2) feet, up to a maximum of seventeen (17) feet, provided that the footprint of the projection is not more than ten (10) percent of the total footprint of the building. Such projections shall be a minimum of twenty (20) feet from rear and side property lines.

- C. Lot Requirements. Unless otherwise identified for specific types of structures or buildings, all accessory buildings and structures shall be constructed only in conjunction with or subsequent to the construction of a main building. An accessory structure or building may be located on a lot without a main building only if all of the following conditions exist:
1. The lot containing the accessory buildings or structure is located adjacent to a lot containing a main building;
 2. Both such lots are owned by the same property owner; and
 3. An agreement between the town and the property owner has been executed and recorded that provides that in the event common ownership of the two lots ceases then the accessory building or structure will be removed or made to conform to all other provisions of this title.
- D. Kitchens. One kitchen may be within an approved accessory building or structure.
- E. Bathrooms. There shall be no limitation on the number of bathrooms allowed in an accessory building.
- F. Connecting Accessory Buildings and Structures. Accessory buildings and structures shall be detached from the main building and other accessory buildings and structures, except that:
1. An accessory building or structure may be connected to another accessory structure/building or a main building by way of a breezeway or covered walkway when the walkway is open on all sides except where connected to the structures. Examples include, but are not limited to, covered walkways connecting the primary dwelling to a detached garage or secondary dwelling. Structures must be located a minimum of eight (8) feet from the main building. The covered walkway may have a maximum width of eight (8) feet and the length of the walk must be a minimum of two (2) feet longer than the width.
 2. A garage shall be considered a part of the main building when it is attached and made an integral part of the dwelling and has at least one common wall of least seven (7) feet in length.
- G. Floor Area Ratio Calculation. Accessory buildings and structures shall count towards the allowed floor area ratio of the underlying zoning district as identified in section 17.32.040 (Development Standards for Residential District R-1A) and section 17.33.040 (Development Standards for Residential District R-1B), except that floor area ratio shall exclude the following:
1. Roofed areas open on two or more sides not exceeding five (5) percent of the maximum allowed floor area for the lot plus five hundred (500) square feet (e.g., awning, patio cover, covered walk); and
 2. Structures, open on all sides, with substantially open roofs (e.g., trellis), that meet the following criteria:

- a. No more than one side of the structure is attached to the main building and no more than one side of the structure is enclosed by small structural features (e.g., outdoor kitchens/b-b-qs, fire pits/ fireplaces, cabinets), provided that on the side with the structural feature at least fifty (50) percent of the side is still open (see figure 17.40.040-2 (Attached Trellis Exempt from Floor Area Requirement)); or
- b. No more than two sides shall be partially enclosed with small structural features (e.g., outdoor kitchens/barbeques, fire pits/ fireplaces, cabinets), provided that at least fifty (50) percent of both sides are still open and the other two sides are completely open.

Figure 17.40-040-2
Attached Trellis Exempt from Floor Area Requirement



- H. Windows. Accessory buildings and structures may include windows and/or skylights, except that no window openings that face the side or rear property line shall be located over nine (9) feet above the ground level.
- I. Lighting. All lighting on accessory buildings and structures that are located outside of the main building area shall be shielded or downlit and shall not shine onto adjoining properties.

- J. Temporary Habitation. Temporary habitation of an accessory building or structure is permitted for a period of no more than thirty (30) days in any calendar year (consecutive or intermittent). Temporary habitation of an accessory building for more than thirty (30) days may be permitted upon issuance of a Conditional Use Permit when the main building is vacant for remodeling or other similar purposes.

17.40.050 Development Standards for Specific Types of Accessory Buildings and Structures (Previously 17.36.070 through 140, and 165)

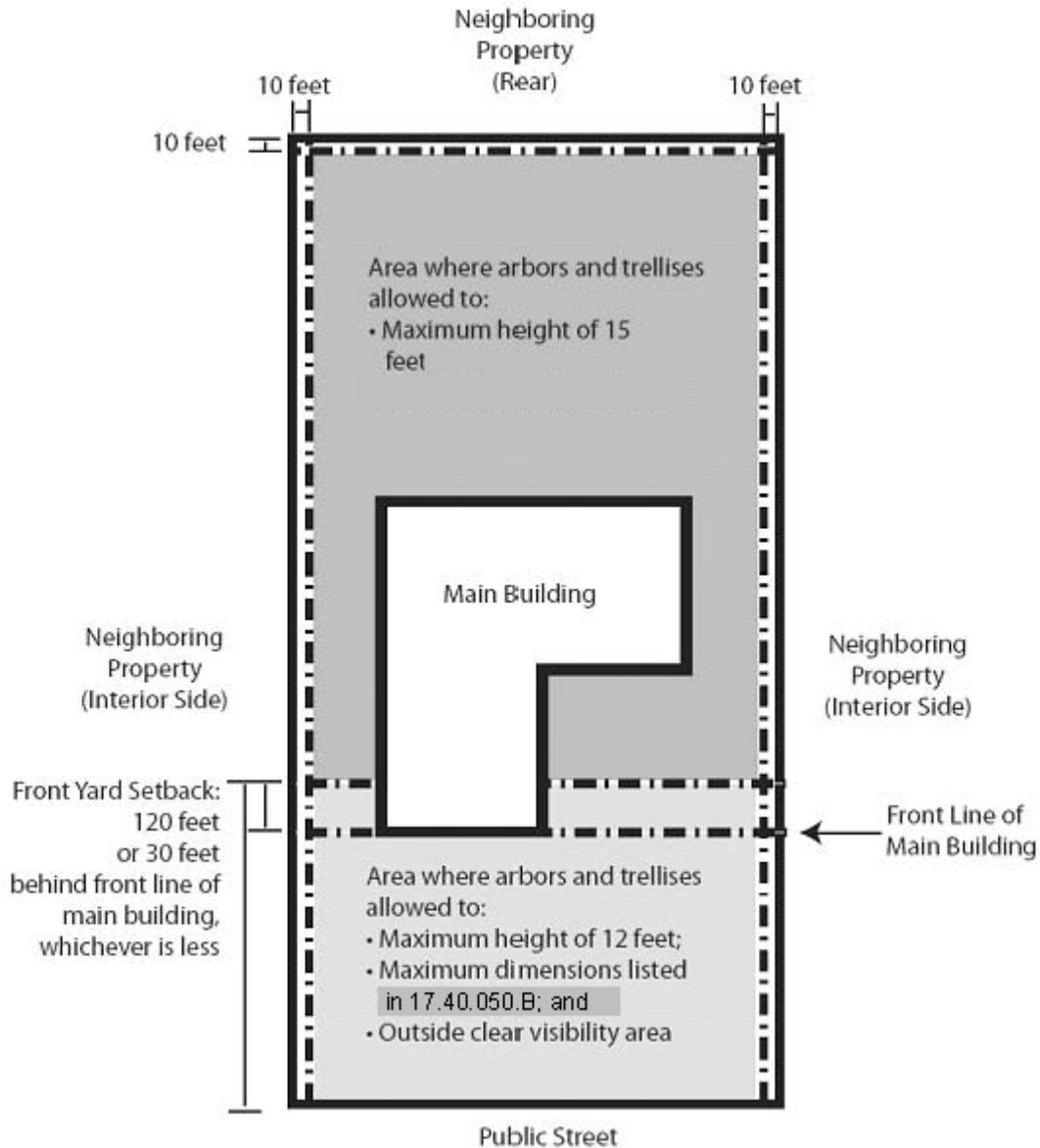
In addition to the development standards of section 17.40.040 (General Development Standards), the following accessory buildings and structures have special standards and regulations:

- A. Athletic Courts. Any athletic court shall be considered an accessory structure and may be located in areas permissible for accessory buildings and structures. Athletic courts may also be located on other portions of the lot, where accessory buildings and structures are normally prohibited, only upon issuance of a special structure permit; however, in no event shall an athletic court be closer to any side or rear property line than specified in Table 17.40.040-1 or closer to the front property line than the minimum front yard setback line of the main dwelling. Any athletic court shall be constructed or erected in accordance with the following standards:
1. No enclosure or partial enclosure for an athletic court shall be permitted within ten (10) feet of any side or rear property line or closer to the front property line than the front setback line.
 2. No enclosure or partial enclosure of an athletic court shall be permitted to exceed nine (9) feet in height from finished grade with the exception of a basketball backboard which is a part of the enclosure.
 3. Nets (with the exception of basketball goal nets) which exceed nine (9) feet in height from finished grade shall be removed or lowered to less than nine (9) feet in height when not in use.
 4. A structure which is used as a practice board or court wall shall be constructed of a minimum six-inch-thick masonry material unless located a minimum sixty (60) feet from any property line.
 5. No artificial lighting shall be constructed to illuminate an athletic court.
 6. No lighting system or light elsewhere on the property (e.g., landscape lighting, porch lighting) shall be used to illuminate an athletic court. (Ord. 442 § 9, 1989; Ord. 434 § 16, 1988; Ord. 407 § 10-1, 1985)
- B. Arbors and Trellises. Arbors, trellises, and pergolas are subject to the same development standards as other accessory structures listed in section 17.40.040 (General Development Standards). This includes adhering to the minimum setback standards and the maximum structure height of fifteen (15) feet and maximum sidewall height of eleven (11) feet (e.g., columns and posts are allowed to a maximum of eleven (11) feet and pitched roofs are allowed to a maximum of fifteen (15) feet). However, arbors, trellises, pergolas, and other such structures may be

constructed without regard to the setback requirements if conforming to all of the following:

1. One or more such structures may be built in front of the required accessory structure front setback, provided that such structures shall not exceed twelve (12) feet in height, eight (8) feet in width, nor a total for all such structures of eight (8) feet in length (see figure 17.40.050-1 - Setback Standards for Arbors and Trellises);
2. Is not located closer than ten (10) feet to any property line other than a public right-of-way (see figure 17.40.050-1 - Setback Standards for Arbors and Trellises);
3. Is substantially open to the passage of light and air in all aspects;
4. Is located outside of the clear visibility area; and
5. Is expressly for the purpose of and used for supporting vines, roses, or other vegetation (except trees and/or tree limbs).
6. Lighting shall be shielded or downlit so the source of the light is not visible from other properties.

**Figure 17.40.050-1
Setback Standards for Arbors and Trellises for Interior Lots**



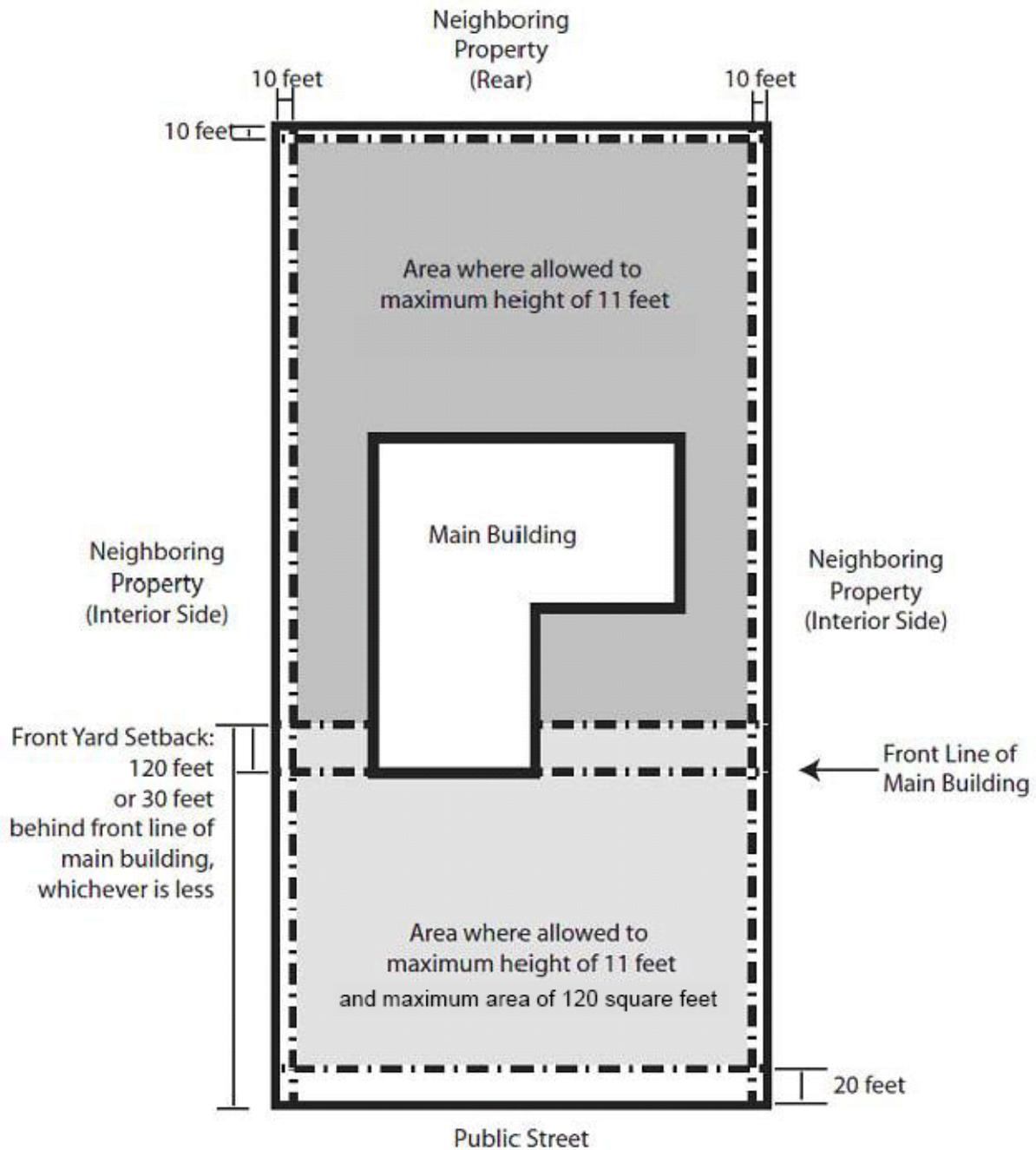
- C. **Roof-mounted Antennas.** Roof-mounted antennas are only permitted when the boom and any active elements of the antenna array are not more than fifteen (15) feet in length and meet the following conditions:
1. That the antenna be attached to a structure that conforms to this zoning code or to a conforming portion of a nonconforming structure;
 2. That it be located so it is shielded in so far as practicable by the structure or landscaping from the view of adjacent property and any public street, park, facility, or right-of-way;

3. That it not exceed the height limit applicable to the structure to which it is attached, with the exception that if a special structures permit is granted so providing, an antenna with the capability of being retracted to a height less than that allowed for the type of building on which it is mounted may exceed the height limit during the actual use for transmitting and receiving.
 4. Each antenna shall be constructed of low-visibility materials and shall be finished with a low-visibility, nonglare paint or other finish, consistent with its location and surroundings.
 5. Roof-mounted amateur radio antennas provide an essential telecommunication service during periods of disaster and other emergency conditions and are therefore exempt from the provisions of this chapter when in compliance with the following standards:
 - a. The antenna is forty-five (45) feet or less in height as measured from the ground to the height point of the antenna, unless the tower is equipped with a lowering device (motorized or mechanical) capable of lowering the antenna to the maximum permitted height when not in operation, in which case the antenna must be not more than seventy-five (75) feet in height.
 - b. The operator registers their amateur radio antenna, including type of antenna (e.g., fixed or retractable) and height, with the town.
 - c. Consistent with federal law, additional height may be permitted through issuance of a special structures permit, provided the approval authority makes a specific finding that the requested height for the amateur radio antenna is needed to enable communication between antennas.
- D. Ground-mounted Antennas. A ground-mounted antenna is only permitted when the following conditions are met:
1. That the antenna be located in the rear yard.
 2. That it meets all requirements of this chapter for accessory buildings and structures.
 3. That it be screened by fences, buildings, or landscaping from the view of adjacent property and any public street, park, facility, or right-of-way.
 4. That it have an antenna height of not more than fifteen (15) feet.
 5. Each antenna shall be constructed of low-visibility materials and shall be finished with a low-visibility, nonglare paint or other finish, consistent with its location and surroundings.

6. Ground-mounted amateur radio antennas provide an essential telecommunication service during periods of disaster and other emergency conditions and are therefore exempt from the provisions of this chapter when in compliance with the following standards:
 - a. The antenna is not more than forty-five (45) feet in height as measured from the ground to the top of the antenna, unless the tower is equipped with a lowering device (motorized or mechanical) capable of lowering the antenna to the maximum permitted height when not in operation, in which case the antenna must be not more than seventy-five (75) feet in height.
 - b. All antenna structures are setback a minimum distance of ten (10) feet from interior property lines.
 - c. All antennas are located within an enclosed fenced area or have a minimum five (5) foot tower shield at the tower base to prevent climbing. All active elements of antennas shall have a minimum vertical clearance of eight (8) feet.
 - d. The operator registers their amateur radio antenna, including type of antenna (e.g., fixed or retractable) and height, with the town.
 - e. Consistent with federal law, additional height may be permitted through issuance of a special structures permit, provided the approval authority makes a specific finding that the requested height for the amateur radio antenna is needed to enable communication between antennas.
- E. Pools and Spas. A pool or spa shall be located within the area generally allowed, identified in Table 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures) and figure 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures for Interior Lots). However, upon issuance of a special structure permit, a pool or spa may be located up to ten (10) feet from side and rear property lines and between the front yard setback line and the front line of the main structure.
- F. Pool Equipment Operation. No pumping, filter, or similar equipment shall be operated between the hours of eight (8) p.m. and eight (8) a.m., and all permits for the erection of pumping, filter, or other similar equipment shall include the installation of an automatic timing device adjusted to ensure such hours of operation. (Ord. 407 § 7-3, 1985)
- G. Inflatable Covers.
 1. Screening. Inflatable covers shall be screened from public view or view from other properties.
 2. Height. No inflatable cover shall exceed nine (9) feet in height as measured from the ground.

3. The designated approval authority (the planning commission as described in Table 17.06.070-1), in approving the special structures permit, may establish time limits on the permit and other conditions as deemed appropriate by the approval authority.
 4. Existing inflatable covers in use at the time of adoption of this title shall be existing nonconforming structures and may continue to be used, provided that they are maintained in the same location and under the same ownership. (date to be inserted)
- H. Artwork and Fountains. Consistent with the setback requirements of Table 17.40.040-1 (General Minimum Setback Standards for Accessory Buildings and Structures), artwork and fountains are permitted in the following lot areas, consistent with specified development standards:
1. Front Yards. Artwork and fountains may be located in required front yard areas provided they are set back twenty (20) feet from the front property line, are no taller than eleven (11) feet in height, and are not more than one hundred twenty (120) square feet in total area (see figure 17.40.050-2 (Setbacks for Artwork and Fountains)).
 2. All other areas. Artwork may be located in side and rear yard areas provided they are set back from property lines consistent with Table 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures) and are no taller than eleven (11) feet in height (see figure 17.40.050-2 (Setbacks for Artwork and Fountains)).

**Figure 17.40.050-2
Setbacks for Artwork and Fountains**



- I. Solar facilities other than pumps for water heaters not exceeding six (6) feet in height are exempt from the minimum ten (10) foot side yard requirement.

Chapter 17.42 Building Height and Measurement (*New chapter*)**Sections:**

- 17.42.010 Purpose (*New section*)
- 17.42.020 Building Height (*New section*)
- 17.42.030 Height Measurement (*Previously 17.08.070*)
- 17.42.040 Exceptions to Height Limit (*New section*)

17.42.010 Purpose (*New section*)

This chapter describes the required methods for measuring the height of structures in compliance with the height limits and exceptions as established by this zoning code.

17.42.020 Building Height (*New section*)

- A. Except as otherwise provided in section 17.42.040 (Exceptions to Height Limit for Main Structures), the height of structures shall not exceed the height limit for the applicable zoning district established by article II.
- B. Additional height provisions for fences and walls are listed in chapter 17.46 (Fences and Walls).
- C. Additional height provisions for accessory buildings and structures are listed in chapter 17.40 (Accessory Buildings and Structures).

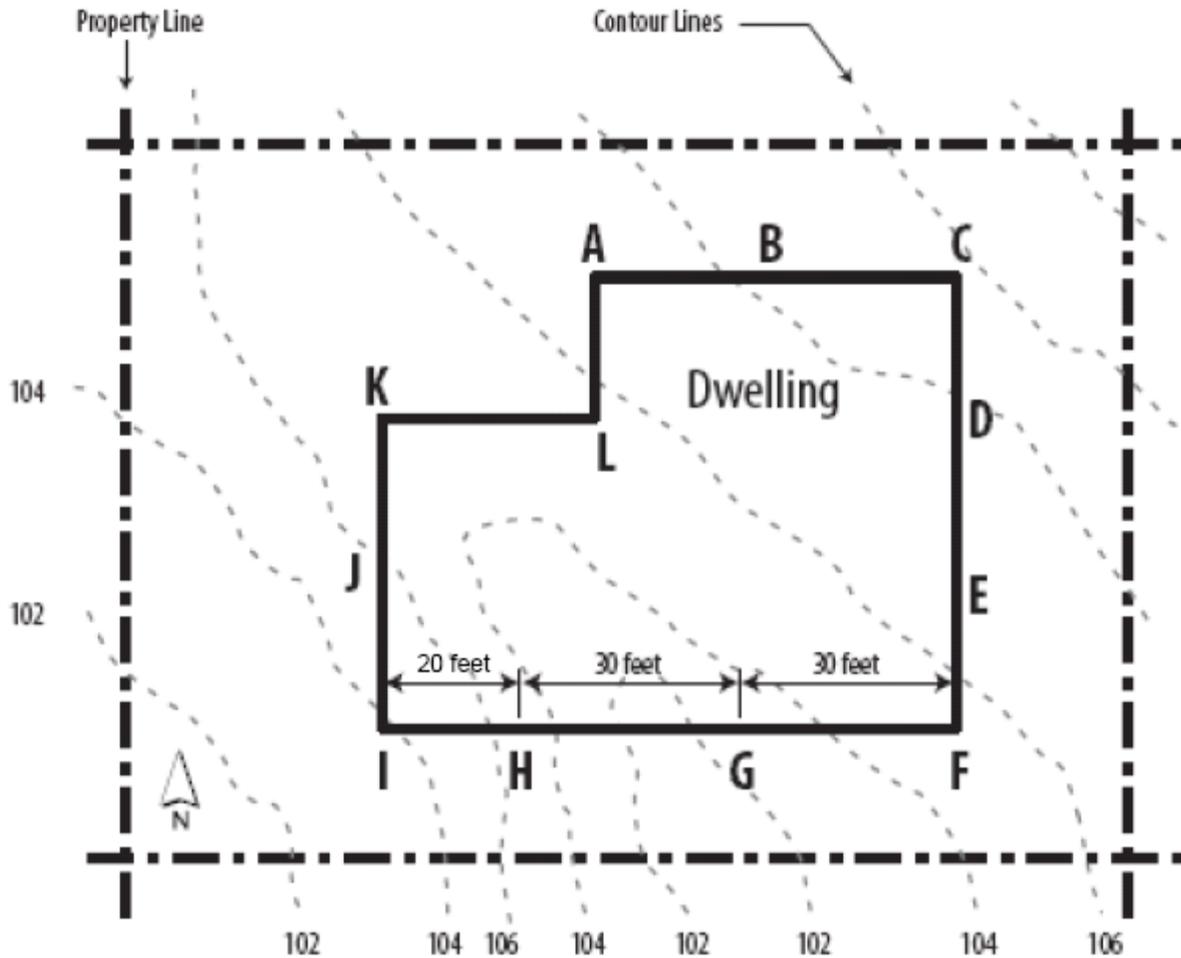
17.42.030 Height Measurement (*Previously 17.08.070*)

- A. Height Measurement Generally. The allowable height shall be measured as the vertical distance at any point from the average natural grade within the building pad area to the topmost portion of the building or structure including structural framing and roof covering material. Continuous decorative roof elements, including but not limited to widow walks and railings, shall be included in the maximum building height. Height measurement shall not prohibit any portion of the building measuring fifteen (15) feet or less in height as measured from the finished ground surface adjoining the wall (referred to as the height differential). Natural grade shall mean the original condition of the ground surface as it existed prior to mechanical grading or disturbance. Where the original condition of the ground surface cannot be determined, the town planner may approve a topographic survey of the property prepared by a registered civil engineer or licensed land surveyor indicating the approximate original condition of the ground surface of the site as can best be determined from record and survey data. Average natural grade shall mean the average elevation of the natural grade based upon twelve (12) points of measure along the perimeter of the building prior to any cut and fill. Each point of measure shall be located (first) at every corner of the building and (second) every thirty (30) feet along continuous walls with lengths over fifty (50) feet. A corner shall mean a change in the wall plane of thirty (30) degrees or more. However, if a building has more than twelve (12) corners, then each corner shall be a point of measure regardless of the twelve (12) point requirement. The points shall be determined by starting at the most northerly corner of the building or structure as determined by magnetic north then moving clockwise around the building or structure. The calculation of the average shall be based on the following formula:

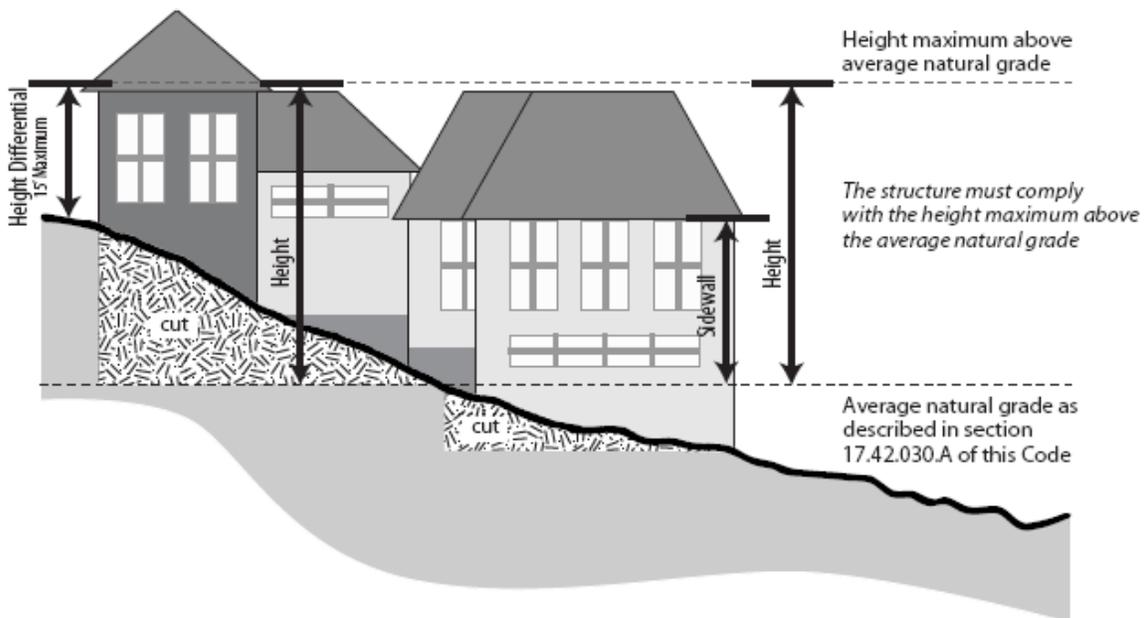
Elevation of point A + Elevation of point B... ÷ the number of points = Average Natural Grade

See figure 17.42.030-1 (Elevation Points on a Parcel) for a representation of the elevation points located on a parcel and figure 17.42.030-2 (Height Measurements for Primary Structures).

**Figure 17.42.030-1
Elevation Points on a Parcel**



**Figure 17.42.030-2
Height Measurements for Primary Structures**



1. The building permit set of plans shall include the calculations determining the average natural grade for the property, including the locations and elevations of the natural grade elevation points around the perimeter of the building footprint.
 2. Certification by the applicant's civil engineer (or licensed land surveyor) that the existing conditions topographic map accompanying the building permit set of plans shows natural grade as defined in the ordinance.
 3. A certification by the applicant's civil engineer (or licensed land surveyor) that, at the time of the roof framing inspection, the height of the building does not exceed the allowable height as specified in the ordinance. That certification shall be accompanied by survey notes or other similar data to permit verification of the calculations by a third party. Additionally, a "non-removable benchmark elevation marker" shall be placed on the site and noted on all plans submitted.
 4. Upon submission of a civil engineer's report that finds a substantial portion of the buildable area of a lot is subject to inundation, the building pad can be raised up to one (1) foot above the engineered flood level. The height of any building or structure placed on this raised pad shall be calculated from the new pad grade, rather than the previous existing grade. The addition of fill to the site shall not negatively impact the potential allowed height of any building or structure.
- B. Height Measurements for Basements. When a building includes a basement, as defined in this title, the height of the building shall be measured as described in 17.42.030.A. Where a home with a basement includes a lightwell, stairwell, driveway

access, or other excavated feature, the height shall be measured from that point on the building where the natural grade would be if the lightwell or other excavated feature were not developed. See figure 17.42.030-3 (Height Measurement for Basements).

**Figure 17.42.030-3
Height Measurement for Basements**



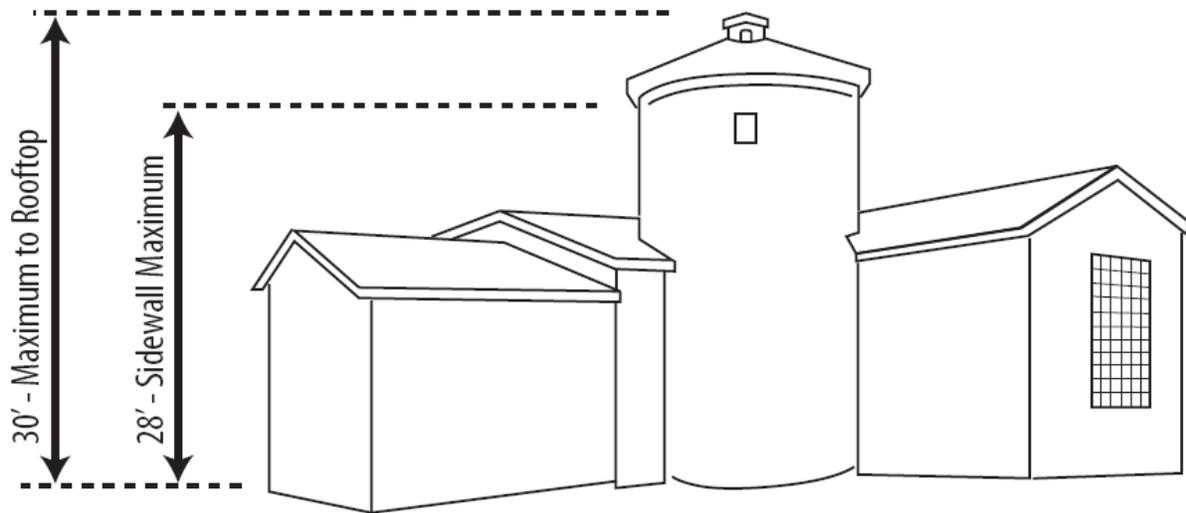
- C. Height Measurement for Sidewalls. The height of sidewalls shall be measured from the average natural grade to the base of the roof plate directly above.

17.42.040 Exceptions to Height Limit for Main Structures (*New section*)

Exceptions to height limits on main structures include:

- A. Chimneys located on the main residential structure, provided they do not exceed six (6) feet in height above the roofline of the structure
- B. Solar panels may extend above the height limit for the zoning district subject to standards and regulations that ensure that the panels will not have a specific, adverse impact upon the public health or safety, as defined by State law.
- C. On main buildings, architectural projections (e.g. towers, cupolas) individually totaling no more than four hundred (400) square feet in footprint area are allowed to extend from the main building to a maximum of twenty-eight (28) feet to the sidewall and thirty (30) feet to the roof top. See figure 14.42.040-1 (Allowed Tower/Stairwell Height).

Figure 17.42.040-1
Allowed Tower/Stairwell Height



- D. Exception for vertical projections. Vertical architectural projections on accessory buildings and structures (e.g., cupolas, spires, towers) may exceed the maximum height by two (2) feet, up to a maximum of seventeen (17) feet, provided that the footprint of the projection is not more than five (5) percent of the total footprint of the building.

Chapter 17.44 Basements (Previously 17.36)**Sections:**

- 17.44.010 Purpose (*New section*)
- 17.44.020 Definitions (*Previously 17.08.054 and 290*)
- 17.44.030 Locations for Basements (*Previously 17.36.190.A*)
- 17.44.040 Floor Area Calculations (*Previously 17.36.190.B*)
- 17.44.050 Lightwells, Stairwells, and Other Excavated Features (*New section*)
- 17.44.060 Design Requirements (*Previously 17.36.190.C*)

17.44.010 Purpose (*New section*)

The purpose of this chapter is to provide for the regulation of basements on residential property. The intent is to regulate the location and size of basements and the orientation and screening of driveway approaches leading to basement garages.

17.44.020 Definitions (*Previously 17.08.054 and 290*)

Terms that are relevant to this chapter are defined in chapter 17.60 (Definitions).

17.44.030 Locations for Basements (*Previously 17.36.190.A*)

- A. **Basements Under Main Buildings.** Basements are permitted under a main building. The total allowed floor area for all basements under a main building shall be the same as the total floor area of the first floor of the building (e.g., maximum floor area for basements under a main building is one hundred (100) percent of the floor area of the first floor of the main building). Additionally, the location of all basements as part of a main building shall be limited to the boundaries of the footprint of the first floor of the main building. However, because not all main buildings are exact rectangles, the approval authority (the planning commission as described in Table 17.06.070-1) may allow, through issuance of a special structures permit, exceptions to this rule when within the following parameters:
 - 1. The total floor area of basements shall not exceed one hundred thirty (130) percent of the total floor area of the first floor of the main building; and
 - 2. A minimum of seventy five (75) percent of the total area of the basements shall be located directly under the footprint of the first floor of the main building; and
 - 3. Portions of basements that are not located directly under the footprint of the first floor of the main building shall only be allowed in such locations when they are still within the extents of the main building (e.g., "squaring off" the basement).
- B. **Basement under Accessory Buildings.** Basements may be located under the footprint of accessory buildings outside of the main building area with a special structures permit from the approval authority with the finding that the basement will not impact heritage trees and the condition that lightwells be located on the interior side of the yard. The approval authority may impose reasonable conditions

including, but not limited to, increased setbacks and limitation on the size of lightwells.

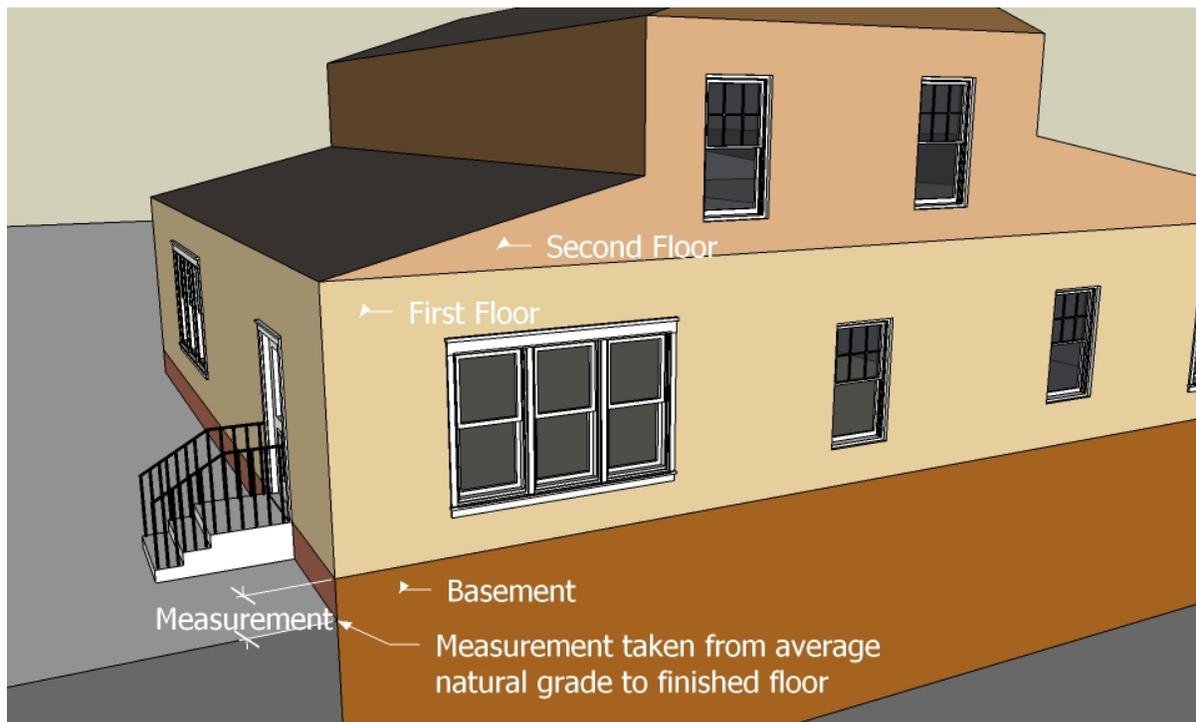
- C. **Garages in Basements.** Garages may be located in basements under buildings located within the main building area.

17.44.040 Floor Area Calculations (*Previously 17.36.190.B*)

The following rules shall apply to the calculation of floor area ratio relative to basements:

- A. In instances where a building has a basement and the measurement of the vertical distance between the average natural grade of the site to the finished floor of the first story measures less than two (2) feet, the basement area shall not be included in the calculation of floor area (see figure 17.44.040-1 (Basements and Floor Area)).
- B. In instances where a building has a basement and the measurement of the vertical distance between the average natural grade of the site to the finished floor of the first story measures more than two (2) feet, the basement area shall be included in the calculation of floor area (see figure 17.44.040-1 (Basements and Floor Area)).
- C. Exceptions to the requirement of this section for hillside properties (where the average cross-slope is greater than twenty (20) percent as determined under section 16.24.050 (Lot Size Requirements) of the town municipal code) may be permitted upon issuance of a special structure permit, provided landscape screening is maintained.

**Figure 17.44.040-1
Basements and Floor Area**

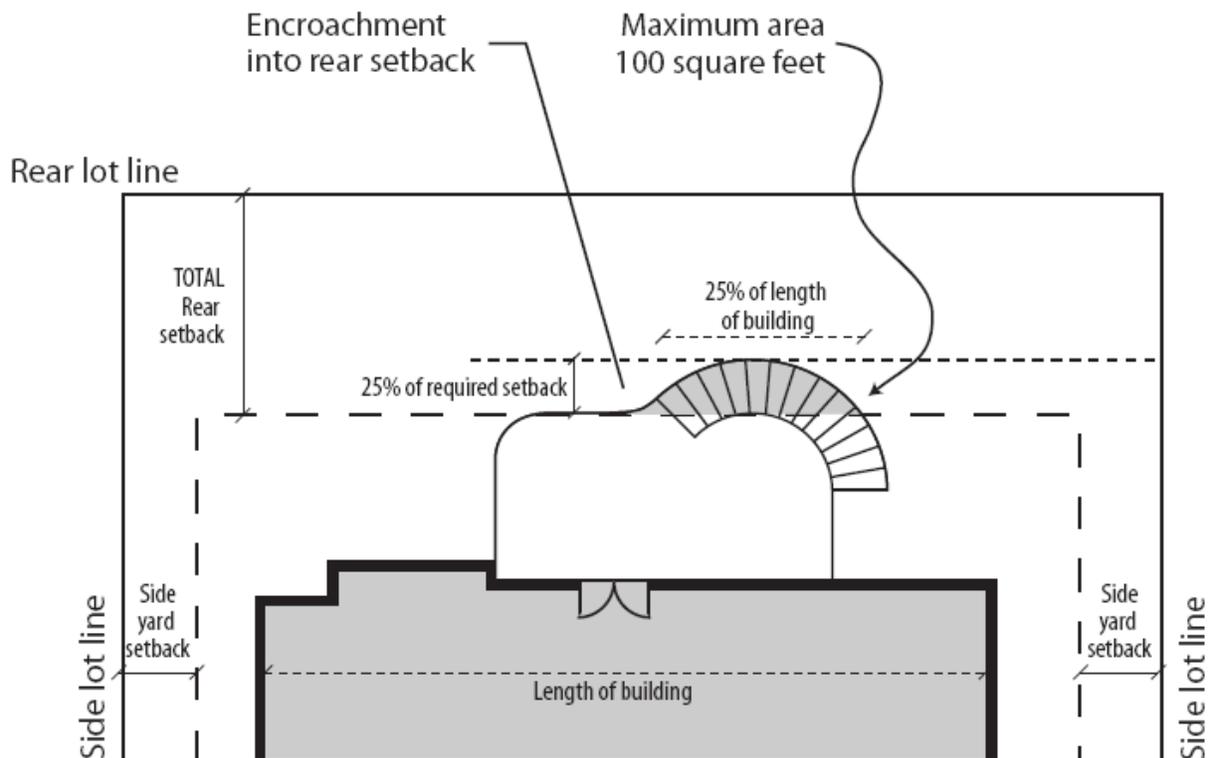


17.44.050 Lightwells, Stairwells, and Other Excavated Features in R-1B

In the R-1B district, excavated features such as lightwells are allowed to encroach into side and rear yards up to twenty-five (25) percent of the total required side and rear setbacks for primary buildings (see figure 17.44.050-1, Lightwell Exemption for R-1B), provided landscape screening is maintained between the feature and the adjacent property line and there is no impact to heritage trees. The following provisions shall apply:

- A. In residential district R-1B, an encroachment into both rear and interior side yards cannot exceed twenty-five (25) percent of the length of the side of the building to which it is adjacent and a total area of one-hundred (100) square feet.
- B. The encroachment is measured to the face of the retaining wall, rather than to the back of the wall.
- C. These provisions do not apply to accessory buildings. Lightwells for these structures may only be allowed facing towards the interior of the lot and may not exceed the minimum setbacks for the accessory building.

**Figure 17.44.050-1
Lightwell Exemption for R-1B**



17.44.060 Design Requirements *(Previously 17.36.190.C)*

- A. The side(s) of a basement not wholly or otherwise substantially underground (e.g., greater than eighty (80) percent) may not be located facing any side of a lot that abuts a road.
- B. Except as provided in section 17.44.050 (Lightwells, Stairwells, and Other Excavated Features), areas for stairways and lightwells for basements in the main building area may extend beyond the footprint of buildings, but shall be limited to the main building area. *(Previously 17.36.190.C.1)*
- C. Driveway approach for garages in basements shall be screened from the public right-of-way by design, landscaping, or a solid wall and gate. The driveway approach shall not negatively impact heritage trees. *(Previously 17.36.190.C.2)*

Chapter 17.46 Fences and Walls (Previously 17.36)**Sections:**

- 17.46.010 Purpose (*New section*)
- 17.46.020 Permit Requirements and Exemptions (*Previously 17.36.150*)
- 17.46.030 Development Standards (*Previously 17.36.150*)
- 17.46.040 Entry Gate and Post Requirements (*Previously 17.36.160*)
- 17.46.050 Operation and Maintenance Provisions (*Previously 17.36.150.E*)

17.46.010 Purpose (*New section*)

This chapter provides regulations for the installation, construction, and placement of fences on private property. For the purposes of this zoning code, the term "fence" includes fences or walls. It is the intent of this chapter to regulate the height and location of fences to provide privacy and establish buffers between properties.

17.46.020 Permit Requirements and Exemptions (*Previously 17.36.150*)

- A. Zoning Clearance Required. Except as otherwise exempted below, zoning clearance shall be required for all fences, walls, entry gates, posts, decorative features, and similar structures. Each application shall be filed with the town planner on a prescribed form, together with all fees, plans, maps, and any other information required by the office of the town planner.
 - 1. Fences located between two private properties and not adjacent to a public street may be up to eight (8) feet in height. The following additional information shall be provided with the application for zoning clearance:
 - Written recordable consent of both property owners;
 - Property line boundary survey, prepared by a California licensed surveyor;
 - Building permit; and
 - An indemnity agreement or other assurances satisfactory to the city manager and city attorney may be required.
- B. Special Structure Permit Required. A special structure permit is required for retaining walls that are taller than six (6) feet in height or located less than twenty (20) feet from other retaining walls on the same property; otherwise, only a building permit is required.
- C. Exemptions. The following walls and fences are exempt from permit requirements.
 - 1. A wall supporting a permitted structure.
 - 2. Fences not over six (6) feet in height on private property and at least ten (10) feet from the public right-of-way.
 - 3. Temporary fences around a construction site.

17.46.030 Development Standards (Previously 17.36.150)

- A. Maximum Allowed Heights. Fences and walls shall not exceed the maximum heights shown in Table 17.46.030-1 (Maximum Height of Fences and Walls).

**Table 17.46.030-1
Maximum Height of Fences and Walls**

Location of Fence/Wall	Maximum Height¹
Generally along all property lines, unless otherwise indicated below ⁵	6 feet / 8 feet ⁵
Coincident to Town boundary ¹	8 feet
Along lot lines adjoining a public or private school or the railroad right-of-way	8 feet
Along regulated streets ²	6 feet / 8 feet ²
At front lot line or along public streets	6 feet
At street intersections within clear visibility area: see chapter 17.60	3 feet
Retaining walls ³	6 feet
Wing walls ⁴ on other parts of a lot	6 feet
Interior fences or walls	6 feet

Notes:

1. Lot boundaries coincident to the town's boundary but facing a street shall be a maximum of six (6) feet high.
2. On those lots adjoining any of the following streets, a fence or wall may be constructed to a height of six (6) feet above the elevation of the natural grade upon which it stands or eight (8) feet above the elevation of the centerline of the adjacent pavement or such boundary, whichever is higher:
 - A. El Camino Real
 - B. Marsh Road
 - C. Middlefield Road
 - D. Valparaiso Avenue
 - E. Alameda de la Pulgas
 - F. Bay Road
 - G. Ringwood Avenue (Previously 17.32.150.B.1)
3. Excludes basements and underground driveway approaches.
4. Wing walls are walls of buildings that extend past the eave. They do not provide support to the building. See figure 17.46.030-1 (Wing Walls).
5. For eight (8) feet tall fences, see 17.46.020A.1.

Figure 17.46.030-1
Wing Walls



- B. Height Measurement. In all areas except for the required clear visibility area, fence height shall be measured from the natural grade at the base of the fence to the uppermost part of fence. Within the clear visibility area, fence height shall be measured from surface of the closest adjoining pavement to uppermost portion of the fence.
- C. Fence/Wall Design Compatibility. In considering whether to issue a permit for such a fence or wall, the town planner shall ensure that it can meet each and all of the following criteria: (*Previously 17.36.150.B.3*)
1. Uniform Design and Appearance. With the exception of renovations and additions to the portion of Lindenwood Wall located along Middlefield Road, any fence or wall shall be of uniform design, construction, and appearance. A fence or wall shall be constructed from the ground level, unless it is an addition to the top of an existing fence or wall. An addition shall be of the same design and feature the same material(s) and color(s) as the existing fence or wall, ensuring that the resulting fence or wall shall appear to have been constructed as a single project. (*Previously 17.36.150.B.3.a*)
 2. Landscape Requirements. A fence or wall greater than six (6) feet in height shall be shielded from the public view by plants installed at the time of construction. The selected species shall reach the height of the fence or wall within three (3) years of planting. (*Previously 17.36.150.B.3.b*)
- D. Retaining Walls. Retaining walls shall be located no closer than five (5) feet from any property line. Except for basements and underground driveway approaches, the

maximum height of the retaining walls shall not exceed six (6) feet solid wall construction, with a maximum three-foot-high safety fence on top. A safety fence guard rail shall be placed on top of a retaining wall with a minimum height of forty (40) inches where the edge of the wall is part of a pedestrian path. The safety fence shall be substantially open to light and air in compliance with applicable safety codes. Retaining walls shall be constructed no closer than twenty (20) feet from one another on the same property, except that for every one foot decrease in height of the retaining wall from the six (6) foot maximum, the minimum spacing may be reduced by four (4) feet, provided the next closest retaining wall is of the same or shorter height. For example, a five (5) foot tall retaining wall may be located sixteen (16) feet from another retaining wall five feet tall or less. However, upon issuance of a special structures permit, the designated approving authority (the planning commission as described in Table 17.06.070-1) may allow for taller retaining walls or retaining walls located less than twenty (20) feet apart.

17.46.040 Entry Gate and Post Requirements (*Previously 17.36.160*)

Entry gates, posts, and decorative features in excess of the height limits established in Table 17.46.030-1 (Maximum Height of Fences and Walls), but not exceeding ten (10) feet in height, shall be permitted upon the issuance of a building permit. The width of the posts and columns incorporated in fences and walls shall not exceed thirty-three (33) percent of the built height. The height of the wall may transition from the column height to the wall height over a distance not to exceed twenty (20) feet in length.

It is permissible to maintain a light that is shielded or down lit, not exceeding eighteen (18) inches in height, at the top of any entry gate post or fence/wall column. However, in no instance shall the top of an entry gate post of a fence/wall column, including the light, exceed ten (10) feet in height. There shall not be more than two (2) lights per entrance. Light spill shall not exceed a twenty-five (25) foot radius or the crown of street, whichever is greater.

Entry gates shall be located a minimum of twenty (20) feet from the edge of the adjacent paved roadways. The intent is to provide the necessary space so a vehicle can stay clear of vehicle travel lanes.

Key pads for gates shall be located to allow vehicles to use the pad without encroaching into the street travel way.

17.46.050 Operation and Maintenance Provisions (*Previously 17.36.150.E*)

- A. Maintenance. Fences and walls shall be continuously maintained in an orderly and good condition, at no more than their maximum allowed height.
- B. Public Nuisance Declared. Each fence, wall, shrub, or tree constructed or maintained in violation of any of the provisions of this title is declared to be a public nuisance and subject to abatement as such.

Chapter 17.48 Home Occupations (Previously 17.48)**Sections:**

- 17.48.010 Purpose (New section)
17.48.020 Permit Required – Standards (Previously 17.48.010)

17.48.010 Purpose (New section)

The purpose of this chapter is to allow limited non-residential uses within a residential neighborhood or zoning district consistent with established criteria to ensure compatibility and to keep the integrity of the surrounding residential uses and character. It will also minimize noise, traffic nuisances, hazardous material use, and other possible side effects of non-residential uses being conducted in residential areas.

17.48.020 Permit Required – Standards (Previously 17.48.010)

Home occupations shall be permitted upon issuance of a zoning clearance by the town planner only when that use conforms to all of the applicable following standards:

- A. The use is clearly incidental and secondary to the use of the dwelling for dwelling purposes.
- B. The use is conducted entirely within a dwelling and is carried on by the inhabitants thereof.
- C. No persons other than the inhabitants are employed at the premises in relation to the home occupation.
- D. No signs or commercial names are displayed for any purpose on or about the premises.
- E. No business address listings are used in telephone or business directories, web sites, advertisements, or similar publications.
- F. The use does not change the character of the dwelling or adversely affect the uses permitted in the surrounding district. There shall be no external evidence of business activity.
- G. The use creates only infrequent or occasional additional traffic.
- H. The entrance to the space devoted to such use is from within the building and no internal or external alterations or construction features not customary in dwellings are involved. (Ord. 407 § 13-1, 1985)

Chapter 17.50 Landscape Screening (*Previously 17.50*)**Sections:**

- 17.50.010 Purpose (*Previously 17.50.010*)
- 17.50.020 Applicability (*Previously 17.50.020*)
- 17.50.030 General Requirements (*Previously 17.50.030*)
- 17.50.040 Maintenance (*Previously 17.50.040*)
- 17.50.050 Continued Landscaping (*Previously 17.50.050*)
- 17.50.060 Installation Requirements (*Previously 17.50.060*)
- 17.50.070 Plant Coverage and Tree Sizes (*Previously 17.50.070*)
- 17.50.080 Protection of Heritage Trees (*Previously 17.50.080*)
- 17.50.090 Violation (*Previously 17.50.090*)
- 17.50.100 Appeals (*Previously 17.50.100*)

17.50.010 Purpose (*Previously 17.50.010*)

The purposes of this chapter are to reduce the impact of structures on neighborhoods and to provide for the maintenance of the individual privacy of homes in a neighborhood to a reasonable degree by requiring landscape screening where appropriate. (Ord. 508 § 1, 1999: Ord. 460 § 2 (part), 1991)

17.50.020 Applicability (*Previously 17.50.020*)

The requirements of this chapter shall apply to the following projects:

- A. New construction that exceeds eighteen (18) feet above grade; or
- B. New construction of an accessory structure or alteration to an existing accessory structure that is more than six (6) feet above grade and is less than twenty-five (25) feet from a property line; or
- C. New construction of an accessory structure or alteration to an existing accessory structure that is ten (10) feet above grade and less than thirty-five (35) feet from a property line.

In the case of additions to existing structures, only those areas adjoining each addition that meet the above criteria are required to be landscape screened. (Ord. 479 § 1, 1994: Ord. 460 § 2 (part), 1991)

17.50.030 General Requirements (*Previously 17.50.030*)

The following general landscape requirements apply to all residential and nonresidential property within the town.

- A. All front, side, and rear yards shall be landscape screened as described in this chapter. Front yards contiguous to a street shall not require landscape screening.
- B. Plantings shall be provided by the owners and located to reduce the visual impact of structures. Planting with appropriate trees and plants shall be used where necessary to provide privacy. Landscaping on adjacent properties may be taken into consideration.

- C. The provisions contained in this chapter are intended to be minimum standards and shall not preclude application of additional requirements where, in the opinion of the town arborist, such additional requirements are necessary to attain the purposes of this chapter and to attain compatibility with the general plan and the goals and policies of the town. (Ord. 508 §§ 2, 3, 1999; Ord. 470 § 1(B),(C), 1992; Ord. 460 § 2 (part), 1991)

17.50.040 Maintenance (*Previously 17.50.040*)

All landscape screening areas shall be maintained reasonably free of weeds, litter, and debris. All required planting shall be maintained in a healthy growing condition and, whenever necessary, replaced with plant materials approved by the town arborists to provide continued conformance with approved plans. All new screening plantings shall be provided with a water-efficient automatic irrigation system to be installed at the time of planting. (Ord. 508 § 4, 1999; Ord. 460 §2 (part), 1991)

17.50.050 Continued Landscaping (*Previously 17.50.050*)

A landscape screening agreement shall be signed by the applicant and shall be submitted to the town before any planning or building application is deemed complete. The purpose of this agreement is to ensure that the landscaping will not be removed at a future date, resulting in a loss of privacy and landscape screening. At no time shall the landscape screening plan be modified or amended in a manner not consistent with the approved plan without prior approval of the town arborist. The intent is to maintain continued landscape screening of property consistent with the objectives of this chapter. Failure to comply with this requirement without first receiving authorization from the town arborist may result in an administrative penalty and fine as established by the city council.

17.50.060 Installation Requirements (*Previously 17.50.060*)

Prior to the final inspection or issuance of a certificate of occupancy (unless delay is authorized by the building official) all required landscape screening shall be installed in conformance with the approved plans. In the case of phased building construction, the town building official may permit phased installation of landscape screening. If the required landscaping is not installed prior to the final inspection, then a minimum five thousand dollar (\$5,000) deposit and an agreement in writing, approved as to form by the city attorney, stating that all required landscaping shall be installed within six (6) months, shall be executed by the applicant and submitted to the town before approval of the final inspection or issuance of the certificate of occupancy. (Ord. 508 §6, 1999; Ord. 470 § 1(E), 1992; Ord. 460 § 2 (part), 1991)

17.50.070 Plant Coverage and Tree Sizes (*Previously 17.50.070*)

Plantings shall be sized to adequately screen the proposed structure within a period of five (5) years from the date of issuance of a building permit. The following shall constitute minimum standards for plant coverage and tree sizes:

- A. Adequacy of Screening: All plantings shall be of adequate size and spacing to ensure compliance with the screening requirements. A site inspection shall be conducted after a completed landscape screening application has been submitted. It shall be at the discretion of the town arborist to assess the adequacy of the proposed planting to meet the screening requirement.

- B. Minimum Tree Size. All trees shall be at least twenty-four (24) inch box container size at the time of installation. Larger trees may be required in the sole discretion of the town arborist where deemed necessary to meet the objectives of this chapter. Fifteen (15) gallon trees or shrubs may be allowed at the discretion of the town arborist, when it can be shown that they will achieve the desired landscape screening requirements. (Ord. 524 § 1, 2001; Ord. 508 §§ 7, 8, 1999; Ord. 470 § (F), 1992; Ord. 460 § 2 (part), 1991)

17.50.080 Protection of Heritage Trees (*Previously 17.50.080*)

Every reasonable effort shall be made to protect heritage trees during the course of construction. Compliance with chapter 8.10 (Removal of and Damage to Heritage Trees) of the town municipal code relating to heritage trees is required. Landscape screening plans shall identify all heritage trees within the construction zone. Each application shall include a tree preservation plan to be implemented during construction. (Ord. 508 § 9, 1999; Ord. 470 § 1(G), 1992; Ord. 460 § 2 (part), 1991)

17.50.090 Violation (*Previously 17.50.090*)

Each violation of this chapter shall constitute a public nuisance and be subject to abatement as such. When, in the opinion of the town arborist or his or her duly authorized representative, this ordinance is not being complied with, the town arborist may issue a stop work order for all construction work on the entire site. (Ord. 508 § 10, 1999)

17.50.100 Appeals (*Previously 17.50.100*)

Any property owner applicant affected by a decision of an official hereunder may appeal such decision to the city council in accordance with the provisions of section 17.06.100 (Appeals) of this title. (Ord. 460 § 2 (part), 1991)

Chapter 17.52 Second Dwelling Units (*Previously 17.36*)**Sections:**

- 17.52.010 Purpose (*New section*)
- 17.52.020 Allowed Use Provisions (*New section*)
- 17.52.030 Development Standards (*Previously 17.36.030*)

17.52.010 Purpose (*New section*)

The purpose of this chapter is to regulate second dwelling units in residential zoning districts and on residential property consistent with state law (California Government Code Sections 65852.1 through 65852.2). Implementation of this chapter is intended to provide for additional housing opportunities by increasing the number of units available within existing neighborhoods while maintaining the primarily single family residential character of the area.

17.52.020 Allowed Use Provisions (*New section*)

Second dwelling units shall be allowed in all residential zoning districts in compliance with the development standards set forth in section 17.52.030 (Development Standards) of this chapter.

17.52.030 Development Standards (*Previously 17.36.030*)

A second dwelling unit is permitted provided the following standards are incorporated into the structural design:

- A. Maximum Number. Only one second dwelling unit shall be allowed on each lot or parcel.
- B. Setback Requirement. Except as otherwise provided herein, each second dwelling unit shall meet all applicable setback requirements in effect for the main residence.
- C. Maximum Size. The size of each such second dwelling unit shall not exceed twelve hundred (1,200) square feet, and no unit shall contain fewer square feet than the minimum prescribed by the applicable building code.
- D. Owner Occupancy. Either the main residence or the second dwelling unit, or both, shall be occupied by the owner of the property.
- E. Parking Requirement. Each second dwelling unit shall have assigned to it one parking space for each bedroom in the second dwelling unit. Parking shall be accessible from a public street and screened from view of the public street.
- F. Minimum Lot Size if Attached. Second dwelling units that are to be incorporated into or added to existing residence structures (e.g., attached to the main residence) shall be permitted only on lots that are larger than one-half (0.5) acre.
- G. Minimum Lot Size/Location Restrictions if Detached. Second dwelling units that are to be detached from main residence structures shall be permitted only on lots that are larger than forty thousand (40,000) square feet.

- H. Separation Requirement. A separation of at least eight (8) feet shall be maintained between any detached second dwelling unit and its main residence structure.
- I. Entrance Requirements. Any new second dwelling unit that is incorporated into an existing main residence shall have a separate entrance facing the side or rear yard.
- J. Compliance with Applicable Requirements. The second dwelling structure shall meet all applicable zoning, building, and fire regulations.
- K. Lighting Restrictions. Any lighting associated with the second dwelling unit shall be shielded or downlit and shall not shine onto adjoining properties.
- L. Landscape Screening. Landscape screening shall be provided in compliance with the provisions of chapter 17.50 (Landscape Screening). (Ord. 544 § 5, 2003; Ord. 442 §§ 6, 7, 1989; Ord. 407 § 12-1, 1985)

Chapter 17.54 Yard Measurements and Projections (*New chapter*)**Sections:**

- 17.54.010 Purpose (*New section*)
- 17.54.020 Definitions (*Previously 17.08.133, 150, 180, 190, 200, 210, 220, 271, 340, 350, 360, and 370*)
- 17.54.030 Setback Measurements (*New section*)
- 17.54.040 Projections (*Previously 17.20.040.G and 17.24.040.G*)

17.54.010 Purpose (*New section*)

The purpose of this chapter is to establish rules and regulations for setback measurement and yard areas. These provisions, in conjunction with other applicable provisions of this title, are intended to ensure open areas around primary structures; maintain clear visibility for traffic safety and pedestrian access; buffer between land uses; and establish natural and visual light and air space for privacy, landscaping, and recreation.

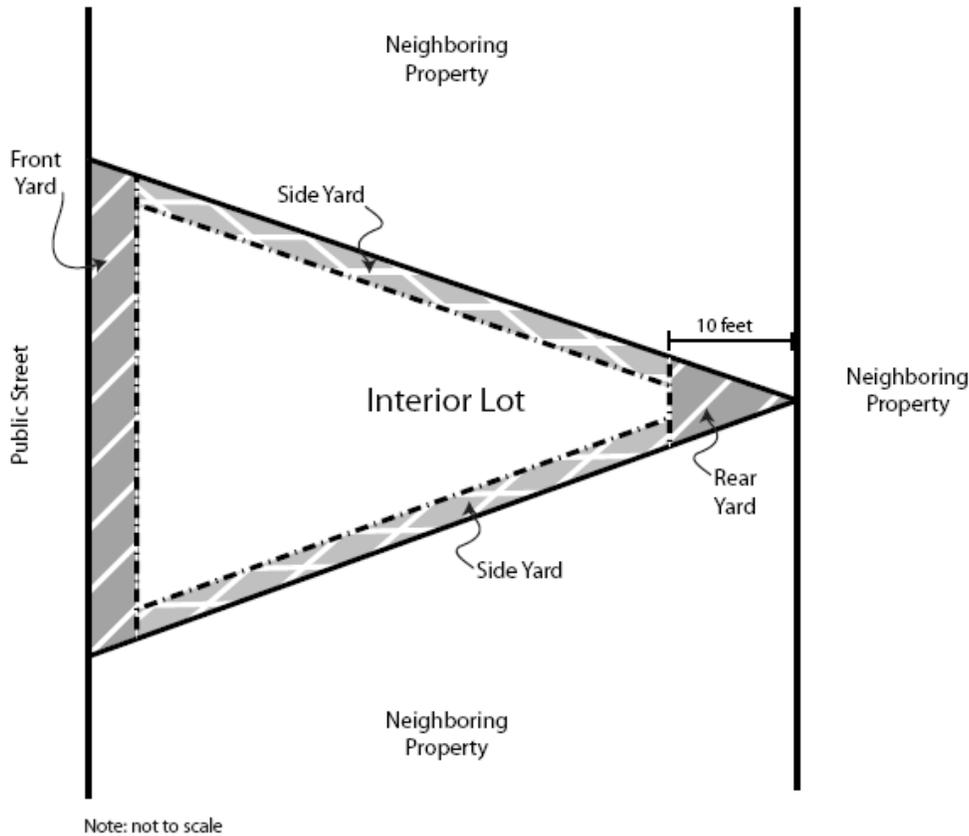
17.54.020 Definitions (*Previously 17.08.133, 150, 180, 190, 200, 210, 220, 271, 340, 350, 360, and 370*)

Terms that are relevant to this chapter are defined in chapter 17.60 (Definitions).

17.54.030 Setback Measurements (*New section*)

- A. All setback distances shall be measured at right angles from the designated property line (e.g., front, interior side, street-side, rear) and the setback line shall be drawn parallel to the designated property line at the required setback distance, except as follows:
 - 1. The rear yard setback on the street side of a double frontage lot is a line parallel to the rear property line abutting the street. However, if a street right-of-way line extends into or through a rear yard, the minimum rear yard setback distance shall be measured at right angles from the access easement or right-of-way line.
 - 2. Where the side lot lines converge to a point with two or three (3) lines, the rear yard setback shall be measured from an imaginary line drawn parallel to the front property line from a distance of ten feet from the point at which the lines converge. See figure 17.54.030-1 (Setback Determination for Converging Side Lot Lines).

**Figure 17.54.030-1:
Setback Determination for Converging Side Lot Lines**



3. The approval authority shall have the authority, through the front/rear lot line redesignation process, to redesignate a front or rear lot line (see chapter 17.20, Front/Rear Lot Line Redesignation).
 - B. At the time of building permit application, the applicant's engineer shall provide certification that the building is being located within the required setback lines.
 - C. The setback lines shall be staked at the same time as foundation staking so that the field inspector can visually verify that the building is being constructed within the setback lines.

17.54.040 Projections (Previously 17.20.040.G and 17.24.040.G)

- A. Roof eaves may encroach into any yard not to exceed a maximum of four (4) feet on the main building and one (1) foot on accessory buildings.
- B. Architectural projections for chimneys and fire places on primary buildings may encroach into the interior side and rear yard setback a maximum of two (2) feet, provided that each projection is a maximum of seven (7) feet in length.

- C. Additionally, in the R-1B district, one cantilevered bay window on the first floor of the main building may project up to two (2) feet into side or rear setbacks, provided that the length of the window is no more than seven (7) feet.

Chapter 17.56 Special Events (Previously 17.38)**Sections:**

- 17.56.010 Title (Previously 17.38.010)
- 17.56.020 Purpose and Intent (Previously 17.38.020)
- 17.56.030 Definitions (Previously 17.38.030)
- 17.56.040 Permit Required (Previously 17.38.040)
- 17.56.050 Application Submittal Requirements (Previously 17.38.050)
- 17.56.060 Permit Issuance (Previously 17.38.060)
- 17.56.070 Permit Requirements (Previously 17.38.070)
- 17.56.080 Permit Revocation (Previously 17.38.080)
- 17.56.090 Violation as a Public Nuisance (Previously 17.38.090)

17.56.010 Title (Previously 17.38.010)

This chapter shall be known as the "Special Event Ordinance" and may be so cited. (Ord. 559 § 2 (part), 2005)

17.56.020 Purpose and Intent (Previously 17.38.020)

- A. The purpose of this chapter is to ensure the comfort, safety, and general welfare of the town citizens by controlling the number of special events and impacts of such events on the community and by providing a simplified permit process. It is also the purpose of this chapter to defray the costs of processing applications for these events.
- B. The intent of this chapter is to protect the residents from excessive noise, traffic, and other intrusions upon their privacy. (Ord. 559 § 2 (part), 2005)

17.56.030 Definitions (Previously 17.38.030)

Terms that are relevant to this chapter are defined in chapter 17.60 (Definitions).

17.56.040 Permit Required (Previously 17.38.040)

- A. All special events held in the public right-of-way shall obtain a special event permit. Activities include, but are not limited to, processions such as walks, road races, bicycle rides, skate-a-thons, and similar activities.
- B. A special event permit is required for any special event held on private property, occurring on two (2) or more consecutive days where members of the general public are invited. Activities requiring a permit include, but are not limited to, the following:
 - 1. Motion picture filming;
 - 2. House and garden tours;
 - 3. Fundraisers;
 - 4. Auctions;

5. Antique shows;
 6. Concerts;
 7. Other similar activities.
- C. The following provisions shall apply to special events held at private and public schools and country clubs:
1. A permit is not required for on-site school-related events. Responsible parties shall notify the town of school events that may result in additional traffic or parking.
 2. A permit is not required for non-school-related events held at schools and country clubs that meet the school event guidelines as prepared by the city manager and accepted by the city council. Responsible parties shall notify the town of events that may result in additional traffic or parking.
 3. A special event permit is required for non-school-related events that are planned to occur outside of the school event guidelines.
- D. Open house tours for the purpose of selling property in the regular course of a real estate transaction shall be exempt from the permit requirements of this chapter. (Ord. 559 § 2 (part), 2005)

17.56.050 Application Submittal Requirements (*Previously 17.38.050*)

The following items and information shall be submitted to the city manager or designee:

- A. Completed application (application form supplied by the town) submitted to the town at least two (2) months prior to the event.
- B. Detailed description of the event.
- C. Contact person available prior to and during the event.
- D. Application fee (as set by resolution of the city council).
- E. The anticipated number of attendees and number of vehicle trips per day.
- F. An on- and off-site parking plan including the placement of barricades, etc.
- G. A deposit as determined by the police chief for the funding of any additional security measures not provided by the applicant.
- H. A hold harmless agreement, naming the town, its officers, employees, volunteers, and agents, and a certificate of insurance in the amount of two million dollars (\$2,000,000) naming the town as additional insured. The hold harmless agreement and certificate of insurance shall be reviewed and approved by the city attorney. (Ord. 559 § 2 (part), 2005).

17.56.060 Permit Issuance (Previously 17.38.060)

- A. The city manager or designee may issue a special event permit when, in the opinion of the city manager or designee, the event meets all of the requirements of this code and the general plan. The city manager or designee may refer items to the planning commission when, in his or her opinion, the public interest would be better served by the planning commission conducting a public hearing. The city manager or designee shall issue, deny, or refer a special event permit within thirty (30) days of receipt of a completed application. If the event will not be in conformance with either this title or the general plan, the application shall be denied.
- B. If a special event permit is issued by the city manager or designee, such official may impose any reasonable conditions to ensure the event will have a minimal impact on the community. Such conditions may include, but are not limited to, any of the following:
1. Adequate arrangements to prevent:
 - a. Violation of chapter 8.16 (Noise Control),
 - b. Violation of chapter 8.20 (Nuisance Abatement),
 - c. Amplified sound,
 - d. Violation of any traffic laws,
 - e. Violation of any other section of this code;
 2. Posting of docents at key/dangerous locations;
 3. Events, including setup and tear-down, will be done during daylight hours if feasible;
 4. Signs on public property shall be kept to a minimum and shall not be displayed for longer than one (1) hour prior to or after the end of the event;
 5. Other materials or mitigation measures deemed necessary by the city manager or designee; and/or
 6. Parking barricades shall be set back a minimum distance as required by the city manager or his or her designee to ensure site distance clearance from special event site driveways and neighboring driveways. (Ord. 559 § 2 (part), 2005)

17.56.070 Permit Requirements (Previously 17.38.070)

- A. All special events held on private property shall be limited to no more than two (2) consecutive weeks, including no more than two (2) consecutive weekends. Any event for a longer period of time requires a conditional use permit.

- B. All special events shall be publicly noticed at least ten (10) days prior to the issuance of a permit, pursuant to the process outlined in State Planning and Zoning Law Section 65091, with a five hundred (500) foot radius notification. However, if the event is not conducted on a single site, or is to be conducted within the public right-of-way, the applicant shall pay for the cost associated with the publication of the notice in a newspaper of general circulation at least ten (10) days prior to issuance of a permit.
- C. The applicant shall execute a contract agreeing to the obligations of the special event permit.
- D. No more than two (2) special event permits shall be issued in a twelve-month period for special events on any single private residential property. (Ord. 559 § 2 (part), 2005)

17.56.080 Permit Revocation (*Previously 17.38.080*)

A special event permit may be revoked by the city manager or his or her designee in the event of any violation of the special events permit or this title. (Ord. 559 § 2 (part), 2005)

Title 17 - Zoning

Article IV Zoning Definitions

Chapter 17.60 Definitions (*Previously 17.08*)

Revisions:

The following revisions have been made to article IV of title 17:

Date of Adoption	Ordinance Number	Subject	Section	Page Number

17.60 Definitions (Previously 17.08)**Sections:**

- 17.60.010 Purpose
- 17.60.020 Definitions

17.60.010 Purpose (Previously 17.08.010)

The purpose of this chapter is to provide definitions of the terms and phrases used in this title that are technical or specialized in an effort to ensure consistency in the interpretation of the zoning code. For the purpose of this title, certain terms and words in the plural number include the singular and the singular includes the plural; the word "building" includes the word "structure," and the word "shall" is mandatory and not directory. (Ord. 407 § 16-1, 1985)

17.60.020 Definitions (Previously 17.08.020 through 17.08.370)

"Accessory building" shall mean a detached building where fifty (50) percent or more of the footprint of the enclosed space is covered. Accessory buildings are subordinate to, and their use is customarily incidental to, that of the main building, structure, or use on the same or attached/adjacent lot as regulated in this title. This classification includes: garages, greenhouses, poolhouses, sunrooms, workshops, storage sheds, carports, patio covers, gazebos, barns, stables, and other agricultural outbuildings with solid roof construction.

"Accessory structure" shall mean a detached structure that is not enclosed by walls and a solid or partially enclosed roof. Accessory structures are subordinate to, and their use is customarily incidental to, that of the main building, structure, or use on the same or attached/adjacent lot as regulated in this title. Types of accessory structures regulated by the town include the following:

- Antennas and satellite dishes. Antennas are a system of wires, poles, rods, reflecting disks, or similar devices used for the transmission or reception of electromagnetic waves. A satellite dish is any antenna (typically parabolic in design) which is used to collect signals from or transmit signals to satellites orbiting the earth.
- Arbors/Trellises/Pergolas. Arbors/trellises/pergolas are structures that are open on all sides and have a roof that is substantially open to the passage of light and air. For purposes of this definition "substantially open" shall mean a minimum of fifty (50) percent of the covered area is open to light and air. Typically, these structures are constructed with a lattice-like roof structure.
- Artwork and fountains/water features. Artwork shall mean sculptures and other decorative features of an artistic nature that are placed outside of any structure. Fountains/water features shall mean a structure where water is forced into the air under pressure, creating a jet. The pressure may be gravitational or may be produced by a motor-driven pump. The definition of fountain/water features excludes bird baths, which are pedestals with a shallow basin filled with water for birds to bathe in and drink from.
- Athletic courts. Athletic courts shall mean any surface constructed primarily for athletic activity use, which may be equipped with nets, standards, backboards, or other projections; or which may be equipped with sleeves suitable for the installation

of such features, above grade. Includes basketball courts, squash courts, tennis courts, baseball, soccer, other fields, and other sports facilities.

- Heat pumps. Heat pumps are mechanical equipment used to transfer heat to the interior of a structure. A furnace is another type of heating device that can also be used to generate and transfer heat.
- Inflatable covers. Inflatable covers are devices that cover pools, spas, hot tubs, and other similar structures. Such covers are inflated with air to maintain their structure and are designed to preclude the pooling of water and leaves on their surface.
- Pool/Spa. As defined in the Uniform Building Code, a pool/spa is any structure intended for swimming or recreational bathing that contains water over eighteen (18) inches deep. This definition includes in-ground, above-ground, and on-ground swimming pools, hot tubs, and spas. It also includes incidental equipment and housing (e.g., pumps, heating equipment, etc).
- Solar facilities. Solar facilities are panels used for the conversion of sunlight into electricity. Such facilities include solar hot water heaters, which are facilities that use sunlight to heat water.

"Approval authority" means the body of the town planning agency (city council, planning commission, town planner) who makes a decision on a planning permit. See section 17.06.070.

"Atherton Zoning Plan" means the map identifying the designations, locations, and boundaries of the zoning districts established by this title. This map and all notations and information on it are a part of this title by reference.

"Attached/Adjacent lot" means one or more lots of record located adjacent to one or more lots of record all held in common ownership. The attached/adjacent lots may be designated as one, separate, or several assessor's parcels.

"Average natural grade" means the average elevation of the natural grade based upon twelve (12) points of measure along the perimeter of the building prior to any cut and fill. Each point of measure shall be located (first) at every corner of the building and (second) every thirty (30) feet along continuous walls with lengths over fifty (50) feet. A corner shall mean a change in the wall plane of thirty (30) degrees or more. However, if a building has more than twelve (12) corners, then each corner shall be a point of measure regardless of the twelve (12) point requirement. The points shall be determined by starting at the most northerly corner of the building or structure as determined by magnetic north then moving clockwise around the building or structure. See section 17.42.030 for determining natural grade.

"Basement" means that finished story below the finished floor of the first story of a building. Basements are subject to the requirements of chapter 17.44. Basements do not include crawl spaces or other under-floor areas, which are separately defined. Includes, but not limited to, hobby space and wine cellar.

"Building" means any structure having a roof, columns, walls, and foundation.

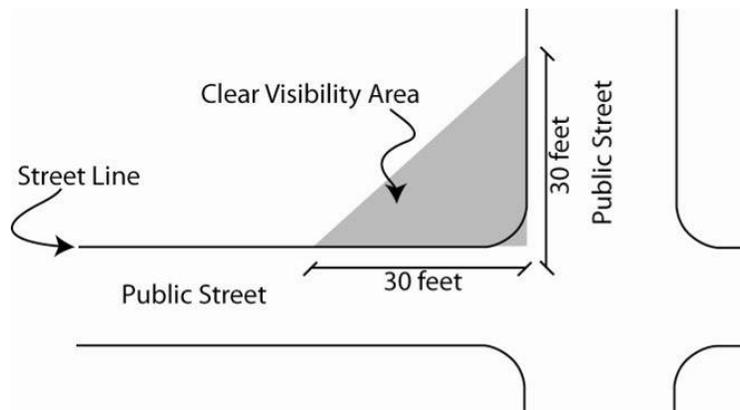
"Building height" means the vertical distance from the ground to the highest point on the structure. See chapter 17.42 for an explanation of how to calculate height.

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

"Chimney" means a vertical structure or flue, which extends through the roof of a house, and provides a path through which smoke from a fire is carried away.

"Clear visibility area" means a triangular area bounded on two (2) sides by street lines extending a distance of thirty (30) feet from any street corner measured along the curb, gutter, or edge of pavement. See figure 17.60.020-1 (Clear Visibility Area). (*Previously 17.36.150.C*)

**Figure 17.60.020-1
Clear Visibility Area**



"Conditional use permit" means a planning permit for the establishment of a specific use of land within the town.

"District" or "zone" means a portion of the town within which certain uses of land and development standards are established for buildings. (Ord. 407 § 16-9, 1985)

"Dormer" means a window which is set vertically on a sloping roof. A dormer has its own roof.

"Dormer, face of" means the vertical surface of a dormer projecting from a sloping roof that is parallel to the vertical walls of the structure.

"Eave" means the overhang at the lower edge of a roof or the line along the sidewall formed by the intersection of the planes of the roof and wall.

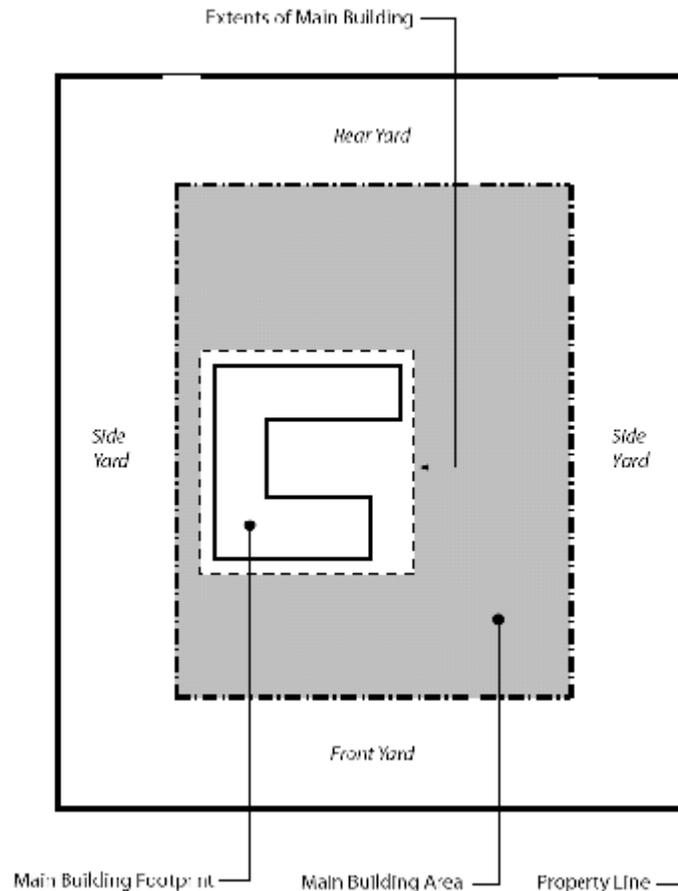
"Eave line" means where the face of a dormer or other architectural feature intersects the eave, that part of the roof that projects beyond the exterior wall. The eave line is the projection on the architectural feature of where the eave of the roof would continue uninterrupted if the architectural projection did not intersect it.

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

"Entry gate" means a gate in a fence or wall intended for vehicle entry into a property.

"Extents of the Main Building" shall be the area of a lot as determined by drawing a rectangle around the outer most edges of the footprint of the main building. See figure 17.60.020-2 (Extents of Main Building).

**Figure 17.60.020-2
Extents of Main Building**



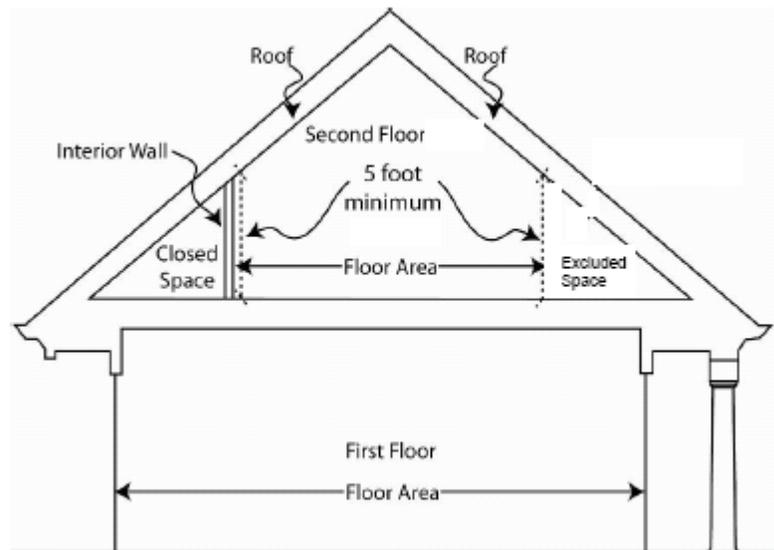
"Fence" means a vertical screening structure used to prevent the ingress or egress of persons or animals or the obstruction of vision or noise. Structures that are used to support a roof, awning, or other horizontal compositions, or structures that have a purpose other than those hereinabove specified, including, but not limited to, tennis courts and other enclosures for athletic activities, compost bins, bath structure enclosures, and enclosures for the storage of tools, equipment and garden supplies, shall not be deemed to be fences. Wing walls or extensions of a building wall that do not support the building shall be included in the definition of a fence for purposes of this title. (Ord. 407 § 16-10, 1985)

"Finish grade" means the final contour of the ground surface of a site that conforms to the approved grading plan.

"Floor area" means the sum of the gross horizontal areas of the several planes of the building at each floor level measured from the outside perimeter of the exterior walls or roof in the case of open structures. In instances where the roof line creates the exterior wall of a floor, such as in an attic, the floor area shall be measured to the interior wall (see figure 17.60.020-3 (Floor Area

for Second Floor/Attic Spaces)). Floor area shall also include those portions of overhangs exceeding four (4) feet on the main building and those portions of overhangs exceeding one (1) foot on accessory structures. Floor area shall not include pools, tennis courts, drives and other paved surfaces, and basements (except as otherwise required by this title). In areas with an open height of sixteen (16) feet or greater at any point, the floor area for that portion of the building shall be multiplied by two (2). (Ord. 497 § 2, 1998: Ord. 478 § 1(B), 1994: Ord. 456 § 3, 1990)

**Figure 17.60.020-3
Floor Area for Second Floor/Attic Spaces**



"Floor area ratio" means the sum of the floor areas of all main and accessory structures on a lot, divided by the gross lot area. (Ord. 497 § 3, 1998: Ord. 407 § 16-11, 1985)

"Front/rear lot line redesignation" means a planning permit that allows a property owner to request a different line as the front or rear lot line.

"Footprint" means the plan view projection to ground level of the perimeter of a building to the outside perimeter of the exterior walls. Open or partially covered flat work such as decks and patios not more than six (6) inches in height are excluded from the footprint.

"Front line of main building" means the line touching the front most point of the main building that is at a right angle to the line connecting the midpoints of the front and rear lot lines. (Ord. 469 § 1(A), 1992)

"Garage or carport" means a separate building or portion of a main building or accessory building designed for shelter or storage of vehicles owned or operated by the occupants of the lot. For the purposes of this title, a carport is equivalent to a garage. (Ord. 434 § 2, 1988)

"General Plan" means the Town of Atherton's general plan as adopted by the city council and as may be amended from time to time.

"General plan amendment" means a planning process for approving an amendment to the general plan, including the Land Use Map.

"Grade" means the elevation of the ground surface.

"Group home" means a dwelling unit licensed or supervised by any Federal, State, or local health/welfare agency that provides twenty-four-hour nonmedical care of unrelated persons who are not disabled but are in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual in a family-like environment. Group homes include children's homes, rehabilitation centers, and self-help group homes. Medical care may be provided in conjunction with group homes that provide alcoholism or drug abuse recovery or treatment services.

"Home occupation" means any use customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character or appearance thereof. (Ord. 407 § 16-12, 1985)

"Kitchen" means any room or area intended or designed to be used or maintained for the cooking, storing, and preparation of food and includes facilities for cleaning, preparation, and storage of food and cooking and eating utensils. (Ord. 434 § 3, 1988)

"Landscape screening area" means the rear yard, the side yard and, when required by the town arborist, the front yard. (Ord. 470 § 1(A), 1992; Ord. 460 § 2 (part), 1991)

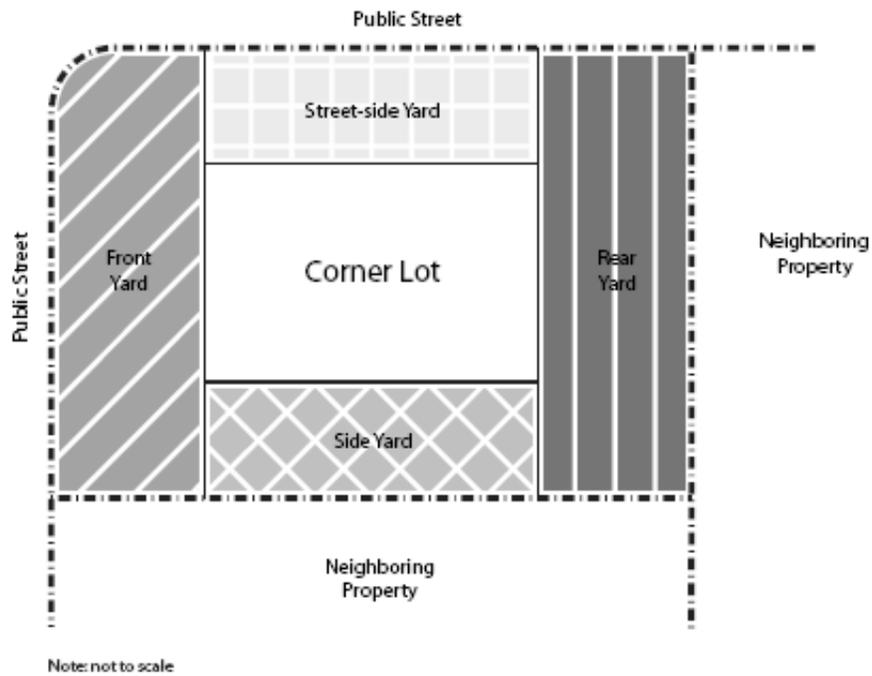
"Legislative decisions" means decisions that must be made by the city council. Legislative land use decisions apply to the general population and prescribe policy and require the greatest amount of discretion and evaluation of subjective approval criteria. A public hearing is required for legislative land use decisions.

"Lot" or "site" means a parcel of land consisting of a single lot of record, used or intended for use or uses under the regulations of this title (Ord. 407 § 16-13, 1985). See "Lot, corner," "Lot, double frontage," "Lot, flag," "Lot, interior."

"Lot area" means the area of a lot measured horizontally between bounding lot lines, including any portion of a flag lot providing access to the street. (Ord. 407 § 16-14, 1985)

"Lot, corner" means a lot bounded by two or more abutting and intersecting street lines. See figure 17.60.020-4 (Corner Lot).

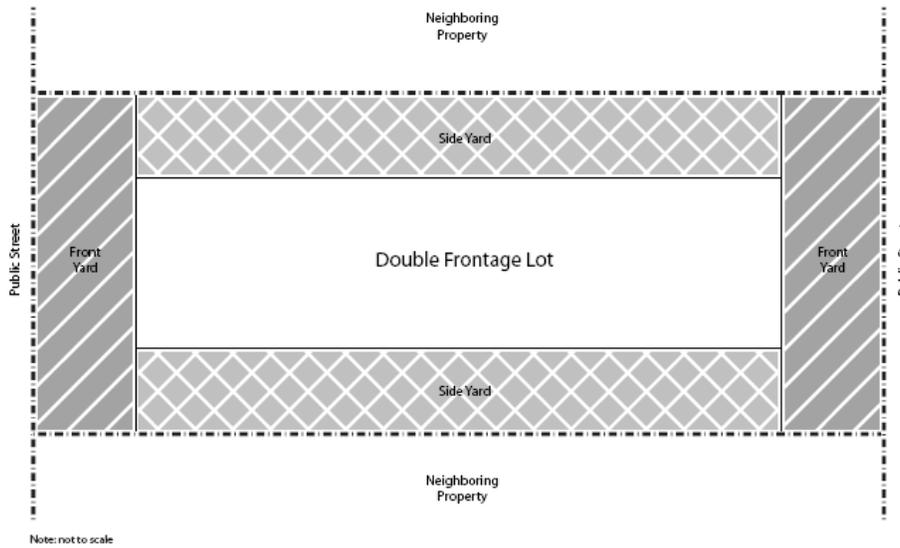
Figure 17.60.020-4
Corner Lot



"Lot depth" means the mean distance between the front lot line and the rear lot line measured in the main direction of the side lines of the lot. (Ord. 442 § 2, 1989)

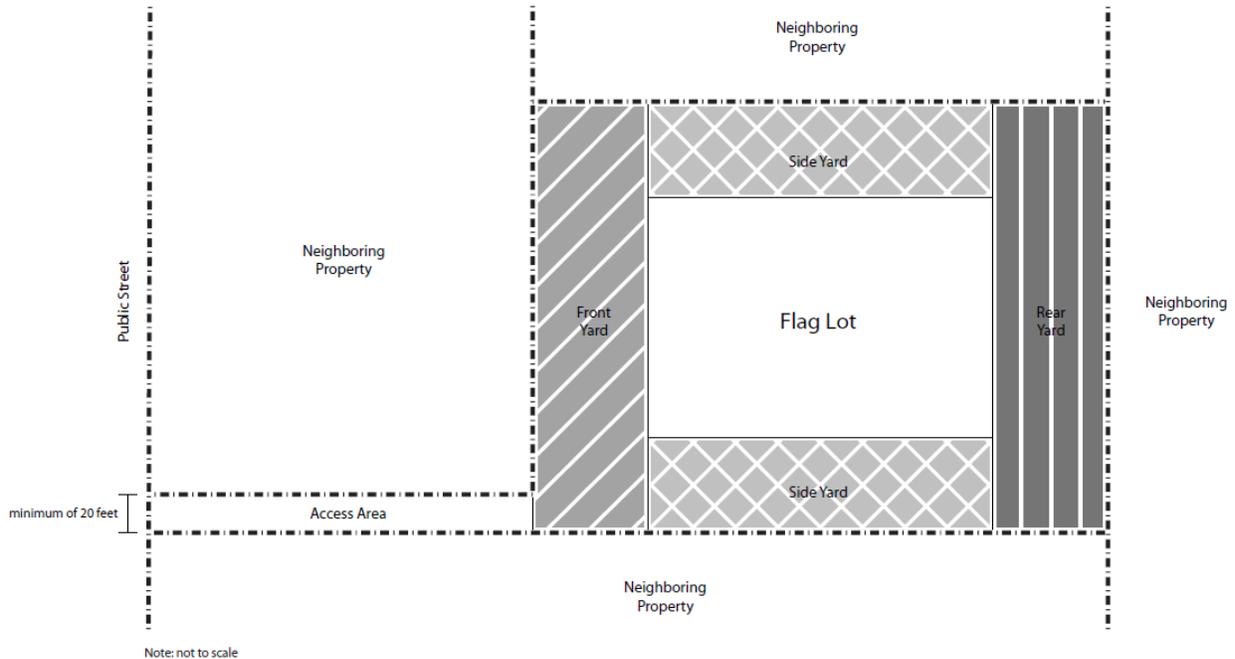
"Lot, double frontage" means an interior lot bounded by two or more abutting street lines that do not intersect. See figure 17.60.020-5 (Double Frontage Lot).

**Figure 17.60.020-5
Double Frontage Lot**



"Lot, flag" means a lot having access to a street by means of a private driveway or parcel of land (known as the access area) not otherwise meeting the requirements of this title for lot frontage. Width of the access area shall be measured at right angle to the side line of the access area. (Ord. 407 § 16-16, 1985) See figure 17.60.020-6 (Flag Lot).

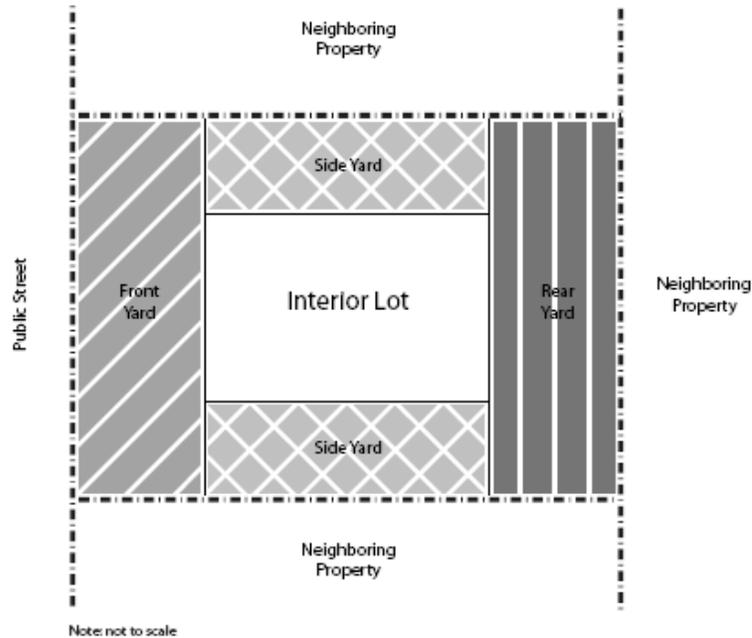
**Figure 17.60.020-6
Flag Lot**



"Lot frontage" means that boundary of a lot along a public right-of-way. (Ord. 407 § 16-18, 1985)

"Lot, interior" means a lot other than a corner lot abutting only one street. (Ord. 407 § 16-20, 1985) See figure 17.60.020-7 (Interior Lot).

**Figure 17.60.020-7
Interior Lot**



"Lot line, front" means that boundary of a lot's narrowest portion abutting a public street or access area in the case of a flag lot, except where a different front has been previously officially designated or recognized by the town. (Ord. 407 § 16-19, 1985)

"Lot line, rear" means the lot line or lines most nearly parallel to and most remote from the front property line. (Ord. 442 § 3, 1989; Ord. 407 § 16-21, 1985)

"Lot width" means the width measured at right angles to its depth at the front line of the building area. (Ord. 407 § 16-22, 1985)

"Main building" means a building or buildings containing the principal use of the building site. (Ord. 449 § 1, 1989)

"Main building area" (front, interior side, street side, and/or rear) of a lot is the horizontal plane between the minimum setbacks of the respective yard.

"Natural grade" shall mean the original condition of the ground surface as it existed prior to mechanical grading or disturbance. Where the original condition of the ground surface cannot be determined, the town planner may approve a topographic survey of the property prepared by a registered civil engineer or licensed land surveyor indicating the approximate original condition of the ground surface of the site as can best be determined from record and survey data.

"Nonconforming building" means a building that does not conform to the current regulations of the district in which it is located. (Ord. 407 § 16-23, 1985)

"Nonconforming structure" means a structure that does not conform to the current regulations of the district in which it is located. (Ord. 407 § 16-24, 1985)

"Nonconforming use" means a use that does not conform to the current regulations for the district in which it is located. (Ord. 407 § 16-24, 1985)

"Rezoning" means a zoning designation, formally adopted by the town, that applies to property owners outside of the existing town limits in advance of annexation of the area into the town.

"Private school," for zoning purposes, means a building, group of buildings, or any tract of land or lot used for play, instruction, or care of children other than at public expense. (Ord. 407 § 16-25, 1985)

"Public hearing:" A meeting held by the approval authority (i.e., the planning commission or city council) that is open to the public and at which the approval authority transparently deliberates a planning entitlement or other land use matter and accepts testimony from the public as required by the provisions of this title or state statute. During a public hearing, the applicant for a project and all other persons shall have the right to be represented, provide testimony, and present evidence. Following the completion of testimony at a public hearing, action shall be taken by the approval authority to approve, conditionally approve, deny, continue, or take under advisement the subject of the public hearing. The public shall be provided with advance notice of all public hearings in compliance with state law, as applicable. See section 17.06.090 (Public Hearings) for more information.

"Public school," for zoning purposes, means a building, group of buildings, or any tract of land or lot used for play, instruction, or care of children at public expense. (Ord. 407 § 16-26, 1985)

"Quasi-judicial decisions" means decisions typically involving some level of discretion or policy determination on the part of the approval authority and require making a set of findings as part of the approval process. A public hearing is held, evidence is weighed, and conclusions are drawn. The approval authority uses this information as the basis for its decision.

"Rear line of main building" means the line touching the rear most point of the main building that is at right angle to the line connecting the midpoints of the front and rear lot lines.

"Reasonable accommodation for accessibility" means a planning permit that provides a process for individuals with disabilities to make requests for reasonable accommodation for relief from the various zoning rules, policies, practices, and/or procedures of the town.

"Retaining wall" means a structurally designed and engineered wall, the primary purpose of which is to retain earth material in an excavated or filled area.

"Rezoning" means a planning permit that changes the zoning designation on a piece of property within the town as recorded on the official zoning plan.

"Ridge line" means the highest point of the roof. Where the roof consists of two sloping roof surfaces, the ridge line is the line at the intersection of the upper edges of the two sloping roof surfaces.

"Second dwelling unit" means a building or portion of a building designed for use and occupancy by people living independently of the occupants of the main residence building and containing separate kitchen, bath, sleeping, or living facilities. (Ord. 544 § 1, 2003; Ord. 407 § 16-38, 1985)

"Shielded and downlit" means that the lamp that emits the light is hidden from view by an opaque shade so that only cast light is visible, not the lamp or bulb itself, and that all cast light is lower than the bottom of the opaque shade.

"Side wall" means any wall not parallel to the end wall. A sidewall shall be measured from the average natural grade to the base of the roof plate directly above. (Ord. 512 § 3, 2000; Ord. 456 § 4, 1990)

"Single family dwelling" means a building designed for use and occupancy by no more than one individual, family, or group of individuals. (Ord. 407 § 16-36, 1985)

"Solar facilities" means panels that are used for the conversion of sunlight into electricity. This includes solar hot water heaters, which are facilities that use sunlight to heat water.

"Special Event" is an activity sponsored by one (1) or more organizations, individuals, or other entities, held at one (1) or more locations within the town to which the general public is invited. (Ord. 559 § 2 (part), 2005)

"Special structures permit" means a planning permit that provides a process for the review of special and specific buildings and structures to ensure compatibility with surrounding areas and uses.

"Staff-level decisions" means decisions that require limited interpretation or exercise of policy or legal judgment in evaluating approval criteria because the decision is made according to specific criteria where no discretion is involved. Examples include zoning clearance as part of an application for a building permit.

"Story" means a horizontal section of a building with a single continuous or primarily continuous floor including all rooms on the same floor or level of a building. (Ord. 407 § 16-28, 1985)

"Story, first" means the first horizontal section of a building located above the natural grade.

"Street line" means the boundary line between a public or private street, road or way, and a lot or parcel of land. (Ord. 407 § 16-29, 1985)

"Structure" means anything constructed or erected, the use of which requires attachment to the ground or attachment to something located on the ground.

"Substantially open" means a structure or portion of a structure that is fifty (50) percent open to the passage of light and air in all aspects. (Ord. 478 § 1(B), 1994)

"Use" means the purpose for which land or a building thereon is designed, arranged, or intended or for which it is or may be occupied or maintained. (Ord. 407 § 16-31, 1985)

"Under-floor area" (a.k.a. crawl space) is the space below the first floor in a building that has a ceiling height not more than seven (7) feet, measured from the floor surface to the bottom of the

floor joists above. A space below the first story in a building having a ceiling height greater than seven (7) feet may be considered an under-floor area when the natural grade in the under-floor space slopes more than two (2) percent due to hillside topography. In these cases, the area may be considered an under-floor area due to its non-usability features of not having a level floor surface. Once a sloped under floor area (or portion of such area) is excavated to achieve a ceiling height of seven (7) feet minimum and the space contains a relatively level floor surface (<2%), then the space will be considered a basement. Under-floor areas are considered restricted use areas and may not be used as habitable space. The area cannot be finished to look as if it were going to be used as habitable space.

"Variance" means a planning permit that provides a process to request exceptions to the development standards and provisions of this title in cases where, because of special circumstances applicable to the property, the strict application of this title deprives such property of privileges enjoyed by other property in the vicinity within identical land use zoning districts.

"Yard" means an open space on the same lot with a building that is unoccupied and unobstructed from the ground upward, except as otherwise permitted in this title. (Ord. 407 § 16-32, 1985)

"Yard, front" means the yard extending across the full width of the lot adjacent to the front lot line and measured from that line to the nearest line where the main building is permitted. (Ord. 407 § 16-33, 1985)

"Yard, rear" means the yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line where the main building is permitted. (Ord. 407 § 16-34, 1985)

"Yard, side" means the yard lying between a side lot line and the nearest line where building is permitted, and extending from the front yard to the rear yard. (Ord. 449 § 3, 1989; Ord. 442 § 5, 1989; Ord. 407 § 16-35, 1985)

"Zoning clearance" means an administrative process, completed as part of the building permit review or similar administrative permit issuance or as required for all new fences and walls, that ensures the proposed activity or construction is consistent with applicable sections and standards of this title. See chapter 17.08 (Zoning Clearance) for more information.

"Zoning code amendment" means a planning process for approving an amendment to this title, including the Atherton Zoning Plan.

"Zoning code interpretation" means the process for clarification of ambiguity in the regulations of this title in order to provide consistent interpretation and application. See chapter 17.10 (Zoning Code Interpretations).

"Zoning plan" – see "Atherton Zoning Plan."



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JEROME D. GRUBER, CITY MANAGER.

DATE: FOR THE MEETING OF AUGUST 19, 2009

SUBJECT: AWARD OF CONTRACT TO THE LEW EDWARDS GROUP
FOR PROFESSIONAL PUBLIC INFORMATION
CONSULTING SERVICES IN AN AMOUNT NOT TO
EXCEED \$15,500.00

RECOMMENDATION:

The City Manager requests that the City Council approve a professional services agreement with The Lew Edwards Group for professional public information consulting services related to public education of services, policy, and programs provided by the Town and that the City Council authorize the City Manager to execute an agreement in the amount not to exceed \$15,500.00.

INTRODUCTION:

On Wednesday, August 5th and Thursday, August 6th, 2009 the Mayor, City Manager and Deputy City Clerk interviewed three (3) professional public information consulting firms: The Lew Edwards Group, Tramutola and TBWB to assist the Town of Atherton with public information services related to public education of services, policy, and programs provided by the Town.

After interviewing all three firms it was decided, based on qualifications, references and cost, to select The Lew Edwards Group to assist the Town of Atherton with public information services.

The Lew Edwards Group has included Exhibit C (Outreach Budget) as an option to the Council. Staff is preparing to use the Fall edition of the Athertonian to educate the public about the parcel tax. The Athertonian will be a 4-page special edition which will be fully dedicated to the parcel tax. All consultant firms that were interviewed recommended at least one to two outreach mailings. Council can choose to do only an Athertonian mailing which would save the Town the cost of informational mailing through a consultant or Council can choose to go with the informational mailing through the consultant for additional cost not to exceed \$7,000.

If Council chooses not to accept the outreach budget the consultant will still work with Town in gathering and embedding information for the Athertonian.

ANALYSIS:

Firm	Cost of Proposal
The Lew Edwards Group	\$15,500.00 (excluding mailings)
The Lew Edwards Group	\$22,500.00 (including mailings)
Sidewalk Strategies/Tramutola	\$24,300.00 (includes mailings)
TBWB	\$24,350.00 (includes mailings)

FISCAL IMPACT

The consulting service will cost \$15,500.00. If Council chooses, the consultant can include an outreach budget not to exceed \$7,000.00 for a total of \$22,500.00. Currently, the amount is not budgeted in FY 2009-10 General Fund operating budget. A mid-year budget adjustment will be needed to cover this expenditure.

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of _____, _____ by and between the TOWN OF ATHERTON, herein called the "Town", and The Lew Edwards Group, herein called the "Consultant".

Recitals

WHEREAS, Town desires to obtain public information consulting services in connection with the current parcel tax and ballot measures; and

WHEREAS, Consultant hereby warrants to the Town that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, Town desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. Town. The City Manager or his/her designee, shall represent Town for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Catherine Lew and Jennifer Root to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services

A. Scope of Services. Subject to such policy direction and approvals as the Town through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference. An optional scope of services is attached as Exhibit A-1.

B. Time of Performance. The services of Consultant are to commence no sooner than August 20, 2009 and be completed not later than November 3, 2009.

C. Standard of Quality. Town relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit B, and incorporated herein by reference. However, in no event shall the amount Town pays Consultant exceed Fifteen thousand five hundred Dollars (\$15,500.00). Payment by Town under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the Town at the time of payment.

B. Timing of Payment.

Installment payments will be tied to completion of tasks so that all payments are proportional to the work completed. A copy of the progress payment schedule is attached to the rate and schedules set forth in Exhibit B.

Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

C. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

D. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

E. Litigation Support. Consultant agrees to testify at Town's request if litigation is brought against Town in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, Town will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by Town and not part of the litigation brought by Town against Consultant.

5. Amendment to Scope of Work. Town shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the Town. Failure of the Consultant to secure Town's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate Town authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish Town with every reasonable opportunity for Town to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in Town, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the Town. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to Town without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of Town during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the Town.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of Town, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the Town. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the Town in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the Town or of any Town official, other than normal contract monitoring; and

(2) possesses no authority with respect to any Town decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of Town. No member of the Town and no other officer, employee or agent of the Town shall be personally liable to Consultant or otherwise in the event of any default or breach of the Town, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the Town), indemnify, and hold harmless the Town, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of Town. The Town has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement.

13. Consultant Not an Agent of Town. Consultant, its officers, employees and agents shall not have any power to bind or commit the Town to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of Town; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to Town's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations.

Consultant represents and warrants to Town that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a Town business license. The Town is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the Town's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. Town Not Responsible. Town is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against Town, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the Town.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the Town, or as required by law.

17. Assignment; Subcontractors; Employees

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the Town's prior written consent. Any assignment without such approval shall be void and, at the Town's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the Town as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be

responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (One Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The Town of Atherton, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) “This policy shall be considered primary insurance as respects any other valid and collectible insurance the Town may possess, including any self-insured retention the Town may have, and any other insurance the Town does possess shall be considered excess insurance only and shall not contribute with it.”

(c) “This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company.”

(6) Consultant shall provide to Town all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with Town on or before commencement of performance of this Agreement. Town reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Town, its officials, officers, agents, employees, and volunteers.

(8) Consultant’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days’ prior written notice by certified mail, return receipt requested, has been given to Town. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best’s rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. At the Town’s option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the Town with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the Town upon 5-days’ written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, Town may terminate this

Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the Town shall deduct from such amount the amount of damages, if any, sustained by Town by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by Town without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the Town. Consultant, however, shall not be liable for the Town's use of incomplete materials nor for the Town's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The Town shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the Town and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the Town and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in

employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. Town Not Obligated to Third Parties. The Town shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work
- A-1. Exhibit A-1: Optional Scope of Work
- B. Exhibit B: Schedule of Performance

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the Town.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of San Mateo, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement as of the date first above written.

TOWN OF ATHERTON

CONSULTANT

By: _____
City Manager

By: _____
Title: _____

Date:

Date:

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

EXHIBIT A

Scope of Work

[to be inserted]

EXHIBIT B

Schedule of Performance

[to be inserted]

EXHIBIT C

Compensation

[to be inserted]

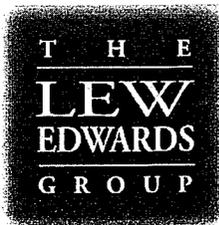


EXHIBIT A -- SCOPE OF SERVICES

Consultant will develop nonpartisan, informational materials on the Town of Atherton's fiscal and service delivery challenges, including information about existing revenue generated by the current Town Parcel Tax. Consultant will:

- Develop messages for use in Town's educational outreach vehicles. Information will include budgetary and service information affecting local residents, including services funded by Town revenues and/or its Parcel Tax.
- Work with Town staff to imbed information in all existing Town communications vehicles, including Town newsletters, guest columns, copy for links on the Town website, and informational Power Point Presentations for community presentations. Consultant will provide first drafts of all materials, for the review and approval of Town.
- Recommend methods to conduct informational outreach with community networks and organizations in Town to provide information and advise Town staff on the best manner of responding to questions from the public. Consultant will develop concise, user-friendly messaging and materials.
- As Town's budget permits, work with Town staff to produce additional informational mailings and materials. Should the Town's budget permit additional outreach mailings, Consultant can facilitate production of these mailings with Consultant's vendors.
- Consultant will review earned (non-paid) local media and/or Internet media opportunities with Town staff as a method for disseminating necessary information.
- Consultant will advise Town staff and assist in rapid response to problematic media or citizen inquiries as necessary to correct misinformation or clarify confusing information. Consultant will be available to craft rapid responses as necessary.

RECOMMENDED NOVEMBER 2009 PUBLIC INFORMATION TIMETABLE

This is a recommended project timetable subject to revision, based on the strategic planning needs of the project and with the consultation of the City. All recommended activities are factual and nonpartisan in nature. The City cannot engage in any partisan or advocacy activities.

AUGUST 2009	<ul style="list-style-type: none"> <input type="checkbox"/> Select Public Information Consultant (Town) <input type="checkbox"/> Review City's recent Public Opinion Research <input type="checkbox"/> Review additional Parcel Tax background materials <input type="checkbox"/> Convene Kick-Off Team Planning Session <input type="checkbox"/> Develop Public Information Recommendations <ul style="list-style-type: none"> • Refine Project Timetable as needed • Recommend Communications Messages • Recommend Mailing Budget as appropriate <input type="checkbox"/> Assess and update Database of Opinion Leaders (Town) <input type="checkbox"/> Identify community organizations for informational presentations (Town)
SEPTEMBER 2009	<ul style="list-style-type: none"> <input type="checkbox"/> Draft Opinion Leader Letter #1 <input type="checkbox"/> Mail Opinion Leader Letter #1 (Town) <input type="checkbox"/> Develop additional Public Information Materials <ul style="list-style-type: none"> • FAQs • Website Copy • Speakers' Bureau Presentation <input type="checkbox"/> Develop Speakers' Bureau Toolkit <input type="checkbox"/> Conduct Message Training <input type="checkbox"/> Schedule informational presentations (Town) <input type="checkbox"/> Place LEG-drafted messaging on Town Website (Town) <input type="checkbox"/> Implement Earned Media and Rapid Response as needed <input type="checkbox"/> Begin to draft community-wide informational mailer #1
OCTOBER 2009	<ul style="list-style-type: none"> <input type="checkbox"/> Draft Opinion Leader Update #2 <input type="checkbox"/> Issue Opinion Leader Update #2 (Town) <input type="checkbox"/> Produce and mail community-wide informational mailer #1 in first week of October <input type="checkbox"/> Continue Informational Presentations (Town) <input type="checkbox"/> Draft, produce and mail community-wide informational mailer #2 by last week in October <input type="checkbox"/> Implement Earned Media as appropriate <input type="checkbox"/> Deploy Rapid Response as needed
NOVEMBER 2009	<ul style="list-style-type: none"> <input type="checkbox"/> Election Day <input type="checkbox"/> Project Assessments and Wrap-Up (Team)

OPTIONAL

EXHIBIT A-1 – OUTREACH BUDGET

Not to Exceed Seven Thousand Dollars (\$7,000) for costs associated with Town informational mailings, which are strongly recommended by Consultant.

This budget would allow for the production and mailing of one jumbo card (at the approximate cost of \$5,000) and one-two lower-tech mailings, such as letters in envelopes. If Town has adequate supplies (stationary/envelopes) on hand, the balance of \$2,000 would easily cover the cost of bulk postage for two such letters.

EXHIBIT B – PROFESSIONAL FEES

Not to Exceed Fifteen Thousand Dollars (\$15,500) for professional services shall be payable to The Lew Edwards Group as follows:

- Seven Thousand, Five Hundred Dollars (\$7,500) in two installments due and payable on September 30 2009 and October 30 2009; and
 - Out of pocket expenditures in the amount Not to Exceed Five Hundred Dollars (\$500) for routine expenses such as mileage, bridge tolls, messenger, and teleconferencing expenses, upon invoice.
-



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

**FROM: JEROME D. GRUBER, CITY MANAGER
WYNNE FURTH, CITY ATTORNEY**

DATE: FOR THE MEETING OF JULY 15, 2009

**SUBJECT: THE SAN MATEO COUNTY LIBRARY SYSTEM JOINT
POWERS AGREEMENT AND THE PROCEDURES FOR THE
SPENDING OF, AND PERMITTED USES OF, "DONOR
FUNDS" ATTRIBUTABLE TO THE TOWN OF ATHERTON**

RECOMMENDATION:

The City Manager and City Attorney recommend that the City Council receive and file this report and provide any further direction to Staff.

BACKGROUND

As of June 30, 2009, The Town of Atherton holds approximately \$4,000,000 in "Donor City Funds" to be used exclusively for library purposes. The Town's finance director reports that the fund balance is expected to increase to approximately \$4,600,000 by the end of the current fiscal year. A portion of this fund is used each year to pay for library maintenance; the annual cost is estimated at less than \$50,000 per year, (often substantially less), and the annual earnings are estimated at approximately \$20,000. However, it is expected that the library facilities will need substantial work in the future. You have asked for a report on the lawful purpose for which these funds may be expended and the decision-making procedure which applies. The Town has made no decisions on whether or how these funds should be used, and this memorandum makes no assumptions or recommendation on that topic.

History of the JPA: In 1999, the Town of Atherton entered into a joint powers agreement with the County of San Mateo and ten other cities ("the JPA cities") for the provision of library services through the San Mateo County Library System ("Library JPA.") A copy of the 1999 JPA agreement is attached to this report as Exhibit A. This agreement was revised and restated in 2004. The 2004 JPA Agreement is attached to this report as Exhibit B. Under these agreements, Atherton provides and maintains a library building; the Library JPA operates the library program, using County employees to do so.

San Mateo County has operated a library system since 1912. Before the passage of Proposition XIII, the San Mateo County Free Library System, which was governed by the Board of Supervisors of the County of San Mateo, had the power to levy and collect real property taxes in its own name. After Proposition XIII passed, all local agencies lost the power to set and collect real property taxes. Instead, the proposition established a uniform state-wide tax rate of one percent without allocating any particular share to any particular taxing entity. The State of California then passed legislation allocating shares of revenue to the various agencies that had previously received property taxes, generally in proportion to their previous share of total property tax revenue. The Free Library System was allocated a portion of the real property taxes, and this levy continues to appear on the property tax bills for member cities in the Library JPA and the unincorporated area of the County.

By 1990, the Free Library System was reducing services because of revenue shortages. The JPA cities found this unsatisfactory and entered into discussions with the County on how to remedy the problem. The general approach was to have the JPA cities and the County provide and maintain library buildings, while the JPA funds would be used for operations. As described in Article XII and Exhibit A of the 1999 JPA, library materials, furniture, and equipment would be the property of the Library System; libraries owned by the County but located in member cities would be transferred to those cities, libraries owned by the County and located in unincorporated areas would remain the property of the County, and the city-owned libraries in Atherton, Belmont, Brisbane, Foster City, Millbrae, Portola Valley and San Carlos would remain the property of those cities. The cities would have sole responsibility for the maintenance and repair of their respective libraries. That is, the cities not only provided library buildings upon the establishment of the Library JPA, they agreed to keep bear the costs of keeping those facilities available and in good repair.

The 1999 JPA also dealt with the fact that, in some cities, the revenues collected for the Free Library System exceeded the cost of providing services in that city. Section XIV C. provided:

Notwithstanding any other provision of this agreement for each fiscal year the library service revenue allocated to libraries in each city shall

not be less than the estimated library property tax revenue attributable to property located in the city. It shall be the responsibility of the Governing Board to develop a budget which guarantees this provision. In the event that the allocated library service revenue exceeds the amount required to maintain the minimum library service hours for each city as described in this agreement, such excess funds shall be spent on library related activities with that city including, but not limited to, facility maintenance, facility remodeling and expansion, increased service hours, or increased book purchases. Before expending such excess funds, the Governing Board shall solicit the views of the affected City council and such views shall be given substantial weight in any Governing Board decision.

Under the agreement, the County agreed to contribute funds for library purposes as well, because of the needs of the residents of unincorporated areas of the County. It is our understanding that the budget for Atherton's branch does not include a county contribution even though it provides services to unincorporated areas of the County.

In 2004, the Library JPA was revised, restated, and readopted by its member agencies ("2004 JPA.") No change was made in the ownership of real property; Atherton continued to own its library building. The power to manage the budget, including the San Mateo County Free Public Library property tax, remained with the Library Governing Board. However, the provision on spending the "excess" real property taxes was modified:

Notwithstanding any other provision of this Agreement, for each fiscal year the library service revenue allocated to libraries in each city shall not be less than the estimated library property tax revenue attributable to property located in that city. It shall be the responsibility of the Governing Board to develop a budget which guarantees this provision. In the event that the allocated library service revenue exceeds the amount required to maintain the minimum library service for each city as described in this Agreement, *such excess funds shall be spent on library related activities within that city (hereinafter, "Donor City"), including but not limited to, facility maintenance, facility remodeling or expansion, increased service hours, or increased book purchases, as mutually agreed by the Library JPA and the city council of the affected Donor City.*

Article VI, Section B, Revenues.

In summary, in 2004 document changes the unilateral power of the Library JPA to spend Donor City Funds to a power shared by the Library JPA Governing Board the City Council.

Originally, the JPA held any excess funds in its own accounts; more recently it transferred these funds to the custody of the various Donor Cities. These funds are spent each year as agreed by the Library JPA and the City Council. Atherton has used some of these funds to pay for maintenance of the library facilities, and obligation that would otherwise fall on the Town's general fund.

JPA Inquiry, Recommendation, and Opinion. In July of 2008 Council Member Marsala reported to the Council that he had asked the Library JPA board to agendize consideration of the library reserve funds and how they could be used. The matter was placed on the August Governing Board meeting. At that time, the Atherton funds were estimated to be \$3.2 million. The staff report noted that the Town of Atherton had expressed interest in using donor city funds to remodel and/or expand the current Atherton Library. The minutes of the meeting report that Council Member Marsala made a motion that:

"Atherton should be allowed to use donor city funds for purposes of acquiring existing lands and buildings to expand the library." The Board unanimously approved the motion pending the outcome of the following: (1) Legal counsel examination of the proposal to identify any conflicts of interest with respect to these funds, (2) Operations Committee examination of the proposal to insure that the project adheres to funding guidelines.

John Shupe, counsel to the Library JPA, prepared an opinion dated November 24, 2008. Mr. Shupe focused particularly on the question of whether Donor City Funds might be used to purchase from Town-owned property for conversion to library use. Mr. Shupe noted that the Library JPA operates under the provisions of state law applicable to the San Mateo County Free Library as established under Education Code Section 19400. Education Code Sections 19400 and following govern library districts; section 19464 authorizes district boards to purchase real property and erect or rent and equip buildings and rooms as it deems proper to carry out district purposes.

Mr. Shupe concluded that with consent of the Council and the Library JPA, Atherton Donor City Funds could lawfully be spent to acquire land and/or buildings for library purposes, but not property that the Town already owns. He did not cite any specific authority for this conclusion. In recent discussions with the City Attorney, he pointed out that the Library JPA has not had the occasion to consider the details of such a transaction, such as which entity would own the land and what conditions might be desirable to assure that the land (or is value) remained

dedicated to library purposes. While it is clear to everyone that the Donor City Funds can only be used for library purposes, it is not as obvious how Atherton's obligation to provide and maintain a library building at its own expenses is affected by its right, with the consent of the Governing Board, to use those funds for "facility maintenance, facility remodeling or expansion."

The City Attorney has concluded that nothing in state law bars a library district from buying land from another government agency, including a city within the district. However, that land would belong to, or be leased by, the library district; under state law, cities and town within a district have no obligation to provide library buildings. The Library JPA operates differently: member agencies own and maintain library buildings at their own expense. The exception to the general rule that JPA cities pay for maintenance and capital improvements to library buildings is that Donor City Funds can be used to pay for maintenance, expansion, and remodeling of library buildings. Reading the 1999 and 2004 JPA agreements together, it seems that an implied term of the Library JPA is that Atherton agreed to provide the existing library building for library operations. Donor City Funds can be used to keep that building in shape, to remodel it, and to expand the library program, either in that building or elsewhere.

The Town and the Library JPA may legally collaborate on new or remodeled facilities and use Donor City Funds to pay for *upgraded and expanded* library facilities, either at the current library or elsewhere. However, the Library JPA assumes that the original level of Town-donated library facilities will be provided without use of Donor City Funds, except for maintenance. For this reason, remodels and expansions are listed as permitted capital expenditures, but not the substitution of library-tax funded facilities for Town-donated facilities.

Atherton is unique among JPA cities in having several million dollars in its Donor City Fund. There is no precedent in determining how these funds can and should be spent for capital projects, however the process is fairly clear. The Library JPA is conducting a library needs assessment as part of its planning process, and the Town is studying the redevelopment of its Town Center. The Governing Board and the City Council have shared decision-making responsibility. It may be that the restoration work needed simply to maintain and improve the existing library would absorb the Donor City Funds. The Donor City Funds may also provide funding for an expanded library program that might be integrated with other civic buildings.

/s/ Jerome D. Gruber

/s/ Wynne Furth

Jerome D. Gruber, City Manager

Wynne Furth, City Attorney

Attachment A: 1999 Joint Powers Agreement

Attachment B: 2002 Joint Powers Agreement

**JOINT POWERS AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
THE CITIES OF ATHERTON, BELMONT, BRISBANE, EAST PALO ALTO, FOSTER
CITY, HALF MOON BAY, MILLBRAE, PACIFICA, PORTOLA VALLEY, SAN
CARLOS, AND WOODSIDE, RELATING TO LIBRARY SERVICES**

This is an agreement between the County of San Mateo and the cities of Atherton, Belmont, Brisbane, East Palo Alto, Foster City, Half Moon Bay, Millbrae, Pacifica, Portola Valley, San Carlos, and Woodside (hereinafter "Parties"), relating to the joint exercise of powers over library services throughout the San Mateo County Library System.

WHEREAS, the San Mateo County Free Library System (hereinafter the "Library System"), which is comprised of the unincorporated area of the County and of the other Parties, has authority to provide library services within its jurisdiction, and is governed by the San Mateo County Board of Supervisors; and

WHEREAS, the Parties have independent authority to provide library services within their jurisdictions; and

WHEREAS, the provision of library services to the residents of the unincorporated area of the County and of the other Parties is enhanced and made more efficient by a coordinated program among the public entities who comprise the Library System; and

WHEREAS, the Joint Powers Law (Government Code §6500 et. seq.) permits public entities, after receiving the prior consent of their respective legislative bodies, to jointly exercise powers common to the contracting parties, including the power to provide for library services; and

WHEREAS, the County Service Area Act (Government Code §25210 et. seq.) provides for alternative methods of providing for services within unincorporated areas of the County and within

those cities which choose to participate in a County Library Service Area (hereinafter "Service Area"); and,

WHEREAS, the Parties may request the San Mateo Local Agency Formation Commission (LAFCO) to approve the creation of a County Library Service Area to include the unincorporated area of the County and other Parties, to provide library services.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN, the parties to this agreement agree as follows:

I. Establishment of Library Joint Powers Authority; Purpose of Agreement.

A. Joint Powers Authority Created.

The parties to this agreement, with the consent of their respective legislative bodies, hereby join together for the purpose of providing extended library services within their communities and by establishing a Library Joint Powers Authority (hereinafter "Library JPA") to exercise the powers described herein. The Library JPA shall be an entity which is separate from the parties to this agreement and shall be responsible for the administration of this agreement. Except as otherwise provided herein, the debts, liabilities and obligations of the Library JPA shall be the debts, liabilities and obligations of the entity and not the debts, liabilities, and obligations of the parties to this Agreement.

B. Purpose and Functions of the Library JPA.

1. Provide policy direction and governance for the San Mateo County Free Library System.

2. Carry out the functions required by Joint Powers Authority Agreement.
3. Approve the budget and disposition of revenues for Library System Services.
4. Approve and oversee the services and programs of the Library System.

C. Library JPA Operating Rules and Restrictions - Designation.

The Library JPA shall operate under and be governed by the rules and regulations and legal restrictions and requirements applicable to the County.

D. County Service Area

The parties by execution of this Joint Powers Agreement also hereby consent to the initiation of and the formation of a County Service Area for library purposes.

II. Additional Parties.

The parties agree that additional cities may become parties to this Agreement on such terms and conditions as may be approved by a majority of the members of the Library Joint Powers Governing Board (hereinafter "Governing Board"). One condition to participation shall be that all Parties and their residents shall have reciprocal access to library facilities, materials and services of all other Parties.

III. Term of Agreement; Termination and Withdrawal.

This Joint Powers Agreement shall commence upon its execution by the County and a majority of the Cities listed on page one of this Agreement. The Agreement shall continue, uninterrupted, until two-thirds of the members vote to terminate the Agreement. An individual Party

may withdraw effective at the end of the fiscal year from this Agreement upon the giving of written notice by December 31st of its intent to withdraw from the JPA effective July 1st of the following fiscal year. For purposes of this JPA, the fiscal year shall run from July 1st of one calendar year to June 30th of the following calendar year. The withdrawal of any Party from this Agreement shall in no way affect the rights and obligations of the remaining Parties. If a Party withdraws from this agreement, such Party shall not be entitled to the return of any funds contributed to the JPA nor to the return in cash or in kind of any materials or supplies and such party shall take on the obligation to provide library services to its residents.

In the event a Party fails to make any required contribution as set forth in a budget approved in accordance with section XIV of this Agreement or otherwise fails to approve the budget adopted by the Governing Board, the Party shall not receive services to be paid for by that party's required contribution.

IV. Disposition of Property Upon Termination.

Upon termination of this Agreement, any surplus money on hand shall be returned in proportion to the contributions made by the Parties who are still active members at the time of termination. Upon termination, title to all property, including facilities, buildings, materials and equipment owned by a Party upon execution of this agreement shall remain in the ownership of that Party, except as otherwise provided by this Agreement. All property acquired by the JPA during the term of this agreement shall become the property of the County Free Library System. Parties shall retain the right to acquire capital outlay items to be used by the JPA with ownership retained by the Party.

V. Creation of Governing Board; Composition.

There hereby is created the Library Joint Powers Governing Board which shall administer this agreement. The Governing Board shall be comprised of one representative from each Party, selected by the Party from the elected legislative body of that Party. Each Party may designate one alternative representative who will be a member of that Party's legislative body. The selection process and length of tenure for each Governing Board representative and any alternate shall be determined by the governing body of each Party. Governing Board representatives shall serve without compensation. The policies of the Library System shall be directed by the Governing Board.

VI. Actions of the Governing Board.

Actions of the Governing Board shall be taken only if a quorum is in attendance and shall be effective upon approval of a majority of the members present. The Governing Board shall select a chairperson and vice-chairperson and shall meet at least annually to consider and approve the operating and capital budget of the Library JPA for the next fiscal year and to elect officers. The Board may also hold other special meetings as convened by the Chairperson.

VII. Powers of Governing Board.

The JPA, through its Governing Board, may acquire, purchase, lease, own or dispose of property and equipment, and make and enter contracts, as may be required to meet the purposes of this agreement. It may employ agents and employees, operate public works improvements and facilities, sue and be sued in its own name, incur debt, and invest surplus funds.

The Governing Board may delegate any or all of these powers, except the power to sue and be sued, to the Operations Committee or County Librarian for purposes of program development and implementation or policy formulation.

VIII. Operations Committee.

An Operations Committee shall be responsible for administration and oversight of the day to day operations of the Library System, working through the County Librarian. The Operations Committee will be comprised of the Chief Executive Officer of each Party, or his/her designee and will serve without consideration of terms or tenure and without additional compensation. The Operations Committee will meet at least quarterly, but may meet more often, upon the call of its Chairperson, as needed.

IX. Notice of Meetings.

Notice of the time and place of all regular meetings shall be given in accordance with the Brown Act and shall be posted in all community libraries in the County Library System. The County Library and Governing Board Chairperson shall be responsible for preparation and posting of the Board's agenda in compliance with the Brown Act. The County Librarian and the Operations Committee Chair shall be responsible for the preparation and posting of the agenda for the Operations Committee in compliance with the Brown Act.

X. Quorum.

A majority of the members of the Governing Board and of the Operations Committee shall constitute a quorum at any regular or special meeting of the Governing Board or Operations Committee respectively. A majority of affirmative votes of those present are necessary for action to be taken.

XI. Employees and Support Services.

The County Librarian shall be appointed and employed by the County of San Mateo. The JPA for a minimum period of five years shall contract with the County to provide staff services to the

Library System and such staff shall be subject to the County's labor agreements and personnel rules. The costs of such services shall be paid for from JPA funds. The County will consult with the JPA Governing Board regarding any personnel rule changes. The JPA also may contract with any other party or may employ its own personnel for additional personnel services deemed necessary.

The Governing Board may contract to provide other administrative services such as legal, purchasing, payroll, budget and other support services to the Library System JPA with the costs of these services paid for from JPA funds.

XII. Property.

A. Ownership of and responsibility for real property shall be as described in Exhibit A attached and incorporated by this reference.

B. The materials in the Library collection and all furniture and equipment used for Library services shall be and remain the property of the Library System on termination of this Agreement except as otherwise provided in Section IV. Insurance for this material is the responsibility of the Library System.

XIII. Library Policies.

All policies relating to the provision of library services, including hours, organization, staffing levels and type, and other services, shall be determined by the Governing Board, unless specifically delegated to the Operations Committee. Current policies with respect to the library shall continue in full force and effect until changed by the Governing Board or Operations Committee, if so delegated by the Governing Board. In addition, the Library System remains subject to general State laws with respect to libraries, including Education Code section 19146 which vests power to select materials in the County Librarian.

XIV. Financial Provisions.

A. Adoption of Annual Budget.

The Board shall adopt by July 1st of each year an annual operating budget for the JPA setting forth anticipated expenses, financing sources and proposed service levels necessary to carry out the purposes of this Agreement. The fiscal year for the Library JPA shall be from July 1st of each calendar year to June 30th of the following calendar year. Immediately after approving the annual budget, the Board shall refer the budget to the governing bodies of the parties for the purposes of securing from them any necessary contributions and/or appropriations as set forth in the budget. Each party shall deposit its monetary contribution to the budget with the JPA Treasurer on or before August 1st of each fiscal year. If a party fails to pay its annual contribution, it shall not receive services to be paid for by that contribution. Any individual party may enhance library services at particular libraries with additional funds contributed by that party.

B. Revenues.

The parties to this agreement hereby reconfirm existing Library System revenue sources and commit to their continuance at their current proportion to the extent permitted by general law. These revenue sources include:

- a. Property Tax
- b. Motor Vehicle in Lieu tax distributed to libraries
- c. Public Library Fund
- d. State and Federal Library Services Act funds
- e. Interest

C. Allocation of Property Tax Dollars.

Notwithstanding any other provision of this agreement for each fiscal year the library service revenue allocated to libraries in each city shall not be less than the estimated library property tax revenue attributable to property located in that city. It shall be the responsibility of the Governing Board to develop a budget which guarantees this provision. In the event that the allocated library service revenue exceeds the amount required to maintain the minimum library service hours for each city as described in this agreement, such excess funds shall be spent on library related activities within that city including, but not limited to, facility maintenance, facility remodeling or expansion, increased service hours, or increased book purchases. Before expending such excess funds, the Governing Board shall solicit the views of the affected City Council and such views shall be given substantial weight in any Governing Board decision.

D. Funding Formula.

Parties to this agreement hereby reconfirm the following "funding formula"; funding of personnel and operation at each library facility shall be a function of three equally weighted factors: circulation and walk-in use, property tax contribution and population of each community's service area, adjusted so as to provide minimum service levels, as set forth below.

E. Minimum Service Levels.

The Parties to this agreement agree to minimum service levels as follows, provided revenues are maintained at the 1997-98 fiscal year level:

1. For parties of less than 10,000 in population, base library service shall be 40 hours per week and for parties of over 10,000 in population, base library service shall be 60 hours per week.

The County will contribute \$225,000 in fiscal year 1998-99 to support these hours. In each subsequent fiscal year the County will contribute an amount equal to \$225,000 plus an adjustment based on the change in the Consumer Price Index (CPI) as published by the United States Bureau of Labor Statistics for the San Francisco-Oakland Metropolitan Area. For fiscal year 1999-2000 the adjustment shall be based on the change in the CPI for the period January 1998 to January 1999. For future fiscal years the adjustment shall be based on the change in the CPI for the period January 1998 to the January preceding the start of the fiscal year. For fiscal years 1999-2000 through 2002-2003 the County will, in addition, contribute an amount equal to the shortfall, if any, in the library system budget needed to provide the minimum level of service specified in this section. The County contributions described in this section of the agreement are in addition to the amounts that the County has agreed to provide as specified elsewhere in this agreement.

2. The funding formula will be applied to allocate all additional available revenues to all member jurisdictions.
3. Library services provided through the Pacifica libraries will be maintained at 74 hours per week beginning in 1998-99 and continuing for five years. Authority revenues will be used to fund a maximum

of 60 branch service hours per week in Pacifica, and the County will contribute revenue to fund 14 additional weekly service hours for five years. At the end of the five year period, as revenues are available, service hours in Pacifica will be funded in the same fashion as other jurisdictions. For fiscal year 1998-99 the County shall contribute \$62,616 to pay for the maintenance and repair costs for the Pacifica and Sanchez libraries. For the fiscal years 1999-2000 through 2002-2003 the County shall make a similar contribution subject to adjustment based on changes in maintenance and repair costs.

4. Bookmobile service will continue on the 1997-98 schedule, with minor adjustments to be made by the County Librarian as he/she deems appropriate in order to meet the responsibilities of a professional Library. This service is to be funded from the Administrative account.
5. Administrative, collection and technical services support will be provided appropriate to each branch's public service hours. Administration and other central services, the Bookmobile, Project Read and Peninsula Library System costs, payments to Redwood City and Daly City for library services provided to residents of Fair Oaks, Colma, and Broadmoor and collection replacement and a base service level of 40 or 60 hours per party will be funded prior to application of the funding formula.

6. Each Party may supplement revenues to provide for enhanced services at individual library facilities, but no party shall be required to make a revenue contribution for additional services beyond the minimum service levels provided for in this agreement.
7. Each Party has the right to use its allocated library services revenues for facility maintenance costs or library patron services. The service levels defined in this agreement for each city are based on the assumption of responsibility for library facility maintenance and repair as described in Exhibit A. However, notwithstanding the provisions of Exhibit A, each city may elect to accept a reduction in the level of service to which it would otherwise be entitled in return for a corresponding reduction in its obligation for maintenance and repair costs. Such election by a city must be accompanied by a resolution duly adopted by the City Council of said city.

F. Half Moon Bay Facility

In the event the City of Half Moon Bay decides to either replace or significantly remodel and expand the Half Moon Bay Library, the County agrees to contribute 50% of the costs associated with any such replacement or remodeling in recognition that approximately 50% of the population served by the Half Moon Bay Library comes from unincorporated areas. If there is a significant change in the unincorporated area population either by annexation to the City of Half Moon Bay or incorporation of a new city then the County contribution to the remodel or expansion of the Half Moon Bay Library will be renegotiated by the County and the City of Half Moon Bay. Any budget

for such facility construction must be mutually agreed to by the County Board of Supervisors and the Half Moon Bay City Council prior to the County making this contribution.

G. Waiver of Property Tax Allocation Fee

The County agrees that it shall waive the imposition of the Property Tax Allocation Fee for Library property tax revenue collected from the unincorporated areas.

H. Treasurer.

The Joint Powers Authority shall designate one of its members to act as Treasurer for the Library JPA. The Treasurer shall be the depository for and have custody of all funds of the JPA from whatever source. The duties of the Treasurer shall include preparation of periodic reports of receipts and disbursements, and all other duties of the Treasurer as set forth in Government Code section 6500, et. seq.

I. Controller/Auditor.

The Joint Powers Authority shall designate one of its members to act as Controller/Auditor for the Library JPA. The Controller/Auditor shall be responsible for all duties required of such by Government Code section 6500, et seq., including preparing or contracting for preparation of regular audits and shall ensure strict accountability of all funds and report all receipts and disbursements.

J. Legal Counsel.

The Joint Powers Authority shall designate one of its members to act as legal counsel.

K. Access to Property; Bonding.

The officers, employees and other persons having access to the property of the JPA shall be specifically designated by the Governing Board, or by the Operations Committee if this authority is delegated by the Governing Board, and bonded in an amount determined by that body.

XV. Insurance Provisions.

A. The County shall add the Library JPA to its existing excess liability insurance coverage and shall maintain such coverage in full force and effect during the life of the Agreement. Said excess liability insurance coverage has a \$250,000 self-insured retention by the County.

Unless the parties determine otherwise, County shall provide for the defense of any claims or litigation within the \$250,000 self-insured retention.

B. Any out of pocket expense or loss, by way of judgment or settlement, arising out of the operation of this Agreement, within the limits of the County's \$250,000 self-insured retention shall be paid from the Library JPA funds. Any additional costs incurred by County in adding the Library JPA to its excess liability insurance coverage shall be borne by the JPA.

XVI. Notices.

The County Librarian shall file all notices with the Secretary of State as required by Government Code Section 6503.5 and shall be responsible for any other notices required by law.

XVII. Amendments.

This Joint Powers Agreement may be amended by the parties to this agreement. In the event there is a change in law affecting a material term of this agreement, the Parties agree to engage in good faith negotiations on a successor agreement within 45 days being notified of the change in law.

XVIII. Authorization and Execution.

By the execution of this Agreement, each Party hereby authorizes its respective Chief Elected Official to execute such documents as may be necessary to carry out the terms of this Agreement. This Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which constitute one and the same agreement.

EXHIBIT A
Real Property

A. Libraries owned by the County in the cities of Half Moon Bay, Pacifica and Woodside shall be transferred to the cities in which they are located, as expeditiously as possible in compliance with all county and state laws and procedures. After transfer of ownership each city shall assume full responsibility for repairs and maintenance of the library facilities in its jurisdiction. In the event any of these cities withdraws from the JPA it will retain ownership of the Library buildings but it will also assume full responsibility for the provision of library services to its residents pursuant to a contract between the County and the withdrawing city.

B. The County library located in East Palo will remain in County ownership unless otherwise agreed by County and East Palo Alto. County shall be responsible for maintenance and repair of this facility as long as it remains in County ownership.

C. Responsibility for the maintenance and repair of libraries owned by individual cities shall be the sole responsibility of the city owning such library. This provision applies to the cities of Atherton, Belmont, Brisbane, Foster City, Millbrae, Portola Valley and San Carlos.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have affixed their hands on the dates indicated below.

Dated: AUG 18 1998

COUNTY OF SAN MATEO

ATTEST:

[Signature]
Clerk of the Board

BY

[Signature]
President of the Board
of Supervisors

Certificate of Delivery

(Government Code Section 25103)

I certify that a copy of the original document filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

Dated: _____

TOWN OF ATHERTON

ATTEST:

Clerk of Town Council

BY

[Signature]
Mayor

[Signature]
Deputy Clerk of the Board of Supervisors

Dated: _____

CITY OF BELMONT

ATTEST:

Clerk of City Council

BY

Mayor

Dated: _____

CITY OF BRISBANE

ATTEST:

Clerk of City Council

BY

Mayor

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have affixed their hands on the dates indicated below.

Dated: _____

COUNTY OF SAN MATEO

ATTEST:

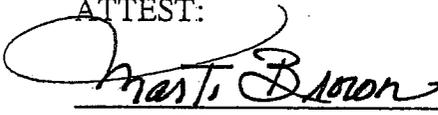
Clerk of the Board

BY _____
President of the Board
of Supervisors

Dated: 1-9-99

TOWN OF ATHERTON

ATTEST:



Clerk of Town Council

BY 

Mayor

Dated: _____

CITY OF BELMONT

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF BRISBANE

ATTEST:

Clerk of City Council

BY _____
Mayor

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have
affixed their hands on the dates indicated below.

Dated: _____

COUNTY OF SAN MATEO

ATTEST:

Clerk of the Board

BY _____
President of the Board
of Supervisors

Dated: _____

TOWN OF ATHERTON

ATTEST:

Clerk of Town Council

BY _____
Mayor

Dated: June 23, 1998

CITY OF BELMONT

ATTEST:

Kathy Kern
Clerk of City Council

BY Pam Rianda
PAM RIANDA, Mayor

Dated: _____

CITY OF BRISBANE

ATTEST:

Clerk of City Council

BY _____
Mayor

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have affixed their hands on the dates indicated below.

Dated: _____

COUNTY OF SAN MATEO

ATTEST:

Clerk of the Board

BY _____
President of the Board
of Supervisors

Dated: _____

TOWN OF ATHERTON

ATTEST:

Clerk of Town Council

BY _____
Mayor

Dated: _____

CITY OF BELMONT

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: 1/11/99

CITY OF BRISBANE

ATTEST:

Sheri Marie Schroeder
Clerk of City Council
Sheri Marie Schroeder

BY Cyril G. Bologoff
Cyril G. Bologoff, Mayor

Dated: 2/18/99

CITY OF EAST PALO ALTO

ATTEST:

Shirley Hicks

Clerk of City Council

BY *R. B. Jones*
Mayor

Dated: _____

CITY OF FOSTER CITY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF HALF MOON BAY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF MILLBRAE

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF PACIFICA

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF EAST PALO ALTO

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: 7/6/98

CITY OF FOSTER CITY

ATTEST:

Cherise Lakin
Clerk of City Council

BY [Signature]
Mayor

Dated: _____

CITY OF HALF MOON BAY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF MILLBRAE

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF PACIFICA

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF EAST PALO ALTO

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF FOSTER CITY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF HALF MOON BAY

ATTEST:

Dorothy R. Robbins

Clerk of City Council

BY *Jim Calver*

Mayor

Dated: _____

CITY OF MILLBRAE

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF PACIFICA

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF EAST PALO ALTO

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF FOSTER CITY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF HALF MOON BAY

ATTEST:

Clerk of City Council

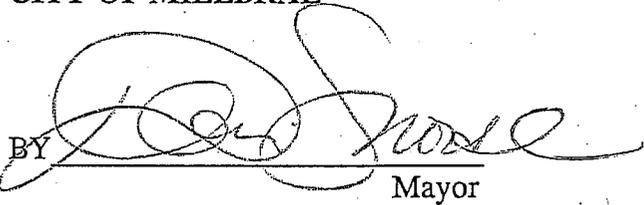
BY _____
Mayor

Dated: 1/12/99

CITY OF MILLBRAE

ATTEST:

Cheryl Mitchell Wood
Clerk of City Council

BY 
Mayor

Dated: _____

CITY OF PACIFICA

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF EAST PALO ALTO

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF FOSTER CITY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF HALF MOON BAY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF MILLBRAE

ATTEST:

Clerk of City Council

BY _____
Mayor

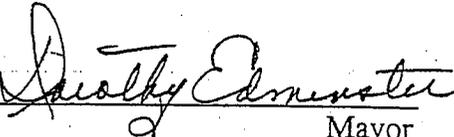
Dated: June 22, 1998

CITY OF PACIFICA

ATTEST:



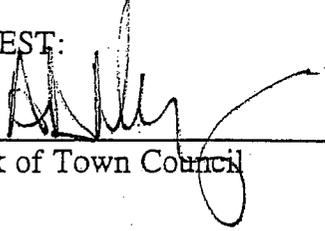
Clerk of City Council

BY 
Mayor

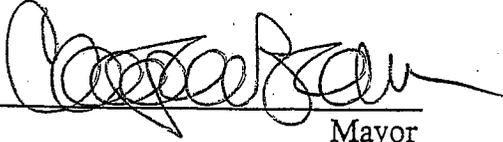
Dated: 1-13-99

TOWN OF PORTOLA VALLEY

ATTEST:


Clerk of Town Council

BY


Mayor

Dated: _____

CITY OF SAN CARLOS

ATTEST:

Clerk of City Council

BY

Mayor

Dated: _____

TOWN OF WOODSIDE

ATTEST:

Clerk of Town Council

BY

Mayor

Dated: _____

TOWN OF PORTOLA VALLEY

ATTEST:

Clerk of Town Council

BY _____
Mayor

Dated: _____

CITY OF SAN CARLOS

ATTEST:

Deputy
Christine Autone
Clerk of City Council

BY *Sylvia M. Nelson*
Mayor

Dated: _____

TOWN OF WOODSIDE

ATTEST:

Clerk of Town Council

BY _____
Mayor

Dated: _____

TOWN OF PORTOLA VALLEY

ATTEST:

Clerk of Town Council

BY _____
Mayor

Dated: _____

CITY OF SAN CARLOS

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: January 5, 1999

TOWN OF WOODSIDE

ATTEST:

Janet B. Haelsch
Clerk of Town Council

BY 
Mayor

1 **FIRST RESTATED JOINT POWERS AGREEMENT BETWEEN THE COUNTY**
2 **OF SAN MATEO AND THE CITIES OF ATHERTON, BELMONT, BRISBANE,**
3 **EAST PALO ALTO, FOSTER CITY, HALF MOON BAY, MILLBRAE,**
4 **PACIFICA, PORTOLA VALLEY, SAN CARLOS, AND WOODSIDE,**
5 **RELATING TO LIBRARY SERVICES**
6

7 This is an agreement between the County of San Mateo and the cities of Atherton,
8 Belmont, Brisbane, East Palo Alto, Foster City, Half Moon Bay, Millbrae, Pacifica,
9 Portola Valley, San Carlos, and Woodside (hereinafter "Parties"), relating to the joint
10 exercise of powers over library services throughout the San Mateo County Library
11 System.

12 **WHEREAS**, the San Mateo County Free Library System (hereinafter the
13 "Library System"), has authority to provide library services within its jurisdiction, and is
14 governed by the San Mateo County Board of Supervisors; and

15 **WHEREAS**, the Parties have independent authority to provide library services
16 within their jurisdictions; and

17 **WHEREAS**, the provision of Library services to the residents of the
18 unincorporated area of the County and to the residents of the other Parties is enhanced
19 and made more efficient by a coordinated program among the public entities who
20 comprise the Library System; and

21 **WHEREAS**, the Joint Powers Law (Government Code '6500 et. seq.) permits
22 public entities, after receiving the prior consent of their respective legislative bodies, to
23 jointly exercise powers common to the contracting parties, including the power to
24 provide for library services; and

25 **WHEREAS**, a Joint Powers Agreement between the parties was approved in
26 1999, and in November 2003 the Library Joint Powers Governing Board ("Governing

1 Board”) recommended that certain changes be made in the original Joint Powers
2 Agreement to clarify the authority of the Governing Board and to make other changes to
3 the nature of the agreement between the parties, as defined in the Joint Powers
4 Agreement; and

5 WHEREAS, this First Restated Joint Powers Agreement replaces the Joint
6 Powers Agreement approved in 1999.

7 NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL
8 PROMISES AND COVENANTS CONTAINED HEREIN, the Parties to this
9 agreement agree as follows:

10 I. Establishment of Library Joint Powers Authority; Purpose of
11 Agreement

12 A. Joint Powers Authority Created

13 The Parties to this Agreement, with the consent of their respective legislative
14 bodies, acting on or before May 30, 2004, hereby join together for the purpose of
15 providing extended library services within their communities and establishing a Library
16 Joint Powers Authority (hereinafter “Library JPA”) to exercise the powers described
17 herein. The Library JPA shall be an entity which is separate from the parties to this
18 Agreement and shall be responsible for the administration of this Agreement. Except as
19 otherwise provided herein, the debts, liabilities and obligations of the Library JPA shall
20 be the debts, liabilities and obligations of the entity and not the debts, liabilities, and
21 obligations of the parties to this Agreement. This Agreement replaces the JPA
22 Agreement approved in 1999. Any debts, liabilities, and obligations assumed by the

1 Parties under the 1999 JPA Agreement remain in full force and effect to the extent they
2 are not inconsistent with the terms and conditions of this Agreement.

3 **B. Purpose and Functions of the Library JPA**

- 4 1. Provide policy direction and governance for the Library System.
- 5 2. Carry out the functions required by this Agreement.
- 6 3. Approve the budget and disposition of revenues for Library
7 System Services.
- 8 4. Approve and oversee the services and programs of the Library System.

9 Subject to the limitations related to the status of the Library System as designated
10 in I.C. below, and subject to the parameters of this Agreement and the agreement for
11 County employees to serve as Library staff, it is the intent of the Parties that the Library
12 JPA shall have full and complete discretion for Library operations and policy.

13 **C. Library JPA Operating Rules and Restrictions - Designation**

14 The Library JPA shall operate under and be governed by the rules and regulations
15 and legal restrictions and requirements applicable to the San Mateo County Free Public
16 Library as established under State Education Code Section 19400.

17 **D. Additional Parties**

18 Additional cities may become Parties to this Agreement on such terms and
19 conditions as may be approved by a majority of the total membership of the Library Joint
20 Powers Governing Board (hereinafter "the Governing Board"). One condition to
21 participation shall be that all Parties and their residents shall have reciprocal access to
22 library facilities, materials and services of all other Parties.

23

1 **E. Terms of Agreement; Termination and Withdrawal**

2 1. This Joint Powers Agreement shall commence upon (1) the date it has
3 been executed by the County and all of those cities which have acted to approve the
4 agreement within the timeframe stipulated in Section I.A., or (2) the date the Staff
5 Services Agreement referred to in Section IV.A., below, is executed by the Governing
6 Board and County, whichever date is later. The Agreement shall continue, uninterrupted,
7 until two-thirds of the members vote to terminate the Agreement, in which case, the
8 Agreement shall terminate on June 30 of the following fiscal year. An individual Party
9 may withdraw from this Agreement upon the giving of written notice by July 1st of its
10 intent to withdraw from the Library JPA effective July 1st of the following fiscal year.
11 For purposes of this JPA, the fiscal year shall run from July 1st of one calendar year to
12 June 30th of the following calendar year. The withdrawal of any Party from this
13 Agreement shall in no way affect the rights and obligations of the remaining Parties. If a
14 Party withdraws from this Agreement, such Party shall not be entitled to the return of any
15 funds contributed to the Library JPA. Such Party shall take on the obligation to provide
16 all library services to its residents. In this eventuality the County shall pay to the
17 withdrawing agency all subsequent library property tax proceeds collected in the
18 withdrawing Party's jurisdiction. At the time of the withdrawal, the Parties may agree
19 to allow the withdrawing party to retain books and other library materials, furniture and
20 equipment obtained by the JPA, on the condition that such property and materials will be
21 used for public library purposes and available to all residents of San Mateo County at no
22 charge.

1 2. In the event a Party fails to make any required contribution as set forth in a
2 budget approved in accordance with Section VI of this Agreement or otherwise fails to
3 approve the budget adopted by the Governing Board, the Party shall not receive services
4 to be paid for by that Party's required contribution.

5 **F. Disposition of Property Upon Termination**

6 Upon termination of this Agreement, any surplus money on hand shall be returned
7 in proportion to the contributions made by the Parties who are still active members at the
8 time of termination. Upon termination, title to all property, including facilities, buildings,
9 materials and equipment owned by a Party upon execution of this Agreement shall
10 remain in the ownership of that Party. All property acquired by the Library JPA during
11 the term of this Agreement shall become the property of the Library System. However, if
12 any Party agrees to ensure that such property and materials will be used for public library
13 purposes and available to all residents of San Mateo County at no charge, then said
14 property and materials shall remain where they are housed at termination.

15 **II. Library Policies**

16 All policies relating to the provision of library services, including hours,
17 organization, staffing levels and type, and other services, shall be determined by the
18 Governing Board, unless specifically delegated to the Operations Committee. Current
19 policies with respect to the Library System shall continue in full force and effect until
20 changed by the Governing Board, or Operations Committee if so delegated by the
21 Governing Board. In addition, the Library System remains subject to State law with
22 respect to libraries, including Education Code section 19146 which vests power to select
23 materials in the County Librarian.

1 **III. Governing Board of Library JPA**

2 **A. Creation of Governing Board; Composition**

3 There is hereby created the Governing Board which shall administer this
4 Agreement. The Governing Board shall be comprised of one representative from each
5 Party, selected by the Party from the elected legislative body of that Party. Each Party
6 may designate one alternative representative who will be a member of that Party's
7 legislative body. The selection process and length of tenure for each Governing Board
8 representative and any alternate shall be determined by the governing body of each Party.
9 Governing Board representatives shall serve without compensation. The policies of the
10 Library System shall be directed by the Governing Board, provided that policies
11 regarding the terms and conditions of employment shall be within the province of the
12 County so long as the County provides the services set forth in any Staff Services
13 Agreement entered into by and between the Library JPA and the Governing Board, as
14 described in Section IV.A., below.

15 **B. Actions of the Governing Board**

16 Actions of the Governing Board shall be taken only if a quorum is in attendance,
17 and shall be effective upon approval of a majority of the members present. A quorum is
18 one more member than half of the total membership. The Governing Board shall select a
19 Chair and Vice-Chair and shall meet at least annually to consider and approve the
20 operating and capital budget of the Library JPA for the next fiscal year and to elect
21 officers. The Board may also hold other special meetings as convened by the Chair.

22

23

1 **C. Powers of Governing Board**

2 1. The Library JPA, through its Governing Board, may acquire, purchase,
3 lease, own or dispose of property and equipment, and make and enter into contracts, as
4 may be required to meet the purposes of this Agreement. It may employ agents and
5 employees, operate public works improvements and facilities, sue and be sued in its own
6 name, incur debt, and invest surplus funds.

7 2. The Governing Board is responsible for establishing policies for the
8 Library JPA in accordance with this Agreement, within the limits of the approved annual
9 budget. The Governing Board shall create, adopt and maintain by-laws and related
10 policies to provide for the conduct of its business.

11 3. The Governing Board shall submit an annual budget for Library Services
12 to the County Board of Supervisors for its approval.

13 4. The Governing Board may delegate any or all of these powers, except the
14 power to sue and be sued and approval of an annual budget, to the Operations Committee
15 or County Library Director for purposes of program development and implementation or
16 policy formulation.

17 **D. Operations Committee**

18 Subject to the direction of the Governing Board, the Operations Committee shall
19 be responsible for administration and oversight of the day to day operations of the
20 Library System, working through the County Library Director. The Operations
21 Committee will be comprised of the Chief Executive Officer of each city which is a
22 Party, or his/her designee, and the representative designated by the County ("County
23 Representative"). Operations Committee Members will serve without consideration of

1 terms or tenure and without additional compensation. The Operations Committee will
2 meet at least quarterly, but may meet more often, upon the call of its Chair, as needed.
3 Actions of the Operations Committee shall be taken only if a quorum is in attendance,
4 and shall be effective upon approval of a majority of the members present. A quorum is
5 one more member than half of the total membership.

6 **E. Notice of Meetings**

7 Notice of the time and place of all regular meetings shall be given in accordance
8 with the Ralph M. Brown Act and shall be posted in all community libraries in the
9 Library System. The Library Director and Governing Board Chair shall be responsible
10 for the preparation and posting of the Board's agenda in compliance with the Brown Act.
11 The Library Director and the Operations Committee Chair shall be responsible for the
12 preparation and posting of the agenda for the Operations Committee in compliance with
13 the Brown Act.

14 **F. Bylaws**

15 The Governing Board shall adopt bylaws necessary to the smooth and successful
16 implementation, administration, and operation of the Library JPA. The bylaws shall
17 become operative upon approval by a majority vote of the Governing Board. The
18 Governing Board may amend the bylaws by a majority vote of the Governing Board.

19 **G. Personnel Committee**

20 1. The Personnel Committee shall consist of: the Governing Board Chair and
21 Vice-Chair; the County Board of Supervisors' member of the Governing Board (if such
22 member is not serving as Chair or Vice-Chair); the County Representative; and the Chair
23 of the Operations Committee (or Vice-Chair if the County Representative is serving as

1 Chair of the Operations Committee).

2 2. The Personnel Committee shall perform the following functions:

- 3 a. Serve as a forum for dispute resolution resulting from the Staff
4 Services Agreement, or other matters involving services provided
5 to the Library JPA by County staff.
- 6 b. With input from the full Governing Board, conduct performance
7 reviews of the Library Director and make recommendations to the
8 County as the final authority.
- 9 c. Initiate and conduct a recruitment and selection process for Library
10 Director, in consultation with the Governing Board. The Personnel
11 Committee will present a list of up to three qualified candidates
12 with a recommendation to the County Representative for final
13 selection and appointment.

14 **IV. Employees**

15 **A. Staff Services Agreement**

16 1. The Library JPA shall contract with the County to provide a Library
17 Director, and may contract with the County to provide other staff services. Such staff
18 shall be subject to the County's labor agreements and personnel rules. All costs of such
19 services shall be paid for from Library JPA funds. The County will consult with the
20 Governing Board regarding any personnel rule changes which impact Library staff. The
21 Library JPA also may contract with any other Party or may employ its own personnel for
22 additional personnel services deemed necessary, provided that any such additional
23 personnel services do not conflict with the Staff Services Agreement, or interfere with the

1 obligations of the County, the Library Director or Library staff employed by County
2 arising out of the employment relationship.

3 2. The Staff Services Agreement with the County shall describe the County's
4 responsibilities for the administration of the policies adopted by the Library JPA
5 Governing Board. The agreement shall also describe the Library Director's
6 administrative responsibilities with the County.

7 3. Provided the Governing Board complies with the notice provisions for
8 termination contained in the Staff Services Agreement, the Library JPA may arrange for
9 staffing services from other sources, or may become the direct employer of Library
10 Services staff. The Governing Board and the County may mutually agree to change,
11 instead of terminating, the Staff Services Agreement.

12 **B. Library Director**

13 1. The Library Director shall be appointed and employed by the County of
14 San Mateo. Unless otherwise designated by the Governing Board and approved by the
15 County Representative, the Library Director shall have the duties and responsibilities of
16 County Librarian as provided for in State law.

17 2. The terms of employment shall be determined by the County and shall be
18 contained in a position classification.

19 3. Under the direction of the Governing Board, the Library Director
20 determines the scope and nature of library services and needed plans for the expansion
21 and modification of library services. The Library Director reports to the County on
22 administrative matters in accordance with the Staff Services Agreement.

1 **V. Support Services**

2 **A. General Support Services**

3 1. The Governing Board may contract to provide other administrative
4 services such as legal, purchasing, payroll, budget and other support services to the
5 Library JPA with the costs of these services paid for from Library JPA funds; provided
6 that the Governing Board may not contract for payroll services or other employee related
7 support services (including, by way of example, classification, compensation,
8 employment benefits, labor negotiations, performance, discipline and workers
9 compensation or assignment matters) provided to any employees covered by the Staff
10 Services Agreement.

11 2. Subject to Agreement with the County, the Governing Board may add
12 other administrative services to the Staff Services Agreement.

13 **B. Treasurer**

14 1. The County Treasurer shall perform the statutory duties required by the
15 Government code for the Library JPA.

16 **C. Controller/Auditor**

17 1. The County Auditor/Controller shall perform the statutory duties required
18 by the Government Code for the Library JPA.

19 2. The Governing Board has the authority to contract for accounting services
20 or to perform them with its own employees.

21 3. The Governing Board has the authority to contract for auditing services.
22 The County shall retain the authority to conduct its own audits of the Library JPA at no
23 cost to the Library JPA.

1 **D. Legal Counsel**

2 The Library JPA shall employ its own Counsel or designate one of its members
3 to provide legal services, with the consent of that member.

4 **VI. Financial Provisions**

5 **A. Annual Budget**

6 1. The Governing Board shall adopt and submit annually to the County
7 Board of Supervisors a budget containing the estimates in detail of the amount of money
8 necessary for the Library Services for the ensuing year, together with an estimate of all
9 revenues other than tax revenues which are anticipated. The Governing Board's proposed
10 budget shall be submitted in a format acceptable to the County and on a schedule as
11 established by the County Manager. The Board of Supervisors, acting on the
12 recommendation of the Governing Board, shall adopt by July 1st of each year an annual
13 operating budget for the Library JPA setting forth anticipated expenses, financing sources
14 and proposed service levels necessary to carry out the purposes of this Agreement.

15 2. The estimate of total expenditures, as finally fixed and adopted by the
16 Board of Supervisors, constitutes the appropriation for the Library Services for the period
17 for which the budget is intended to apply. The Governing Board shall have authority to
18 expend funds within the appropriations for the Library Services as defined in this section,
19 except that the monies specified in the Governing Board's budget for salaries and
20 employee benefits, fixed asset purchases or capital expenditures shall not be exceeded
21 without a transfer or other appropriate augmentation of said budget category as
22 authorized by standard County policies and procedures. The fiscal year for the Library
23 JPA shall be from July 1st of each calendar year to June 30th of the following calendar

1 year. Immediately after approving the annual budget, the Governing Board shall refer the
2 budget to the governing bodies of the Parties for the purposes of securing from them any
3 necessary contributions and/or appropriations as set forth in the budget. Each Party shall
4 deposit its monetary contribution as specified in the adopted budget with the Library JPA
5 Treasurer on or before August 1st of each fiscal year, or at any other schedule approved
6 by the Governing Board and the Party. If a Party fails to pay its annual contribution, it
7 shall not receive services to be paid for by that contribution. Any individual Party may
8 enhance Library services at particular libraries with additional funds contributed by that
9 Party.

10 **B. Revenues**

11 1. The Parties to this agreement hereby reconfirm existing Library System
12 revenue sources and commit to their continuance at their current proportion to the extent
13 permitted by general law. These revenue sources include:

- 14 a. San Mateo County Free Public Library Property Tax
- 15 b. Motor Vehicle in Lieu tax distributed to libraries
- 16 c. Public Library Fund
- 17 d. State and Federal Library Services Act funds
- 18 e. Interest
- 19 f. Other monies which may be appropriated by the State Legislature
20 for the specific benefit of county public libraries

21 2. The Governing Board is authorized to apply directly for grants and
22 donations. All such revenues shall be deposited and accounted for by the Library JPA
23 Treasurer.

1 **C. Library Funds**

2 The revenue derived from taxes or other monies allocated to the County free
3 public library shall be deposited with the County Treasurer as required by State Law and
4 shall be paid out for the purposes authorized in this Agreement. Other monies acquired
5 by gift, devise, bequest, or otherwise by or for Library Services, to the Library JPA, shall
6 be paid into either the County Treasury or other fund maintained by the Library JPA, and
7 shall be paid out for the purposes authorized in this Agreement.

8 **D. Allocation of Property Tax Dollars**

9 Notwithstanding any other provision of this Agreement, for each fiscal year the
10 library service revenue allocated to libraries in each city shall not be less than the
11 estimated library property tax revenue attributable to property located in that city. It shall
12 be the responsibility of the Governing Board to develop a budget which guarantees this
13 provision. In the event that the allocated library service revenue exceeds the amount
14 required to maintain the minimum library service for each city as described in this
15 Agreement, such excess funds shall be spent on library related activities within that city
16 (hereinafter, "Donor City") including, but not limited to, facility maintenance, facility
17 remodeling or expansion, increased service hours, or increased book purchases, as
18 mutually agreed by the Library JPA and the city council of the affected Donor City.

19 **E. Minimum Service Levels**

20 1. The Parties to this agreement agree to minimum service levels as follows,
21 provided revenues are maintained at the 2003-2004 fiscal year level:

22 a. For Parties of less than 10,000 in population, base library service shall be
23 40 hours per week and for Parties of over 10,000 in population, base

1 library service shall be 60 hours per week. The County has agreed to
2 contribute \$275,000 in General Fund monies to support Library operations
3 in 2003-2004. Starting in fiscal year 2004-05, the County may reduce this
4 contribution at its discretion. However, such support shall not be reduced
5 by more than \$91,667 per year; provided that, if the County elects to forgo
6 some or all of the reduction allowed in a given year, the County may add
7 the reduction it elected to forgo to any reduction allowed in a subsequent
8 year.

9 b. Unincorporated area residents are currently served at libraries located in
10 and maintained by City members and operated by the Library JPA or by a
11 City itself. Since the County does not have a discrete library branch it has
12 been the practice of the Governing Board to allocate Library property tax
13 monies collected in the unincorporated areas to fund access agreements
14 with Redwood City and Daly City and to insure minimum service levels at
15 all San Mateo County Library branches. All Parties to this Library JPA
16 recognize that the discretion the Governing Board has with respect to the
17 unincorporated area tax revenues is crucial to the continued functioning of
18 the Library Services and the provision of minimum services to all
19 members.

20 c. The County may from time to time request that the level of service to a
21 particular unincorporated area be examined to insure adequate and
22 comparable service. When such a request is made, Library staff or an
23 independent library consultant working with the Library staff, shall

1 prepare a report, with input from community representatives and other
2 stakeholders identified by the County, objectively comparing service
3 levels on a system wide basis in comparable city areas with that provided
4 to the subject unincorporated areas. The analysis shall take into
5 consideration such factors as community needs, hours of service,
6 collection materials and accessibility, as well as relative population
7 density. To the extent that the unincorporated service level is
8 demonstrably less than that provided to similar incorporated areas on a
9 system-wide basis, the Governing Board shall have an obligation to
10 complete a study of this service deficiency within 12 months, and bring
11 service to a level comparable with other similarly situated areas in
12 member city jurisdictions, within the subsequent 12 months.

13 2. Bookmobile service will continue on the 2003-04 schedule, with minor
14 adjustments to be made by the Library Director as he/she deems appropriate, and with
15 major changes to be approved by the Governing Board.

16 3. Administrative, collection and technical services support will be provided
17 appropriate to each branch's public service hours. Administration and other central
18 services, regional services, access agreement payments to other libraries, collection
19 replacement, and a base service level of 40 or 60 hours per Party will be funded with
20 Library System revenues, subject to the property tax restriction identified in VI (D).

21 4. Each Party may supplement revenues to provide for enhanced services at
22 individual library facilities, but no Party shall be required to make a revenue contribution
23 for additional services beyond the minimum service levels provided for in this agreement.

1 5. In the event that library revenues are not sufficient to provide minimum
2 service levels, the Governing Board shall reduce services as necessary. Service
3 reductions will be implemented with consideration to maintaining services to all areas
4 and populations, while maintaining the revenue allocations specified in Section VI (D).

5 6. Each city has the right to use its allocated library services revenues for
6 facility maintenance costs or library patron services. The service levels defined in this
7 agreement for each city are based on the assumption of responsibility for library facility
8 maintenance and repair as described in Section VII (B). However, notwithstanding the
9 provisions of Section VII (B), each city may elect to accept a reduction in the level of
10 service to which it would otherwise be entitled in return for a corresponding reduction in
11 its obligation for maintenance and repair costs. Such election by a city must be
12 accompanied by a resolution duly adopted by the City Council of said city.

13 **F. Half Moon Bay Facility**

14 In the event the City of Half Moon Bay decides to either replace or significantly
15 remodel and expand the Half Moon Bay Library, the County agrees to contribute 50% of
16 the costs associated with any such replacement or remodeling in recognition that
17 approximately 50% of the population served by the Half Moon Bay Library comes from
18 unincorporated areas. If there is a significant change in the unincorporated area
19 population either by annexation to the City of Half Moon Bay or incorporation of a new
20 city, then the County contribution to the remodel or expansion of the Half Moon Bay
21 Library will be renegotiated by the County and the City of Half Moon Bay. Any budget
22 for such facility construction must be mutually agreed to by the County Board of

1 Supervisors and the Half Moon Bay City Council prior to the County making this
2 contribution.

3 **G. Library Administration Building**

4 1. The Tower Road building is owned by the County and is dedicated for the
5 use of the Library JPA. The building operations costs shall be paid from Library JPA
6 funding sources.

7 2. The Governing Board may investigate and implement building operations
8 and maintenance arrangements independent of the County, in which case the building
9 charges would be adjusted accordingly.

10 **H. Waiver of Property Tax Allocation Fee**

11 The County agrees that it shall waive the imposition of the Property Tax
12 Allocation Fee for Library property tax revenue collected from the unincorporated areas,
13 estimated at \$43,000 in FY 2003-04. The County may reduce this contribution at its
14 discretion; however, this contribution shall not be reduced by more than \$14,333 per
15 year, provided that, if the County elects to forgo some or all of a reduction allowed in a
16 given year, the County may add the reduction it elected to forgo to any reduction allowed
17 in a subsequent year.

18 **VII. Property**

19 **A.** The materials in the Library collection and all furniture and equipment
20 used for Library services shall be and remain the property of the Library System on
21 termination of this Agreement except as otherwise provided in Section I (E). Insurance
22 for this material is the responsibility of the Library JPA.

23 **B.** Maintenance, repair and all capital improvements to new and existing city

1 library facilities shall be the responsibility of the facility owner, or pursuant to an
2 agreement approved by the Governing Board and the facility owner.

3 **VIII. Insurance Provisions**

4 A. The County shall add the Library JPA to its existing excess liability
5 insurance coverage and shall maintain such coverage in full force and effect during the
6 life of the Agreement. Coverage and limits shall be equivalent to that provided to
7 Agencies and Departments of the County.

8 B. Unless the parties determine otherwise, County shall provide for the
9 defense of any claims or litigation within the self-insured retention limits set forth in
10 subsection A.

11 C. Any out of pocket expense or loss, by way of judgment or settlement,
12 arising out of the operation of this Agreement, within the limits of the County's self-
13 insured retention shall be paid from the Library JPA funds, including, but not limited to,
14 all costs of defense, including attorneys' fees. Any additional costs incurred by County
15 in adding the Library JPA to its excess liability insurance coverage shall be borne by the
16 Library JPA.

17 **IX. Notices**

18 The Library Director shall file all notices with the Secretary of State as required
19 by Government Code Section 6503.5 and shall be responsible for any other notices
20 required by law.

21 **X. Amendments**

22 This Agreement may be amended by a 2/3rds vote of the Parties to this
23 Agreement. In the event there is a change in law affecting a material term of this

1 Agreement, the Parties agree to engage in good faith negotiations on a successor
2 agreement within 45 days being notified of the change in law.

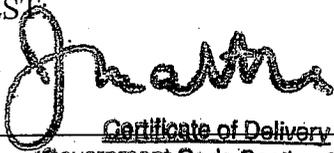
3 **XI. Authorization and Execution**

4 By the execution of this Agreement, each Party hereby authorizes its respective
5 Chief Elected Official to execute such documents as may be necessary to carry out the
6 terms of this Agreement. This Agreement may be signed in counterparts, each of which
7 shall be deemed an original, and all of which constitute one and the same agreement.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives,
have affixed their hands on the dates indicated below.

Dated: 5-11-04 COUNTY OF SAN MATEO

ATTEST:

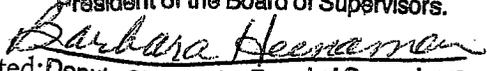


Certificate of Delivery

BY 

President of the Board of Supervisors

(Government Code Section 25103)
Clerk of the Board
I certify that a copy of the original document filed in
the Office of the Clerk of the Board of Supervisors
San Mateo County has been delivered to the
President of the Board of Supervisors.


Dated: Deputy Clerk of the Board of Supervisors

TOWN OF ATHERTON

ATTEST:

Clerk of Town Council

BY _____
Mayor

Dated: _____ CITY OF BELMONT

ATTEST:

Clerk of City Council

BY _____
Mayor

IN WITNESS WHEREOF, the parties, by their duly authorized representatives,
have affixed their hands on the dates indicated below.

Dated: _____ COUNTY OF SAN MATEO

ATTEST:

Clerk of the Board

BY _____
President of the Board of Supervisors

Dated: May 19, 2004 TOWN OF ATHERTON

ATTEST:

Sharon Barker
Clerk of Town Council

BY Kathy McKeown
Mayor

Dated: _____ CITY OF BELMONT

ATTEST:

Clerk of City Council

BY _____
Mayor

IN WITNESS WHEREOF, the parties, by their duly authorized representatives,
have affixed their hands on the dates indicated below.

Dated: _____ COUNTY OF SAN MATEO

ATTEST:

Clerk of the Board

BY _____
President of the Board of Supervisors

Dated: _____ TOWN OF ATHERTON

ATTEST:

Clerk of Town Council

BY _____
Mayor

Dated: April 27, 2004 CITY OF BELMONT

ATTEST:

Jeri Cook
Clerk of City Council

BY George Petropoulos
Mayor

APPROVED TO FORM:
Harold S. Toppel
HAROLD S. TOPPEL
CITY ATTORNEY

Dated: April 19, 2004

CITY OF BRISBANE

ATTEST:

Sherron Marie Fernandez
Clerk of City Council

BY *Paul Z...*
Mayor

Dated: _____

CITY OF EAST PALO ALTO

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF FOSTER CITY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____

CITY OF HALF MOON BAY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____ CITY OF BRISBANE

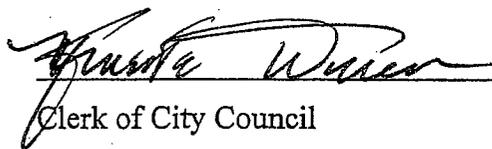
ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: 5/4/04 _____ CITY OF EAST PALO ALTO

ATTEST:


Clerk of City Council

BY 
Mayor

Dated: _____ CITY OF FOSTER CITY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____ CITY OF HALF MOON BAY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____ CITY OF BRISBANE

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____ CITY OF EAST PALO ALTO

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: May 5, 2004 CITY OF FOSTER CITY

ATTEST:

Theresa Lesue BY Anna Starnes
Clerk of City Council Mayor

Dated: _____ CITY OF HALF MOON BAY

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____ CITY OF BRISBANE

ATTEST:

Clerk of City Council BY _____
Mayor

Dated: _____ CITY OF EAST PALO ALTO

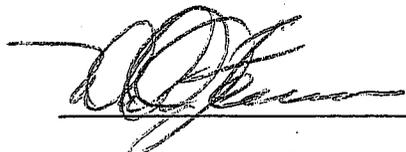
ATTEST:

Clerk of City Council BY _____
Mayor

Dated: _____ CITY OF FOSTER CITY

ATTEST:

Clerk of City Council BY _____
Mayor

+


MAYOR

CITY OF HALF MOON BAY

ATTEST:

X


Clerk of City Council



Date

Dated: April 27, 2004 CITY OF MILLBRAE

ATTEST:

Alicia Espinoza BY Nadia V. Holaben
Clerk of City Council Mayor

Dated: _____ CITY OF PACIFICA

ATTEST:

Clerk of City Council BY _____
Mayor

Dated: _____ TOWN OF PORTOLA VALLEY

ATTEST:

Clerk of Town Council BY _____
Mayor

Dated: _____ CITY OF SAN CARLOS

ATTEST:

Clerk of City Council BY _____
Mayor

Dated: _____ CITY OF MILLBRAE

ATTEST:

Clerk of City Council BY _____
Mayor

Dated: 30 JUNE 04 CITY OF PACIFICA

ATTEST:

Flo Derby BY *JM V...*
Clerk of City Council Mayor

Dated: _____ TOWN OF PORTOLA VALLEY

ATTEST:

Clerk of Town Council BY _____
Mayor

Dated: _____ CITY OF SAN CARLOS

ATTEST:

Clerk of City Council BY _____
Mayor

Dated: _____ CITY OF MILLBRAE

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____ CITY OF PACIFICA

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: April 30, 2004 TOWN OF PORTOLA VALLEY

ATTEST:

Angela Howard
Clerk of Town Council

BY GE Comatoff
Mayor

Dated: _____ CITY OF SAN CARLOS

ATTEST:

Clerk of City Council

BY _____
Mayor

Dated: _____ CITY OF MILLBRAE

ATTEST:

Clerk of City Council BY _____
Mayor

Dated: _____ CITY OF PACIFICA

ATTEST:

Clerk of City Council BY _____
Mayor

Dated: _____ TOWN OF PORTOLA VALLEY

ATTEST:

Clerk of Town Council BY _____
Mayor

Dated: April 12, 2004 CITY OF SAN CARLOS

ATTEST:

Lynne Gilmore BY Michael King
ACTING ASST. Clerk of City Council Mayor

Dated: May 28, 2004 TOWN OF WOODSIDE

ATTEST:

Janet S. Kalsch BY [Signature]
Clerk of Town Council Mayor

1 AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO
2 COUNTY LIBRARY JOINT POWERS AUTHORITY FOR STAFF AND SERVICES
3

4 This Agreement is made on _____ 2004, by and between the County of San Mateo
5 ("COUNTY") located at 400 County Center, Redwood City, California, and the San Mateo
6 County Library Joint Powers Authority ("LIBRARY JPA") located at 25 Tower Road, San
7 Mateo, California.
8
9

10 WHEREAS, Library JPA is responsible for operations and policy determination regarding the
11 functioning of the San Mateo County Library System pursuant to a Joint Powers Agreement
12 approved on _____ 2004; and
13

14 WHEREAS, The Joint Powers Agreement provides that County employees shall serve as staff to
15 the Library JPA under a staff services agreement between the County and the Library JPA; and
16

17 WHEREAS, It is in the interests of the public to retain the services of County employees to
18 operate libraries under the purview of the Library JPA because it will minimize costs, disruption
19 to existing staff and provide for a smooth transition to governance of the Library System by the
20 Library JPA.
21

22 NOW THEREFORE, in order to implement the above-described provisions of the Joint Powers
23 Agreement the parties enter into the following agreement:
24
25

26 **1. LIBRARY DIRECTOR**

27 The Library Director (Director) shall be appointed by the County and shall be a County
28 employee. The position classification for the Director shall state that the Director supervises all
29 Library JPA employees and reports to the County with respect to all matters relating to
30 supervision of personnel and other administrative matters handled by or through the County. The
31 position classification shall also state that the Director has a responsibility to implement the
32 provisions of the Joint Powers Agreement in an equitable manner and a reporting responsibility to
33 the Governing Board of the Library JPA with respect to the level of services to be provided by the
34 various branches including hours, materials, programs and policies relating to the use of libraries
35 by the public. The Director shall also have responsibility for reporting to the Governing Board on
36 all financial matters relating to library services and making appropriate recommendations.

37 Any employment recruitment materials or other employment related documentation describing
38 the job duties of the Director shall reference the above and state that while the Director is a
39 County employee, he/she has a reporting responsibility to the Governing Board with respect to
40 the scope and nature of library services and needed plans for the expansion and modification of
41 library services. Such materials shall also state that the Director shall have a reporting
42 responsibility to the County with respect to matters that relate to personnel and administration,
43 including but not limited to training and discipline. The Library Director shall be required to
44 attend such staff meetings and training seminars as the County deems necessary to fulfillment of
45 Director's responsibilities in the areas of personnel and administration.

1 **2. OTHER STAFF**

2 This Agreement shall also apply to and cover all existing County positions and employees
3 assigned to the San Mateo County Library, as well as new classifications and employees added
4 during the term of the Agreement.

5
6 **3. SERVICES**

7 County shall provide staff services to operate Library JPA libraries in accordance with the
8 adopted annual budget. Library JPA has jurisdiction over the level of services to be provided to
9 the various branches including hours, materials, programs and policies relating to the use of
10 libraries by the public. The Director shall determine how such services and policies are carried
11 out.

12 **4. DURATION**

13 This Agreement shall have the initial term stipulated in the Joint Powers Agreement and
14 thereafter shall continue from year to year. Either the County or Library JPA may give the other
15 written notice of intent to terminate this Agreement. The termination shall take effect at the close
16 of the fiscal year following the fiscal year in which notice was given. Notice of termination may
17 be withdrawn anytime up to December 31 of the fiscal year in which termination is scheduled to
18 occur. Notwithstanding the above, this Agreement shall also terminate under either of the
19 following circumstances:

- 20 1. On the date that the Joint Powers Agreement terminates; or
21 2. On a specified date no sooner than 6 months after the Governing Board votes to terminate this
22 Agreement, provided that such vote is taken within 90 days of the effective date of a new labor
23 agreement.

24 If this Agreement is terminated in any manner such that the stipulated notice is not provided to
25 the County by the Governing Board, the Library JPA shall remain responsible for all costs
26 associated with employment of Director and Library Staff until such time as the persons holding
27 such positions are terminated from County employment, or are assigned to a position within the
28 County other than the position of Library Director or Library Staff.

29 **5. STATUS OF COUNTY AS EMPLOYER**

30 Except as pertains to contractors engaged by the County, all persons rendering services to the
31 Library JPA shall be County employees. Control of personnel standards of performance,
32 discipline and all other aspects of employment shall be governed by the County. All
33 classification, compensation and employment benefits shall be governed by the County. All labor
34 negotiations, either with represented or unrepresented employees shall be conducted by and under
35 the exclusive direction of the County.

36 In the event County uses contract services to perform one or more of the services provided to
37 Library JPA, the appropriate supervision and inspection of the contractors work will be
38 performed by the County.

39 **6. AUDITS AND INSPECTION**

40 The records and documents with respect to all matters covered by this Agreement shall be subject
41 to inspection, review or audit by each of the parties during the term of the Agreement and for
42 three years after termination, or shorter period as identified by applicable County records
43 retention policy.

1 **7. SUPPORT SERVICES**

2 Library JPA may use County human resources, accounting, payroll, purchasing, facilities
3 maintenance and other support systems when the Library JPA and County agree in writing to
4 such provision. County services will be made available to the Library JPA on the same terms and
5 conditions, including the payment of associated costs, provided to County departments.

6 **8. INDEMNIFICATION**

7
8 Each party agrees to defend, indemnify and save harmless the other, their respective board
9 members, officers, agents and employees, from and against all loss or expense including, but not
10 limited to judgments, settlements, attorney's fees and costs by reason of any and all claims for
11 injuries, damages, penalties or other relief based upon the alleged negligence, or wrongful
12 conduct of a party, or its board members, officers, agents and/or employees, except for the
13 injuries, penalties and damages caused by the sole negligence or wrongful conduct of the party.

14 **9. INSURANCE**

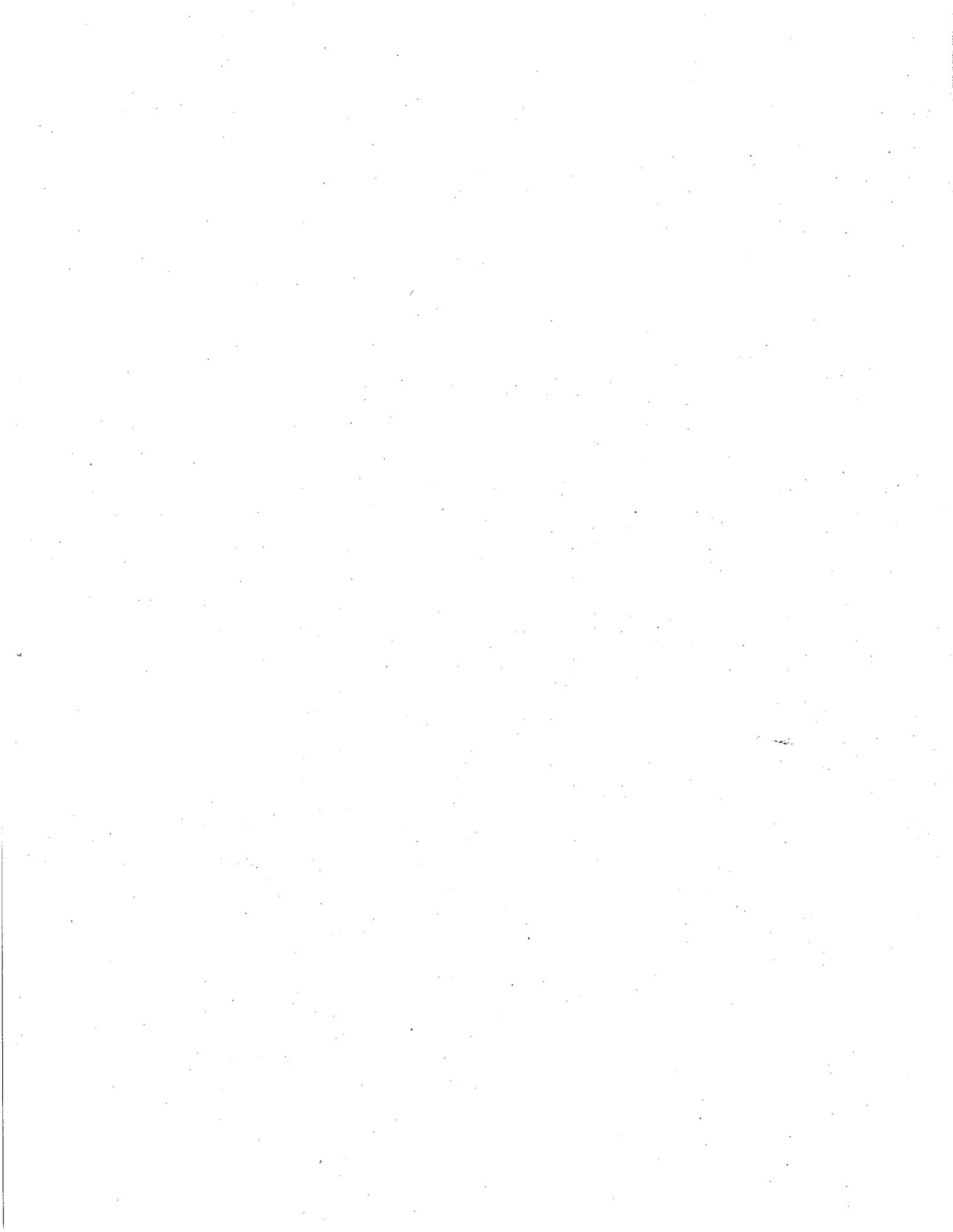
15 Workers compensation and employment liability insurance coverage or self insurance shall be
16 provided by County for Library JPA operations, the costs of which shall be paid from Library
17 JPA revenues. Coverages and limits shall be equivalent to that provided to other County
18 employees. Notwithstanding the above, Library JPA shall indemnify and save harmless County
19 for any amounts County expends within the limits of its self insured retention in defending
20 Library JPA, its Governing Board, officers, agents, and/or employees.

21 **10. ASSIGNMENT / SUBLETTING**

22 Neither the Library JPA nor the County shall transfer or assign, in whole or in part, any or all of
23 their respective rights or obligations under this Agreement without the prior written consent of the
24 other. The County shall not subcontract for the provision of any library services currently
25 provided by Library staff under this Agreement without the prior written consent of the
26 Governing Board. The Library JPA shall not subcontract for the provision of any services
27 assigned to the County under this Agreement without prior written consent of the County.

28 **11. DISPUTE RESOLUTION PROCESS**

29 Disputes between the parties with respect to the relative authority and responsibilities of
30 each shall be referred to the Personnel Committee defined in the Joint Powers
31 Agreement. It shall be the responsibility of this Committee to serve as a forum for
32 dispute resolution resulting from the Staff Services Agreement, or other matters involving
33 services provided to the Library JPA by County staff.



1 BYLAWS

2
3 FOR

4
5 THE SAN MATEO COUNTY LIBRARY JOINT POWERS AUTHORITY

6
7 The County of San Mateo and certain cities within the County of San Mateo have entered into a
8 Joint Powers Agreement establishing the Library Joint Powers Authority (hereinafter referred to as the
9 "Library JPA"). The Library JPA hereby adopts the following Bylaws for the purpose of providing for
10 the orderly conduct of its affairs.

11 ARTICLE I.

12 NAME.

13
14 The name of the separate entity established by the Joint Powers Agreement is the "San Mateo
15 County Library Joint Powers Authority" and may be referred to as the "Library JPA." The Library JPA
16 is charged with the governance of the San Mateo County Free Public Library system pursuant to the
17 Joint Powers Agreement.

18 ARTICLE II.

19 PURPOSES.

20 The Library JPA shall have the purposes established by the Joint Powers Agreement. In
21 addition, the JPA shall::

- 22
23 A. Authorize the submission of applications for federal, state, local, and private grants and
24 approve acceptance of such grants as are received, and allow for the delegation of this
25 responsibility to the Library Director.
26
27 B. Advise the County concerning the job performance of the Library Director and concerning
28 any issues regarding the Staff and Services Agreement between the Library JPA and the
29 County.
30
31 C. Act in an advisory capacity to each City Council and the Board of Supervisors in all matters
32 pertaining to public library services and the services of the library system.
33
34 D. Make appointments to advisory boards and other groups with which the Library JPA is
35 affiliated including the Peninsula Library System Advisory Board.
36
37 E. Consult with support groups and citizens on the development and delivery of library
38 services.
39
40 F. Accept contributions, or authorize the Library Director to accept contributions, of money or

1 property to the Library system and make appropriations in accordance with any limitations
2 imposed by the contributors on the appropriate distribution and use of such gifts, and the
3 Library JPA budget.
4

5 ARTICLE III.

6 MEMBERS; GOVERNING BOARD.

7 Governing Board membership shall be as established by the Joint Powers Agreement.

8 A. If both the member and the alternate as described in the JPA will be absent, the City
9 Council or Board of Supervisors may designate a substitute for that meeting and notify the
10 Library JPA, in written notice to the Library Director, of the designation.

11 B. Members are expected to attend all meetings of the Board. A member, or designated
12 representative, who is unable to attend a given meeting, shall give advance notice of his/her
13 inability to attend to the Board Chair or to the Library Director.

14 C. If any member, or designated representative, fails to attend three consecutive meetings, the
15 Chair will notify the City Council or Board of Supervisors to encourage future participation.

16 D. The Governing Board may appoint such committees as may be necessary from time to
17 time. The Governing Board shall appoint a Personnel Committee in accordance with the
18 Library JPA.

19 E. Members of the Governing Board and the designated representatives shall comply with
20 State and Federal conflict of interest laws and regulations.

21
22 ARTICLE IV.

23 OFFICERS.

24 A. The Governing Board will elect a Chair and Vice Chair annually not later than June. Voting
25 shall be public. The Chair and Vice Chair shall be voting members of the Governing Board.
26 New officers shall assume office the first day (July 1) of the next Fiscal Year.

27 B. It shall be the duty of the Governing Board Chair to preside at the meetings of the
28 Governing Board, call special meetings when necessary and to perform other duties as
29 ordinarily pertain to the office of Chair. The Chair shall set the agenda in conjunction with the
30 Library Director and the Operations Committee Chair.

31 C. The Vice Chair shall have all the powers and duties of the Chair in his or her absence.

32 D. The term of office for the Chair and Vice Chair shall commence as stated in paragraph A
33 above, and run for a period of one year. No person shall hold the same office for more than two
34 consecutive terms.

1 E. Nomination for officers shall be made from the floor. Nominations shall be made by voting
2 members of the Governing Board only. Nominations and election of the Chair shall precede
3 nominations and election of the Vice Chair.

4 F. A special election shall be called by the Governing Board if the Chair and/or Vice Chair is
5 unable to serve a full term of office. The newly elected member shall serve the remaining term
6 of that office and this remaining term shall be considered a term in determining consecutive
7 terms.

8 G. All officers shall serve without compensation.

9 H. The Chair or Vice Chair may be removed from office at any time by majority vote of the
10 Governing Board.

11
12 ARTICLE V.

13 OPERATIONS COMMITTEE; OFFICERS.

14 A. The Operations Committee shall be responsible for advising the Library Director and
15 Library Governing Board on budget and operational issues of the library system.

16 B. The Operations Committee shall elect a Chair and Vice Chair from among its members
17 annually.

18 C. It shall be the duty of the Chair to preside at the meetings of the Operations Committee, call
19 special meetings and set the agenda in conjunction with the Library Director.

20 D. The Vice Chair shall have all the powers and duties of the Chair in his or her absence.

21 E. The term of office for the Chair and Vice Chair shall commence on July 1 and be for a
22 period of one year. No person shall hold the same office for more than two consecutive terms.

23 F. Nomination for officers shall be from the floor. Nominations shall be made by members of
24 the Operations Committee only. Nominations and election of the Chair shall precede
25 nominations and election of the Vice Chair.

26 G. The Operations Committee may appoint such other committees as may be necessary from
27 time to time.

28
29
30
31 ARTICLE VI.

1 MEETINGS.

2 A. The Governing Board shall establish by resolution the date, time and place for regular
3 Library JPA meetings. The Governing Board may call for or set special meetings as deemed
4 necessary.

5 ARTICLE VII.

6 CONDUCT OF BUSINESS.

7 A. Except as otherwise provided in these bylaws, or by a majority vote of those present,
8 Roberts Rules of Order, Revised, shall constitute the parliamentary authority for the Library
9 JPA Governing Board and Operations Committee.

10 B. For all meetings, the Governing Board and Operations Committee may use a consent
11 calendar containing items generally non-controversial in nature. Any Governing Board or
12 Operations Committee member, staff or member of the public may request that an item be
13 taken from the consent calendar and voted on separately.

14 C. The Governing Board agenda order of business may be revised by the Chair with the
15 concurrence of the Board.

16 D. The public shall have an opportunity to speak on any Governing Board agenda item. The
17 Chair, with the concurrence of the Board, may set parameters for the nature and length of any
18 comments.

19 E. Action may be taken on items not appearing on the posted agenda only in compliance with
20 provisions of the Ralph M. Brown Act.

21 F. The Library Director shall prepare or cause to be prepared such reports, studies and
22 recommendations as may be requested by the Board to assist in the conduct of business,
23 including financial reports.

24 G. The Library Director shall be responsible for the maintenance of proper records and files
25 pertaining to Board business.

26
27 ARTICLE VIII.

28 ADOPTION OF BUDGET; PROCEDURES.

29 A. The budget for the Library JPA will be adopted annually by the Governing Board.
30 Preliminary study sessions or special meetings will be established by the Chair as needed.
31 Governing Board members may request the Chair to call such sessions or meetings. A
32 preliminary budget shall be prepared by the Library Director and reviewed and approved by the
33 Operations Committee and presented to the Governing Board for approval prior to July 1 each
34 year. A revised final budget shall be prepared and presented to the Governing Board for

1 approval prior to October 15 each year.

2
3 ARTICLE IX.

4 ADOPTION AND AMENDMENT OF BYLAWS.

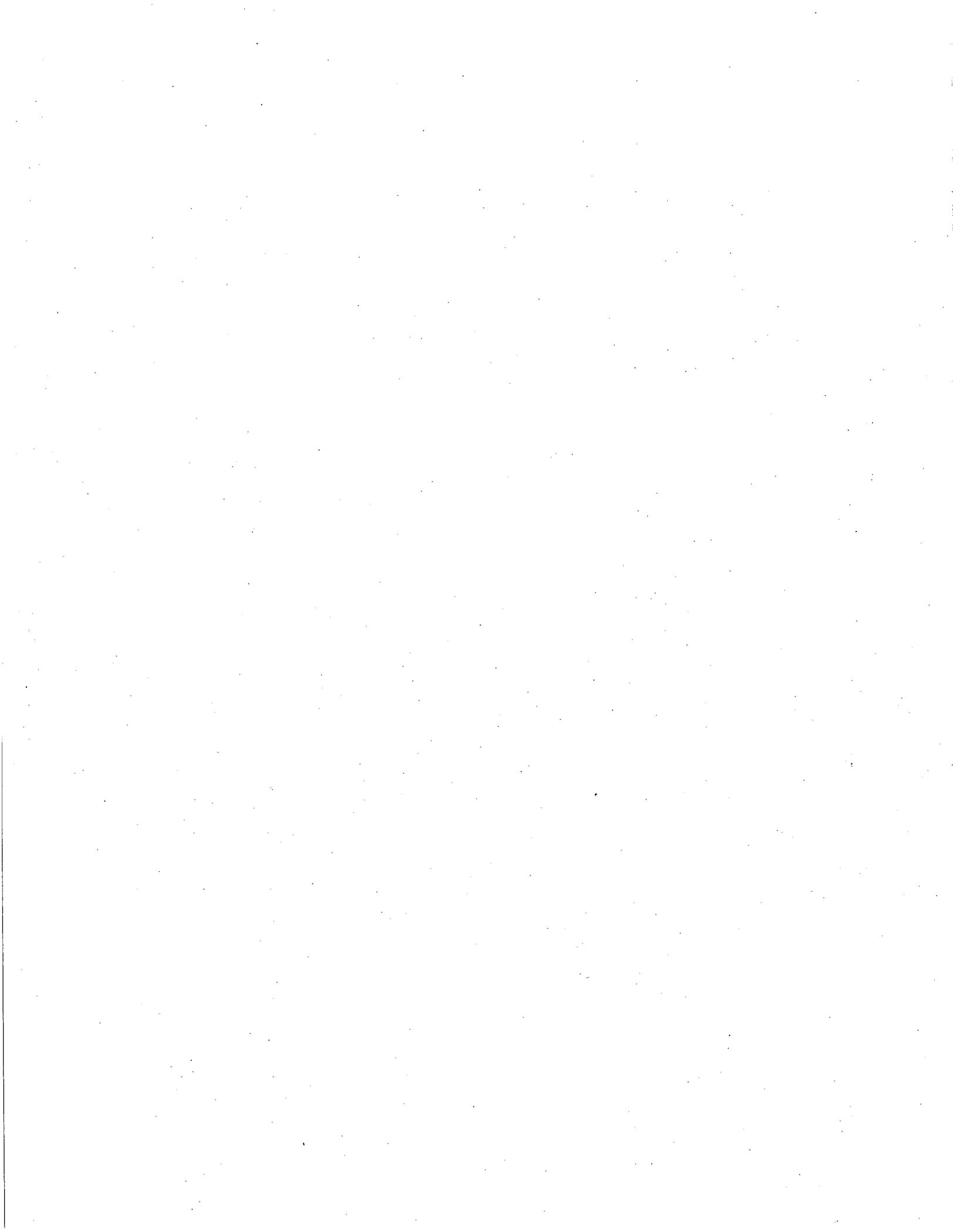
5 A. These Bylaws shall become effective upon an affirmative vote of a majority of the
6 Governing Board.

7 B. The Bylaws may be amended by a majority vote of the Governing Board. Proposed
8 amendments shall be proposed in writing and distributed to all members at least five (5) days
9 prior to the meeting at which they are to be considered. The Governing Board shall vote on the
10 proposed amendment at the soonest practicable regular meeting date.

11
12 ARTICLE X.

13 CONFLICT BETWEEN BYLAWS AND JOINT POWERS AGREEMENT

14 A. In the event of a conflict between these Bylaws and the Joint Powers Agreement, the latter
15 shall prevail.





Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

**FROM: JEROME D. GRUBER, CITY MANAGER
WYNNE FURTH, CITY ATTORNEY**

DATE: FOR THE MEETING OF AUGUST 19, 2009

**SUBJECT: TOWN RESPONSE TO CIVIL GRAND JURY REPORT ON
REVERSING THE UPWARD TRAJECTORY OF EMPLOYEE COSTS IN THE
CITIES OF SAN MATEO COUNTY**

RECOMMENDATION

Staff recommends that the City Council accept the attached final proposed draft as the Town's response to the civil grand jury regarding reversing the upward trajectory of employee costs in the cities of San Mateo County.

DISCUSSION

The San Mateo County Civil Grand Jury issued a report entitled *Reversing The Upward Trajectory Of Employee Costs In The Cities Of San Mateo County* on June 4, 2009. In that report, the Grand Jury makes nine findings. It also makes two recommendations. By September 3rd the Atherton City Council must approve a response at a public meeting as follows:

1. For each finding, the Town must either
 - a. agree with the finding
 - b. disagree in whole or in part, explaining which part is disputed and why.
2. For each recommendation either
 - a. state that the recommendation has been implemented, with a summary regarding the implemented action
 - b. state that the recommendation will be implemented within a specified time frame

- c. state the recommendation requires further analysis, with an explanation of the scope and parameters of the analysis or study and a time frame of not more than six months from June 4th.
- d. state that the recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefore.

Working with the Assistant City Manager, we have prepared a draft response to the Grand Jury for the Council's consideration. The Civil Grand Jury report contains two additional sections, entitled *Background* and *Conclusions*, but since no legal response is required, we have not included one.

FISCAL IMPACT

Staff and attorney time was required to prepare this response.

Wynne Furth

Wynne Furth, City Attorney

Jerome D. Gruber, City Manager

Attachments:

Report of the Civil Grand Jury
Draft Response of Town of Atherton



**Office of the City Manager
Town of Atherton**

**91 Ashfield Road
Atherton, California 94027
Phone: (650) 752-0500
Fax: (650) 614-1212**

August 20, 2009

Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

RE: San Mateo County Grand Jury Report On The Upward Trajectory of Employee Costs in Cities

Dear Judge Miram:

The Town of Atherton (the "Town") has received and reviewed the "San Mateo County Grand Jury Report On The Upward Trajectory of Employee Costs in Cities." The Atherton City Council reviewed the report and approved this response at its regular City Council meeting on August 19, 2009. Pursuant to California Penal Code sections 933 et seq., the Town responds to the findings and recommendations as follows:

The Town agrees with the 9 findings set out in the report with the following additional comments or exceptions:

Finding 1(a): The Town has the lowest retirement formula combination of all San Mateo County Cities at 3% @ 50 and Single Highest Year (Safety) and 2% @ 55 and Highest 36 Month Average (Miscellaneous).

Finding 1(b): The Town only offers retiree and dependent medical benefits as post employment benefits.

Finding 1(d): The Town does not convert unused sick days to cash at termination or retirement.

Finding 1(e): The Town does not automatically increase step categories annually to reflect cost of living increases (COLA).

Finding 2(a): The Town does not assume that people in the private sector are not qualified for public sector jobs. The Town actively recruits in the private sector.

Finding 2(b): The Town contracts out fire services, planning, information technology, vehicle maintenance, and code enforcement. Table 8 shows Atherton staff as 51, the correct figure is 48.35 as of July 1, 2009.

Finding 3(a): There is no conflict of interest when Council Members set employee compensation and benefits. Town Council Members serve without compensation or benefits. Furthermore, negotiations of the City Manager contract do not track union agreements. The Town does not agree with the Grand Jury's conclusion that having the City Council set compensation and benefits is a conflict of interest. City Council members are elected by residents of the Town to represent the residents and are charged by law to carry out this responsibility. Unions are only one of many sources of political contributions. The City Council is keenly aware of the importance the Town residents place on their funds.

Finding 3(b): The Town holds a public discussion prior to City Council approval of all Memorandums of Understanding (MOU). A Staff Report is provided that describes the fiscal impacts of decisions and includes a copy of the proposed MOU and resolution.

The Town's response to the Grand Jury's recommendations is as follows:

The Grand Jury report will be a helpful document moving forward; however, the Town will not implement recommendations 1 or 2 because the recommendations are not warranted or reasonable.

In a small town the size of Atherton citizens are in close touch with their elected officials. The Town holds extensive hearings on its budget each year. The City Council and Town management are mindful of the need to reduce costs and have a mechanism in place that works towards cost reduction. The Council believes that elected representatives should make compensation and benefit decisions.

The Town shares the Grand Jury's concerns about the cost of public services and appreciates the information provided in the Grand Jury report. The Town is working with other San Mateo County cities to address these issues. In 2008, the Town joined the Municipal Employee Relations Committee (MERC) to work with other San Mateo County cities to identify and develop information that will assist the Town in its understanding of the changes that are occurring relative to employee costs and recruitment. A more detailed discussion of that program has been forwarded to the Grand Jury by the San Mateo County City Managers Association and Human Resources Association.

If you have any questions please feel free to contact the Town of Atherton.

Thank you.

Sincerely,

TOWN OF ATHERTON

Jerry Carlson
Mayor

ITEM 34

Regular Agenda Item prepared by Council Member Charles Marsala:

Discussion and Action for Council to Assign a Sub-Committee or other mechanism to deal with Town Facilities outside of the Town Center.

History: In 2002 the Town Council created the Facilities Sub Committee, consisting of two Council Members. In 2006 the Committee consisted of Alan Carlson and Charles Marsala. The Committee worked with Staff, and members of the Park and Recreation Commission to remodel and expand the Pavilion from a indoor capacity of 90 to 120 using \$220,000 in state Bond funds.

The Committee worked with staff to issue the Gee Study on a new Town Center.

The Committee brought to council’s attention that the Library reserves had grown to \$1.6Million.

In 2008, Council elected to remove the Park Facilities, Library, and Current Council Chambers from the Town Facilities Committee and rename the Committee the Town Center Committee.

Today: The Council Chambers, Park Pavilion, and Library all have issues facing them.

Council Chambers: Needs more \$300,000 in seismic repairs, can not have attendance of more than 55 residents.

Park Pavilion: As the Town looks for revenue, the Pavilion could be a source. Most weddings need capacity for 200 minimum attendance plus a dance floor. Back in 2000, Interim City Manager Ralph Friedman suggested expanding the Pavilion to bring in more revenue from higher capacity and winter rentals. Is this a solution or does it cause other problems?

For more than a year, two POD container storage units have been sitting next to the Pavilion as there is no storage space.

To be competitive in the year round wedding marketplace 2,000 square feet of seating square footage is needed. Rates would increase to approximately \$7,500.

Increased rates would increase revenues approximately:

80 current weddings a year from \$4,000 to \$7,500 impact	–additional \$240,000
20 Winter Bookings a year at \$4,000 -----	additional \$ 80,000
	TOTAL \$320,000

Library: The Library currently has \$4 million in reserves, after a surplus of \$770,000 in FY 2008-2009. A surplus of more than \$600,000 is planned for FY2009-FY2010.

Back in 1983 the Library had plans developed to separate the Children's Area from the Adult Area.

As a member of the San Mateo JPA, the Library now has numerous events drawing ninety people for lectures, movies, and children's storytelling.

There could be a win-win for the Library and Council Chambers. Options would be:

1. Connect the Library and Council Chambers, expanding the capacity of the council chambers to hold ninety people. Council Chambers are used less than ten times a month for council, committee, and commission meetings- mostly on Wednesday nights. The Library would have use at other times. This could be done with funds from both organizations. Perhaps open up the back wall and push the stage back to accommodate larger crowds.
2. Expand the Library South, although neighbors have expressed concerns.

Request for Agenda Item:

Create a policy for the Atherton JPA Representative:

History: At the May Atherton Council meeting there was an agenda item to request council the JPA for permission to use Library Donor Funds. A motion was passed 3-2 (Council Members Dobbie and McKeithen opposed) to authorize the Atherton City Manager and City Attorney to research the JPA Agreement regarding Donor City Funds.

In May, Council Member McKeithen had requested the JPA have Use of Donor City Funds on the June 1, 2009 JPA Agenda. The JPA Staff report reads: “ Ms. McKeithen has requested that no further action on the issue of donor city funds be taken until such time that the Town Council authorizes formal JPA Board consideration.

The item was listed as “Use of Donor City Funds Update”. At that meeting Council Member McKeithen did not mention the 3-2 vote. Council Member McKeithen did move to rescind a February motion of the JPA and “that no further action on the issue on donor city funds be taken at this time.”

Recommendation: Require Atherton’s JPA representatives to advise the Atherton Council that they will be making motions at JPA meetings and to require disclosing votes of the Atherton Council involving the JPA agreement at those meetings