

REGULAR AGENDA (Item 9)

- 7:55 P.M. 9. CONSIDERATION OF LEASE AGREEMENT FOR THE CONTINUATION AND THE EXPANSION OF THE KNOX PLAYSCHOOL**

Recommendation: Approve the Lease Agreement with Knox Playschool for an initial term of five (5) years with an option for five (5) additional years with the financial change recommended by Staff, if the option term is exercised.

- 9:15 P.M. PUBLIC HEARING (Item 10)**

- 10. PUBLIC HEARING - SPECIAL MUNICIPAL PARCEL TAX**

- 10:30 P.M. 11. PUBLIC COMMENTS**

- 10:45 P.M. 12. ADJOURN**



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: INTERIM CITY MANAGER RALPH FREEDMAN

DATE: FOR THE MEETING OF MARCH 6, 2001

SUBJECT: ADOPTION OF RESOLUTION NO. 01-01A, (AMENDING RESOLUTION 01-01) CHANGING THE DATES THAT ARGUMENTS AND REBUTTAL ARGUMENTS FOR AND AGAINST THE SPECIAL TAX MEASURE ARE DUE

RECOMMENDATION:

Adopt Resolution No. 01-01A, amending Resolution No. 01-01, which was adopted by the City Council on February 8, 2001. The amended resolution changes the dates that arguments and rebuttal arguments for and against the Special Tax Measure are due.

INTRODUCTION:

The City Council adopted Resolution 01-01, calling for an election of the Special Parcel Tax on the June 5, 2001 ballot. The resolution requested election services from the County, and set the dates of March 9, 2001 that arguments for and against the measure are due in the City Clerk's Office, and March 27, 2001 as the date that rebuttal arguments are due. The adopted resolution was submitted to the County Elections Office after the February 8, 2001 meeting.

ANALYSIS:

The argument dates were initially set to allow for ample time to submit the documents to the printer for the sample ballot. The Elections Office has requested that the dates the Town set for the arguments be changed to coincide with the due dates adopted by the County – March 19, 2001 for arguments, and March 29, 2001 for rebuttal arguments. Changing the dates will provide uniformity if there is a consolidated election in June involving another district whose boundary lines fall within the Town limits. By adopting the amended Resolution 01-01A, the City Council will change only

the dates that the arguments are due in the City Clerk's Office. The remainder of the resolution stands as adopted.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: RALPH FREEDMAN, INTERIM CITY MANAGER

DATE: FOR THE MEETING OF MARCH 6, 2001

**SUBJECT: AGREEMENT WITH MIG, INC. FOR THE HOLBROOK-PALMER PARK
PLAY AREA REPLACEMENT AND EXPANSION**

RECOMMENDATION:

Authorize the Interim City Manager to execute the Professional Services Agreement with MIG, Inc. for design, planning, and construction oversight services of the new Playground Project in Holbrook-Palmer Park.

INTRODUCTION:

The City Council, at the January 17th meeting, approved the replacement and expansion of the playground equipment at Holbrook-Palmer Park by a 4-0-1 vote. This approval was granted with the proviso that the Park & Recreation Commission sign-off on the final plans before the project goes to bid, and that construction be designed to minimize maintenance.

The proposal from Susan McKay of MIG, Inc. includes the design of the playground site, the development of the construction documents, bidding assistance, and the oversight of the construction of the new playground. She has worked on developing the conceptual plans for this project, and has met with the Park & Recreation Commission, the Planning Commission, and the City Council over the last several months. Her familiarity with this project and her interface with the Committee that organized this project, make the utilization of her firm the most logical choice.

ANALYSIS:

This agreement is well defined, and it provides the Town with the needed services from start to finish. MIG, Inc. is nationally recognized for its work on playground projects, and it has been involved in many park projects in the local area.

FISCAL IMPACT:

The cost of the proposed agreement with MIG, Inc. is \$38,650, which includes both labor and direct costs. The Committee that is doing the fundraising for this project has already deposited the total amount needed for this entire agreement with the Town.

PROFESSIONAL SERVICES AGREEMENT FOR THE HOLBROOK-PALMER PARK PLAYGROUND PROJECT

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

1. **Project Designation.** The Consultant is retained by the City to perform design, planning, and construction oversight services in connection with the project designated as "the Playground."
2. **Scope of Services.** Consultant agrees to perform the services, identified in Exhibit "A" attached hereto, including the provision of all labor, materials, equipment, and supplies.
3. **Time for Performance.** Work under this contract shall commence upon the giving of written notice by the City to the Consultant to proceed. Consultant shall perform all services and provide all work product required pursuant to this agreement within 60 calendar days from the date written notice is given to proceed, unless an extension of such time is granted in writing by the City.
4. **Payment.** The Consultant shall be paid by the City for completed work and for services rendered under this agreement as follows:
 - a. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
 - b. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.
 - c. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.
 - d. The Consultant's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the City for a period of three (3) years after final payments. Copies shall be made available upon request.
5. **Ownership and Use of Documents.** All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this agreement shall be the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Consultant's endeavors.
6. **Compliance With Laws.** Consultant shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.
7. **Indemnification.** Consultant shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, including attorneys fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Consultant's own employees, or damage to property occasioned by a negligent act, omission or failure of the Consultant.
8. **Insurance.** The Consultant shall secure and maintain in force throughout the duration of this contract

comprehensive general liability insurance with a minimum coverage of \$500,000 per occurrence and \$1,000,000 aggregate for personal injury; and \$500,000 per occurrence/aggregate for property damage. Said general liability policy shall name the Town of Atherton as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this section shall be delivered to the City within fifteen (15) days of execution of this agreement.

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

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

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

12. Termination.

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

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

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

Ralph Freedman, Interim City Manager
91 Ashfield Road
Atherton, CA 94027

Notices to Consultant shall be sent to the following address:

Susan McKay, Project Manager
MIG, Inc.
800 Hearst Avenue
Berkeley, CA 94710

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

DATED this _____ day of _____, 2001.

Town of Atherton

Consultant

By _____
Interim City Manager

By _____

Item No. 8



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
RALPH FREEDMAN, CITY MANAGER**

FROM: ROBERT J. BRENNAN, CHIEF OF POLICE

DATE: FOR THE MEETING OF MARCH 6, 2001

**SUBJECT: POLICE DISPATCH CENTER UPGRADE PROJECT
SELECTION OF PROJECT CONSULTANT**

RECOMMENDATION:

Approve Specialized Communications Services as the sole-source vendor to manage the Police Dispatch Center upgrade project in the amount of \$10,000.00 of State grant funds.

INTRODUCTION:

The Town of Atherton Police Department has recently been awarded two technology grants that have already been accepted by the Town Council. One of the grants, the California Law Enforcement Equipment Program Grant (\$102,601.00), is part of the State COPS funding program funded by the State budget surplus. The grant must be spent on “technology related purposes that enhance law enforcement”.

The Chief of Police has identified the Atherton Dispatch Center as being in critical need of updating, and wishes to use the grant funding (without cash matching requirements) to make the necessary improvements. It is the intent of this Staff Report to obtain Council approval to formally accept Specialized Communications Services (the project manager) as the sole source vendor.

ANALYSIS:

Daniel White, the owner and operator of Specialized Communications Services, has worked in and around public safety for over 30 years. He serves as project manager for design/build projects, and works closely with dispatchers, communications managers, risk managers, vendors, and utilities (including PacBell 911) to guide the project. Mr. White is recognized as the local expert in this field. His list of local projects includes the remodeling of the Mountain View, Millbrae, Burlingame, San Carlos, San Rafael and San Jose State University Police dispatch centers.

It should be noted that this fee is solely for the project management portion of the desired Dispatch Center remodel. The purchase of equipment, labor, additional vendors, etc. will be brought to Council for approval after bids are received for the construction phase of this project.

Mr. White’s proposal includes the following:

- > Space needs analysis
- > Designing console furniture
- > Accessing ADA requirements
- > Review specifications and requirements for 911 and CAD equipment
- > Preparing and monitoring bids for the subsequent remodel
- > Review installation and working with vendors to correct any deficiencies

FISCAL IMPACT:

None. There are no cash matching requirements for this grant. The grant funds have already been allocated to the Police Department budget per Council instructions.

Prepared by:

Approved:

/s/Robert J. Brennan
Robert J. Brennan
Chief of Police

Ralph Freedman
Interim City Manager

Attachments:

1. Proposed Agreement
2. Insurance Requirements for Contractors

**AGREEMENT FOR SPACE PLANNING
AND PROJECT MANAGEMENT SERVICES**

This Agreement is made and entered into this 6th day of March, 2001, by and between the **Town of Atherton (hereinafter "CITY")**, and **Daniel D. White, an individual, dba Specialized Communication Services (hereinafter "CONTRACTOR")**.

RECITALS

WHEREAS, CITY desires space planning and project management services in connection with the design and the remodeling of the Atherton Police Dispatch Center located at 83 Ashfield Road, in the Town of Atherton; and

WHEREAS, CONTRACTOR is a firm which has the experience, skill, training, and expertise to provide the necessary space planning and project management services for the aforementioned Atherton Police Dispatch Center.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. PROJECT COORDINATION.

A. CITY. The City Manager shall be the representative of the CITY for all purposes under this Agreement. The Police Lieutenant is hereby designated the PROJECT MANAGER for the CITY, and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement.

B. CONTRACTOR. CONTRACTOR shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for CONTRACTOR. Daniel D. White is hereby designated as the PROJECT DIRECTOR for CONTRACTOR. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR for any reason, the CONTRACTOR shall notify the CITY within ten (10) business days of the substitution.

2. DUTIES OF CONTRACTOR.

CONTRACTOR shall perform the duties and/or provide services as described in the proposal letter attached hereto and incorporated herein as Exhibit "A".

3. **COMPENSATION.**

CITY shall pay CONTRACTOR for the full performance of its duties and services, and reimburse CONTRACTOR for its expenses related thereto for a total fixed fee amount of \$10,000. CITY shall make monthly progress payments based upon completed work, following receipt by PROJECT MANAGER of invoices submitted by CONTRACTOR, with a final payment of \$1,500.00 to be made upon satisfactory completion of the project.

4. **TERM OF AGREEMENT.**

The term of this Agreement shall be for a maximum of three (3) months from the date of this Agreement.

5. **TERMINATION.**

A. Discretionary. Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.

B. Cause. Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) day time period.

C. Effect of Termination. Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other. CONTRACTOR shall be entitled to payment by CITY for any unpaid services and expenses rendered prior to the date of termination, upon submission of an itemized invoice to CITY for same.

D. Return of Documents. Upon termination, any and all CITY documents or materials provided to CONTRACTOR and any and all of CONTRACTOR's documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to CITY as soon as possible, but not later than thirty (30) days after termination.

6. **OWNERSHIP OF DOCUMENTS.**

The written documents and materials prepared by the CONTRACTOR in connection with the performance of its duties under this Agreement, shall be the sole property of CITY. CITY may use said property for any purpose, including projects not contemplated by this Agreement, provided

that CITY agrees to hold harmless and defend CONTRACTOR from any claims arising out of the CITY's use of the documents and materials for projects other than as contemplated by this Agreement.

7. INSPECTION AND AUDIT.

Upon reasonable notice, CONTRACTOR shall make available to CITY, or its agent, for inspection and audit, all documents and materials maintained by CONTRACTOR in connection with its performance of its duties under this Agreement. CONTRACTOR shall fully cooperate with CITY or its agent in any such audit or inspection.

8. ASSIGNABILITY.

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

9. INSURANCE.

A. During the term of this Agreement, CONTRACTOR shall maintain, at no expense to CITY, the following insurance policies:

1. A comprehensive general liability insurance policy in the minimum amount of one million (\$1,000,000) dollars per occurrence for death, bodily injury, personal injury, or property damage;

2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million (\$1,000,000) dollars per occurrence;

3. If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of five hundred thousand (\$500,000) dollars to cover any claims arising out of the CONTRACTOR's performance of services under this Agreement. CITY agrees that any CONTRACTOR liability for professional negligence arising under this Agreement shall not exceed five hundred thousand (\$500,000) dollars.

B. The insurance coverage required of the CONTRACTOR by Section 10. A., shall also meet the following requirements:

I. The insurance shall be primary with respect to any insurance or coverage maintained by CITY and shall not call upon CITY's insurance or coverage for any contribution.

2. Except for professional liability insurance, the insurance policies shall be endorsed for contractual liability and personal injury.

3. Except for professional liability insurance, the insurance policies shall be specifically endorsed to include the Town of Atherton, the CITY, and their officers, agents, employees, and volunteers, as additionally named insureds under the policies.

4. CONTRACTOR shall provide to City's Risk Manager, (a) Certificates of Insurance evidencing the insurance coverage required herein, and (b) specific endorsements naming CITY, its officers, agents, employees, and volunteers, as additional named insureds under the policies.

5. The insurance policies shall provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance policies except upon thirty (30) days written notice to City's Risk Manager.

6. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years.

7. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this Agreement.

8. The insurance shall be approved as to form and sufficiency by PROJECT MANAGER and the City Attorney.

C. If it employs any person, CONTRACTOR shall maintain worker's compensation and employer's liability insurance, as required by the State Labor Code and other applicable laws and regulations, and as necessary to protect both CONTRACTOR and CITY against all liability for injuries to CONTRACTOR's officers and employees.

D. Any deductibles or self-insured retentions in CONTRACTOR's insurance policies must be declared to and approved by the City's Risk Manager and the City Attorney. At CITY's option, the deductibles or self-insured retentions with respect to CITY shall be reduced or eliminated to CITY's satisfaction, or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

10. INDEMNIFICATION.

CONTRACTOR shall indemnify, release, defend and hold harmless the County of Mann, the CITY, and their officers, agents, employees, and volunteers, against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorney's fees and administrative costs, arising out of or resulting in any way, in whole or in part, from any acts or omissions, intentional or negligent, of CONTRACTOR or CONTRACTOR'S officers, agents and employees in the performance of their duties and obligations under this Agreement.

11. NONDISCRIMINATION.

CONTRACTOR shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

12. COMPLIANCE WITH ALL LAWS.

CONTRACTOR shall observe and comply with applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. CONTRACTOR shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. CONTRACTOR shall release, defend, indemnify and hold harmless CITY, its officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

13. NO THIRD PARTY BENEFICIARIES.

CITY and CONTRACTOR do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

14. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO CITY: Glenn Nielsen , Police Lieutenant
Project Manager
Town of Atherton
83 Ashfield Road
Atherton, CA 94027

and, with respect to insurance issues:
City Manager
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

TO CONTRACTOR: Daniel D. White
Project Director
Specialized Communication Services
2438 Wildhorse Drive
P.O. Box 833
San Ramon, CA 94583
(925-833-2424)

15. INDEPENDENT CONTRACTOR.

For the purposes, and for the duration, of this Agreement, CONTRACTOR, its officers, agents and employees shall act in the capacity of an Independent Contractor, and not as employees of the CITY. CONTRACTOR and CITY expressly intend and agree that the status of CONTRACTOR, its officers, agents and employees be that of an Independent Contractor and not that of an employee of CITY.

16. ENTIRE AGREEMENT - AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the CONTRACTOR and the CITY.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the CONTRACTOR and the CITY.

E. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

17. SET-OFF AGAINST DEBTS.

CONTRACTOR agrees that CITY may deduct from any payment due to CONTRACTOR under this Agreement, any monies which CONTRACTOR owes CITY under any ordinance, agreement, contract or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks or other amounts.

18. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

19. COSTS AND ATTORNEY’S FEES.

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, may recover its reasonable costs (including claims administration) and attorney’s fees expended in connection with such action.

20. APPLICABLE LAW.

The laws of the State of California shall govern this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

DATED this _____ day of _____, 2001

Town of Atherton

Consultant

By _____
Interim City Manager

By _____



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: RALPH FREEDMAN, INTERIM CITY MANAGER

DATE: FOR THE MEETING OF MARCH 6, 2001

SUBJECT: CONSIDERATION OF LEASE AGREEMENT FOR THE CONTINUATION AND THE EXPANSION OF THE KNOX PLAYSCHOOL

RECOMMENDATION:

Approve the Lease Agreement with Knox Playschool for an initial term of five (5) years with an option for five (5) additional years with the financial change recommended by Staff if the option is exercised.

INTRODUCTION:

The three (3) year Lease Agreement with Knox Playschool expires on June 30, 2001. In January, Susan Knox went before the Planning Commission seeking approval to place a new modular building next to the existing building. This new building would add two classrooms to the Playschool. The Planning Commission unanimously approved a Conditional Use Permit allowing for the expansion of the Playschool with conditions. Prior to going to the Planning Commission, she presented her proposal to the Park & Recreation Commission, who endorsed her proposal.

At the February 8th City Council meeting, several members of the City Council indicated that they wanted a full discussion of the proposal and the lease agreement at the next meeting. For this reason, this item has been placed on the March 6 agenda. A subcommittee of the City Council, Jim Janz and Kathy McKeithen, was created to discuss the lease agreement language with City Attorney Marc Hynes. The marked up version of the Lease Agreement reflecting their changes is attached to this Staff Report.

ANALYSIS:

This agreement is straightforward and covers monthly lease payments on both the existing building and the new modular building. The Agreement has been reviewed by the City Attorney, and provides the Town with adequate safeguards and the escalation of rental payments each year. The agreement calls for monthly lease payments on the existing modular, and in effect, a land lease for the initial five (5) year term for the land on which the new modular will be placed.

The Staff's recommended changes and the details of the Agreement can be summarized as follows:

1. A five (5) year term with an option by the Lessee to extend the term by an additional five (5) year term. The initial lease will extend from July 1, 2001 to June 30, 2006. The Lessee must inform the Town of her intention to extend the initial term by June 30, 2005.
2. For the first year of the lease agreement, the Lessee will pay the Town \$2,071 plus a CPI adjustment for the existing modular, and \$500 for the land lease for the new modular. These amounts would remain in place for one (1) year, and then be adjusted annually by the appropriate CPI. The land lease for the new modular starts at only \$500 because the Lessee will be paying in excess of \$3,000 in payments each month over 60 months for the new modular and furnishings, if one assumes a loan of \$150,000 at 8% interest over five years.
3. The Lessee is responsible for buying the new modular, installing it on site, putting up a new fence in the area behind the new modular, planting new trees to act as a buffer to the residents of Felton Gables, complying with the conditions imposed by the Planning Commission, and relocating the Town's existing water line in that area to avoid conflict with the new modular. In addition, the Lessee will have to equip the new modular with equipment and furnishings.
4. The Lessee will also pay the actual cost for her utilities, provide her own janitorial services, and pay her portion of the quarterly floor care in both trailers when the other Park building floors are waxed and polished.
5. At the beginning of the option term, if exercised by the Lessee, the base for the monthly rent for each modular should be \$3,000. Based upon past inflationary increases, this should be approximately \$300 greater than the lease payment on the existing modular in Year 5.
6. At the end of the initial term of the lease agreement, the new modular becomes the property of the Town of Atherton, whether or not the option term is exercised.

The Lessee has operated the Playschool at a high level for the past three (3) years. Each year, a higher percentage of her enrollment is from Atherton. The Lease Agreement calls for Atherton residents to be given the first opportunity to fill any vacancies. It is a service that is of great benefit to many Atherton families. In addition, most current Park uses or those that have been proposed, do not generate a positive cash flow for the Town. This use generates monies for the Town that will offset the costs of operating the Park.

FISCAL IMPACT:

At the current time, Susan Knox pays a monthly rental to the Town of \$2,071 for ten months of the year, and reduced payments during the two summer months. Under the new Lease Agreement, she will pay this amount plus a CPI adjustment for the existing building beginning on July 1, 2001. This then reflects additional revenue to the Town for the two summer months, which will now be rented to her at the full monthly amount.

The new modular building will be purchased and installed by Susan Knox, along with the relocation of the water line, the construction of new fence, construction of stairs and a ramp to the new modular building, and the installation of new lattice and landscaping. For the first five (5) years, she will pay the Town \$500 per month plus the appropriate CPI adjustment. For any additional years, she will pay the full monthly lease amount on the new modular building that is levied on the existing building.

In the first year of the new lease agreement, Susan Knox will pay approximately \$2,650 per month to the Town of Atherton. This amount will go up each year based upon the CPI as cited in the agreement. If the lease option term is exercised for Year 6, Susan Knox would pay the Town \$6,000 per month for leasing the two modulars from the Town under Staff's proposal.

LEASE

1. Parties. This lease is entered into between the Town of Atherton, a California municipal corporation, whose address is 91 Ashfield Road, Atherton, California 94027 ("Lessor") and Knox Playschools, Inc., a California corporation, whose address is 919 Cloud Avenue, Menlo Park, California 94025 ("Lessee").

2. Leased Premises. Lessor leases to Lessee those certain premises ("**Premises**") presently commonly known as the Creative Design Facility, together with the adjoining play yard, the tricycle track behind the Carriage House, and the non-exclusive use by adults of one rest room in the Carriage House and **(a) space for** one (1) modular building ("new modular building") approximately 36 by 60 feet in size to be acquired by Lessee at Lessee's expense **and to eventually be transferred by Lessee to Lessor** and located on property at Holbrook Palmer Park, 150 Watkins Avenue, Atherton, San Mateo County, California, ~~and to eventually be transferred by Lessee to Lessor~~ all as shown on Exhibit A attached here and incorporated by this reference, **and (b) following transfer of the modular building to Lessor pursuant to paragraph 4 the term "Premises" shall include the modular building itself**, on the following terms and conditions:

3. Term. The lease term shall be for a period of five (5) years commencing effective 12:01 a.m. on July 1, 2001, and ending at 11:59 p.m. on June 30, 2006. During the term of the lease and any extensions as described below, Lessee shall have the exclusive occupancy and use of the Premises from 7:30 a.m. until 6:00 p.m. each Monday through Friday provided, however, that classes ~~should~~ **shall** be scheduled and conducted in accordance with the terms and conditions of the Conditional Use Permit issued to Lessee by the Town of Atherton. Lessee shall not have occupancy or uses of the Premises at other hours nor on Saturdays, Sundays, school vacations and holidays, providing, however, that Lessee shall have the use and occupancy of the premises for up to four (4) night meetings per year for parent-teacher meetings and/or student family functions so long as these have been cleared with Lessor's City Manager in advance so as to avoid conflict with other programs or activities. Lessee shall use the new modular building during the initial term of this lease and, following its transfer to Lessor as described in Paragraph 4 below, for the purposes and subject to the limitations set forth in this lease and the Conditional Use Permit.

4. Ownership of New Modular Building. Lessee intends to acquire a new modular building approximately 36 by 60 feet in size to be located on the Holbrook Palmer Park property as shown in Exhibit A. No later than the expiration of the initial term of this lease, Lessee shall transfer to Lessor without charge and Lessor shall accept ownership of the new modular building. Upon transfer of ownership to Lessor, the new modular building shall be treated in all respects as Lessor owned property under the terms and provisions of this lease. Lessee shall execute any documents required to transfer ownership of the modular building from Lessee to Lessor.

5. Options to Extend Lease. No later than June 30, 2005, Lessee shall have the option to extend the term of this lease for two **five** (5) year periods following the expiration of the initial term on all of the terms and conditions in this lease. During the first extended term, Lessee shall have the further option to extend the term for the second and final five ~~(5)~~ year period provided that notice of said extension is given on or before June 30, 2010. The rent during the extension terms shall be either the effective rent or as adjusted pursuant to Section 6 below. To exercise this option, Lessee must give Lessor written notice of exercise of the option ("option notice") no later than twelve (12) months prior to the expiration of the term then in effect. However, if, as of Lessor's receipt of the option notice, Lessee is in default under this lease, or has committed or failed to perform acts that with the giving of notice or the lapse of time would constitute a default under this lease ("potential default"), the option notice shall be of no effect. If after giving the option notice, Lessee is in default under this lease, or if a potential default has occurred, and that default or potential default remains uncured as of the expiration of the term then in effect, this lease shall, at the election of Lessor, terminate as of the expiration of the term then in effect.

6. Base Rent. Lessee shall pay to Lessor as base rent for the ~~demised premises-~~ **Premises** the sum of Two Thousand Seventy-one Dollars (\$2,071.00) to be increased on the basis of the calculations described below to establish the amount owing as of July 1, 2001 and for each month of the lease term thereafter, in advance on the first day

of each month commencing on July 1, 2001 and ending on June 30, 2002 and thereafter in increased amounts calculated as set forth below at such place as Lessor may from time to time specify by written notice served on Lessee; provided, however, that Lessee shall pay an additional sum of Five Hundred Dollars (\$500.00) per month for the new modular building space commencing on July 1, 2001 and to be adjusted commencing on the "adjustment date" as hereinafter provided **until ownership of the new modular building is transferred to Lessor. Thereafter, the additional sum for the new modular building shall be equal to the base rent and shall be adjusted on the adjustment dates so as to remain equal to the base rent as adjusted.** Until changed by written notice served on Lessee by Lessor, all rent payable hereunder shall be paid to Lessor at its address first specified in this lease.

The base rent **and additional sum** described above ~~including the \$500.00 per month charge for the new modular building~~ shall be adjusted for the then remaining portion of the initial term of this lease or any extension thereof as of the first and following annual anniversary dates after the commencement date. Each such anniversary date is hereunder referred to as an "adjustment date." The base rent and new modular building rent shall be adjusted on the adjustment date commencing as of July 1, 2002, and as of each adjustment date thereafter to an amount calculated by multiplying the base rent for the month in which the commencement date occurred, or the month in which the immediately preceding adjustment date occurred, whichever month is later, by a fraction, the numerator of which shall be the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All urban Consumers, All Items, San Francisco-Oakland-San Jose, California (~~1967~~ 1982-1984 equals 100), or the successor of such index (the "CPI"), for the month immediately preceding such adjustment date, and the denominator of which shall be the CPI for the month in which the commencement date occurred, or the month in which the immediately preceding adjustment date occurred, whichever is later. Provided, however that on July 1, 2001, the base rent shall be adjusted by multiplying the sum of Two Thousand Seventy-One Dollars (\$2,071.00) by a fraction, the numerator of which shall be the "CPI", for June, 2001, and the denominator of which shall be the CPI for June, 2000. If the CPI or successor index is changed so that the base year differs from that in effect on the commencement date, the CPI or successor index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. In the event that compilation and/or publication of the CPI shall be transferred to any other governmental department or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. Further provided that in no event shall the rent be less than the amount being paid on the adjustment date.

7. Security Deposit. On execution of this lease, Lessee shall deposit with Lessor the additional sum of Two Thousand Dollars (\$ 2,000.00) as security for the faithful performance of the provisions of this lease relating to rent, repairs or cleaning, and to be returned on full performance of those provisions. This deposit shall be governed in all respects by the provisions of Section 1950.7 of the California Civil Code. This deposit is in addition to an existing Two Thousand Dollars already deposited, receipt of which is hereby acknowledged for a total security deposit of Four Thousand Dollars (\$4,000.00).

8. Use Limitations. The demised Premises shall be used by Lessee only for a licensed play school, as described in Exhibit "B" attached here and incorporated by this reference. Children of Atherton residents will have priority to register and use the program. Children of Atherton residents will not be rejected except for good and sufficient reasons or because of class size and/or space limitations. Lessor will permit Lessee to advertise the play school in Lessor's mailers at least semi-annually during the term of the lease, without charge to Lessee. Lessee shall not permit the Premises or any part thereof to be used for (1) the conduct of any offensive, noisy or dangerous activity that would increase the premiums for fire insurance on the Premises; (2) the creation or maintenance of a public or private nuisance (including, without limiting the generality of the foregoing, any noise nuisance to the occupants of adjoining or neighboring properties); (3) anything which is contrary to or prohibited by any laws or rules and regulations or any public authority (including Lessor) at any time applicable to the Premises; or (4) any purpose or in any manner which will obstruct, interfere with, or infringe on the rights of other tenants or users of adjoining property owned by Lessor. Lessee shall be solely responsible for the conduct of its activities on the Premises, and each party hereto does not in any way constitute itself the agent, partner, or joint venturer of the other. Lessee shall restrict its use of the Premises to those areas at least twenty-four (24) feet from the property line at the rear of the buildings on the Premises, and shall, at its sole cost and expense, maintain a substantial fence to the satisfaction of Lessor as now existing along a line twenty-four (24) feet from said rear line and at such other locations as are specified on Exhibit "A" attached hereto and by this reference incorporated herein, and remove the said fences, if requested to so do by Lessor, at Lessee's sole cost and

expense upon the termination of its occupancy hereunder. In accordance with this paragraph, Lessee shall extend the existing fence to comply with the design as shown on Exhibit A.

9. Taxes and Assessments. Lessee shall be responsible for and shall timely pay before delinquency any and all taxes and assessments of every nature levied or assessed on any fixtures, furniture, appliances, or personal property belonging to Lessee including the modular building and located on the demised Premises.

10. Utilities. Lessee shall pay the **actual monthly charges** ~~sum of Two Hundred Dollars (\$200.00) per month~~ for all water, electrical, sewer and garbage service provided to the Premises for the use of Lessee related to Lessee's occupancy. ~~This sum shall be increased based upon the manner described in paragraph 6 and further provided that should any utility cost be incurred in excess of ten percent (10%) over the period preceding the adjustment date, the Lessee shall pay any such increase. Any charges for special garbage pickups shall be passed on to Lessee by Lessor and paid by Lessee.~~ **Lessor shall advise Lessee, monthly, of the charges then due for the preceding month's services. Lessee shall pay said charges within ten (10) days of receipt of Lessor's billing.** Lessee shall contract and pay for janitorial and cleaning service for the premises. Lessor will clean floors and carpeting on the premises on a quarterly basis and shall bill Lessee for this work. Lessee shall promptly pay these charges.

11. Alterations. Lessee shall make no alterations to the Premises nor construct any structures on the Premises without first having obtained the written consent of Lessor, provided that ~~lessor~~ Lessor hereby consents to the addition of the new modular building as described above.

12. Acceptance of Premises. Lessee stipulates that it has examined the Premises and all improvements located thereon and that they are all, at the date of this lease, in good order, repair, and a safe and clean condition. Lessor has, at no expense to Lessee, put the Premises into condition fit for occupation, and except as to the new modular building as described above will, in a timely manner, repair any future dilapidations thereof which render it untenable and except when Lessee is in substantial violation of any obligation of Lessee hereunder, and except that Lessee shall at its sole cost and expense repair all deteriorations and injuries to the Premises caused by the want of ordinary care on the part of Lessee. or any person on the premises as part of Lessee's business.

13. Signs. ~~Lessor~~ Lessee shall pay for the cost of any necessary directional signage, and Lessor shall have sole authority to control the content and location thereof. Lessee shall only erect or display signs on or about the Premises in compliance with regulations of the Town of Atherton. and subject to Lessor's prior written approval.

14. Warranties of Lessee. Lessee has warranted and does hereby warrant to Lessor that Lessee has all necessary licenses and permissions required by any authorities having jurisdiction thereof to conduct the activities of Lessee contemplated by this lease, and Lessee will abide by and perform all requirements thereof. If, at any time during the term of this lease or any extension thereof, Lessee lacks such licenses and permissions, Lessee shall immediately notify Lessor of that fact, and this lease shall immediately be terminated. Any expenses resulting from licensing requirements imposed as a result of Lessee's occupancy hereunder shall be paid by Lessee. The maximum enrollment in the play school shall not exceed one hundred fifty (150) children and the maximum number of children occupying the Premises hereunder at any given time shall not exceed sixty-four (64) unless Lessor has first given written approval of a larger number.

15. Indemnity/Hold Harmless. Lessee agrees to and shall defend, indemnify and hold Lessor, its officers, agents and employees, and the ~~demised~~ Premises, free and harmless from any and all liability, costs and expenses of every nature for injury to or death of any person, ~~including the officers, agents and employees of Lessee,~~ and for damage to property arising from the use and occupancy of the Premises by Lessee or from the ~~at-act~~ or omission of any person or persons, and including children or other occupants as well as the officers, agents and employees of Lessee, who are in or about the Premises with the express or implied consent of Lessee.

16. Insurance. Lessee shall procure and maintain for the duration of the lease and any extension thereof, including any holdover occupancy by Lessee, insurance for claims for injuries or death to persons or damages to property which may arise from or in connection with Lessee's occupancy, operation and use of the Premises. During its ownership of the new modular building, Lessee shall fully insure said modular building against loss by fire. Lessor shall be named on such policy as an additional insured. Lessee's insurance shall cover and include Lessee's contractual

liability obligations under this lease and specifically Lessee's agreement in paragraph 15, above. The cost of all such insurance shall be paid by Lessee. All such insurance shall at least meet the minimum standards therefor which are specified in Exhibit "C" attached here and incorporated by this reference. For purposes of Exhibit "C", the term "Agency" shall mean the Lessee.

17. Damage/Destruction of Premises. (a) Should the new modular building while owned by Lessee, or any other part of the Premises be damaged or destroyed by fire, the elements, acts of God, or other causes ~~not the fault of Lessee or any person in or about the Premises with the express or implied consent of Lessee~~, Lessor may, at its option, either repair and restore the building ~~or building(s)~~ owned by Lessor or ~~cancel~~ terminate this lease and return any unearned rent previously paid under this lease by Lessee. (b) Following transfer of the new modular building to Lessor, should it or any other part of the Premises be damaged or destroyed by fire, the elements, acts of God, or other causes, Lessor, may, at its option, either repair and restore the buildings owned by Lessor or terminate this lease and return any unearned rent previously paid under this lease by Lessee.

18. Ownership of Property at Expiration of Lease. All alterations, changes and improvements built, constructed, or placed on the Premises by Lessee, other than trade fixtures or moveable personal property shall, unless otherwise provided by written agreement between the parties hereto, be the property of Lessor and remain on the Premises at the expiration or sooner termination of this lease. Provided, however, that should this lease terminate before the transfer of ownership of the new modular building to Lessor, Lessee, at Lessee's expense, shall cause said building to be removed from the Holbrook Palmer Park property unless the parties otherwise agree. Nothing contained in this paragraph shall, however, authorize Lessee to make or place any such alterations, changes or improvements on the Premises without having first obtained the written consent of Lessor.

19. Assignment. Lessee shall not assign this lease, ~~or sublet~~ or license the Premises, or assign, mortgage or hypothecate any interest therein, ~~without the written consent of Lessor first had and obtained. A consent by Lessor to one assignment or subletting shall not be deemed to be a consent to any subsequent assignment or subletting.~~ An assignment or subletting without the written consent of Lessor, or an assignment or subletting by operation of law, shall be void and shall, at the option of Lessor, terminate this lease. ~~Lessor's consent here will not be unreasonably withheld.~~

20. Lessee's Default. Should Lessee be in default for a period of more than ten (10) days in the payment of any rent due under this lease or in the performance of any other provision of this lease, Lessor may terminate the lease and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California in effect at the date of such default.

21. Assignment for Benefit of Creditors. Should Lessee make an assignment for the benefit of creditors or allow a judgment rendered against it to stand unbonded and unsatisfied for sixty (60) days or more, this lease and all rights, privileges, and benefits of Lessee under this lease shall, at Lessor's option, terminate and not become a part of the estate subject to such assignment or judgment.

22. Continuation of Lease After Breach. At Lessor's option, if Lessee has breached this lease and abandoned the Premises, the lease shall continue in effect for so long as Lessor does not terminate Lessee's right to possession, and Lessor may enforce all of its rights and remedies under this lease, including the right to recover rent as it becomes due.

23. Lessor's Right of Entry. Lessor shall have the right to enter the Premises during the hours demised to Lessee under this lease only in the following circumstances:

- (a) In case of emergency.
- (b) To make necessary or agreed repairs, decoration, alterations or improvements, or supply necessary or agreed services.
- (c) After Lessee has abandoned or surrendered the Premises.

24. Holding Over. In the event that upon expiration of the term of this lease, or any extension Lessee holds over beyond the expiration of the term, such tenancy shall be deemed a month-to-month tenancy only at the current rental as adjusted pursuant to this lease, payable in advance on the first day of each month thereafter until the tenancy is terminated in a manner provided by law.

25. Notices. Any and all notices and other communications required or permitted by this lease to be served upon or given to either party by the other shall be in writing and, except as otherwise required by law or this lease, be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when it is deposited in the United States mail, postage prepaid, addressed to the party at the address first stated for the party in this lease, or at such other address as a party may from time to time designate in a written notice delivered to the other party.

27. Arbitration. In the event of any dispute regarding the terms and provisions of this lease, the parties agree to arbitrate the dispute in accordance with the judicial arbitration procedures of the San Mateo County Superior Court.

27. Attorneys Fees. Should any arbitration or litigation be commenced between the parties concerning the demised Premises, this lease, or the rights or duties of either in relation thereto, the prevailing party in such arbitration or litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorneys' fees in such arbitration or litigation.

28. Waiver of Breach. The waiver by Lessor of any breach of any provision of this lease shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this lease.

29. Time of Essence. Time is expressly declared to be of the essence of this lease.

30. Successors and Assigns. Subject to the provision of this lease against assignment of Lessee's interests under this lease, all provisions of this lease shall extend to and bind, or inure to the benefit not only of the parties hereto but to each and every one of the representatives, successors and assigns of the parties hereto.

31. Integration. Lessor and Lessee agree that this lease document contains the sole and only agreement between them concerning the ~~demised~~ Premises and correctly sets forth their rights and obligations to each other concerning the Premises as of its date. Any agreement or representation respecting the ~~demised~~ Premises or the duties of Lessor or Lessee in relation to them not expressly set forth in this instrument is null and void.

EXECUTED on _____, 2001, at Atherton, California.

TOWN OF ATHERTON, Lessor

By: _____
Its: City Manager

KNOX PLAYSCHOOLS, INC., Lessee

By: _____
Its: President

NOTARIAL ACKNOWLEDGMENT

State of California)
)
County of San Mateo)

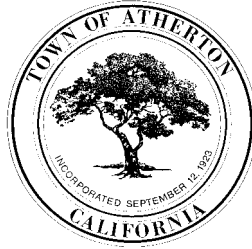
On _____ - ____, 2001, before me, _____, Notary Public, personally appeared _____ - and _____

_____ personally known to me **OR** _____ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s)

or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

Notary public



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: RALPH FREEDMAN, INTERIM CITY MANAGER

DATE: FOR THE MEETING OF MARCH 6, 2001

SUBJECT: PUBLIC HEARING ON PARCEL TAX ISSUE

RECOMMENDATION:

Conduct the second Public Hearing to gather input from Atherton residents on the Parcel Tax election scheduled for June 5, and how monies derived from this tax should be allocated.

INTRODUCTION:

The Town of Atherton unsuccessfully tried to gain voter approval for the imposition of a Parcel Tax in November, 1999 and March, 2000. With the loss of approximately \$1.6 million, the Town reorganized and reduced the size of the Police Department, and eliminated almost all capital projects from the current fiscal year budget.

ANALYSIS:

At the February 8th City Council meeting, Ordinance No. 520 was approved by the City Council calling for the election, and authorizing the levy of the special tax. This ordinance and the other information from this agenda item are attached to this Staff Report.

FISCAL IMPACT:

The fiscal impact on the Town will be significant, and will enable the Town to run its operations in an effective way. Having a four-year term on this tax, makes it necessary for the Town to effectively and wisely expend these funds to address the needs of the community. The tax will generate approximately \$1.6 million at the levies that were utilized in the past. The City Council has the ability to raise the levy to the maximum amounts in the Ordinance if a need arises. In the past, City Councils have never levied the maximum amounts on parcels that they were empowered to do.

Attachments:

1. Parcel Tax Revenues Projected Expenditures and Uses
2. Feb. 8th Staff Report on Parcel Tax
3. Ordinance No. 520
4. Feb. 8th Staff Report – Resolution
5. Resolution 01-01

PARCEL TAX REVENUES PROJECTED EXPENDITURES AND USES

	7/1/2001 to 6/30/2002	7/1/2002 to 6/30/2003	7/1/2003 to 6/30/2004	7/1/2004 to 6/30/2005
Police Dept. Overhires (2)	\$180,000	\$189,000	\$200,000	\$210,000
Compensation Adjustments	500,000	660,000	700,000	750,000
Miscellaneous Capital Improvements	670,000	476,000	400,000	315,000
Street and Storm Drainage Maintenance	250,000	275,000	300,000	325,000
Total	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000

- **Police Department overhires will help the Department keep staffing at adequate levels despite the ongoing turnover of staff.**
- **Compensation adjustments will keep staff salaries and benefits competitive in comparison to other cities, which should aid in the retention and recruitment of employees.**
- **Miscellaneous Capital Improvements will be determined on an ongoing basis by the City Council after public meetings. Proposed uses include the replacement of the Public Works Corporation Yard building, facility upgrades, and putting aside funds each year for a permanent Civic Center complex. This future facility would eliminate the need for the modular trailers utilized currently for the Police, Building, and Public Works Departments.**
- **Monies for Street and Storm Drainage maintenance would be used to augment Gas Tax and Measure A monies. With any significant infrastructure improvements to the Streets or Storm Drainage systems several years away, Town staff feels that maintenance should be increased until these improvements are funded.**

ORDINANCE NO. 520
AN ORDINANCE OF THE TOWN OF ATHERTON
CALLING AN ELECTION TO SUBMIT TO THE VOTERS
AN ORDINANCE AUTHORIZING THE LEVY OF A SPECIAL TAX
FOR MUNICIPAL SERVICES AND CAPITAL IMPROVEMENTS, AND FOR THE EXPENDITURE OF
FUNDS DERIVED FROM SUCH TAX

The City Council of the Town of Atherton does hereby ordain as follows:

SECTION 1. ELECTION CALLED. The City Council of the Town of Atherton submits the following ordinance to the voters of the Town of Atherton at an election to be held on Tuesday, June 5, 2001.

SECTION 2. FULL TEXT OF MEASURE. The complete text of the proposed ordinance shall be:

“AN ORDINANCE OF THE TOWN OF ATHERTON
AUTHORIZING THE LEVY OF A SPECIAL TAX FOR
MUNICIPAL SERVICES AND CAPITAL IMPROVEMENTS AND FOR THE EXPENDITURE OF FUNDS
DERIVED FROM SUCH TAX

The people of the Town of Atherton do ordain as follows:

SECTION 1. AUTHORITY TO ADOPT MEASURE. This ordinance and the tax authorized herein are adopted pursuant to the provisions of the California Constitution, Articles XIII A §4, XIII B §4 and XIII C §2, and pursuant to Sections 50075, 50076, 50077 and 53722 et. seq. of the California Government Code.

SECTION 2. AUTHORIZATION TO LEVY SPECIAL TAX. If, in any fiscal year commencing July, 2001, the City Council shall determine that municipal services such as police protection, street repair and maintenance, drainage facility repair and maintenance are necessary for the public good, welfare, and safety, and that the cost of providing such services will exceed the amount of funds generated through other revenue and income which are counted under the limit of the Town for such services calculated in accordance with the provisions of Article XIII B of the California Constitution, as provided for in the adopted budget, and/or if capital improvements are required, the cost of which exceeds the amount of funds generated through other revenues and receipts, and/or if amounts should be required to augment operational and capital needs of the Town, then it may levy a special tax for such fiscal year on each parcel of property within the Town in the manner provided herein. This special tax shall be in addition to the annual tax rate allowed by law.

SECTION 3. DETERMINATION OF AMOUNT TO BE RAISED. Each year following adoption of the Town’s annual budget, the City Council will determine the total amount of expenditures necessary to provide adequate levels of municipal services and capital improvements and deduct therefrom the projected revenue to be gathered from sources other than this special tax. The difference, if any, shall be the maximum amount of funds to be derived from the tax authorized by this ordinance for such year.

SECTION 4. MAXIMUM TAX RATE/METHOD OF ASSESSMENT. After determining the amount of tax to be raised under Section 3, the City Council shall apportion said amount among the parcels of real property within the Town not exempted by law as follows:

		MAXIMUM TAX IN GIVEN YEAR			
		2001-02	2002-03	2003-04	2004-05
1.	For each dwelling on a parcel with an area of less than 1/4 acre:	450.00	450.00	450.00	450.00
2.	For each unimproved parcel with an area of less than 1/4 acre:	225.00	225.00	225.00	225.00
3.	For each dwelling on a parcel with an area				

	of 1/4 acre or more, but less than 1/2 acre:	570.00	570.00	570.00	570.00
4.	For each unimproved parcel with an area of 1/4 acre or more, but less than 1/2 acre:	285.00	285.00	285.00	285.00
5.	For each dwelling on a parcel with an area of 1/2 acre or more, but less than 2 acres:	750.00	750.00	750.00	750.00
6.	For each unimproved parcel with an area of 1/2 acre or more, but less than 2 acres:	375.00	375.00	375.00	375.00
7.	For each dwelling on a parcel with an area of 2 acres or more:	960.00	960.00	960.00	960.00
8.	For each unimproved parcel with an area of 2 acres or more:	480.00	480.00	480.00	480.00
9.	For each private club:	10,000.00	10,000.00	10,000.00	10,000.00
10.	For each parcel available for tax owned by a utility which serves the Atherton community:	450.00	450.00	450.00	450.00
11.	For each parcel available for tax owned by a utility which does not directly serve the Atherton community:	750.00	750.00	750.00	750.00

The records of the San Mateo County Assessor, as of each year, shall determine whether or not any particular lot is unimproved for purposes of this ordinance.

SECTION 5. HEARING, TAX LIEN AND INCLUSION IN CITY TAXES. Prior to levying a special tax under this ordinance in any fiscal year, the City Council shall conduct a public hearing on the proposed tax. Such hearing shall be conducted after the City Council has adopted an annual budget for that year. Notice of such hearing shall be posted in at least three public places within the Town of Atherton at least fifteen days prior to the hearing. All of the information and material which the City Council intends to consider at such hearing and the amount of tax to be raised shall be made available to the public by being on file in the office of the City Clerk for at least fifteen days prior to said hearing. Following said hearing, the City Council may adopt a resolution fixing the amount of tax to be raised which shall not exceed the amount contained in the material on file in the Clerk's office. Any tax levied under this ordinance shall become a lien upon the properties against which it is assessed and collectible in the manner provided by applicable law and by the levying resolution.

SECTION 6. COLLECTION. The City Council may elect to have any special tax authorized under this Chapter either collected by the Town or, in the alternative, by the Tax Collector of San Mateo County. If the services of the Tax Collector of the County of San Mateo are elected, the special tax may only be included on the annual tax bill set out by such Tax Collector. A certified copy of the resolution electing to use the service of the Tax Collector of San Mateo County shall be filed with said Tax Collector prior to September 1st of the fiscal year for which the tax is assessed and shall include a list of all parcels of real property to be taxed and the amount of each parcel.

SECTION 7. INCREASE APPROPRIATIONS LIMIT. Pursuant to California Constitution Article XIII B, the appropriations limit for the Town of Atherton will be increased by one and one-half times the aggregate sum authorized to be levied as a special tax in each of the years covered by this ordinance.

SECTION 8. FUNDING AND EXPENDING PROCEEDS. Proceeds of any tax levied under this ordinance shall be deposited in a Special Fund and expended only for the purposes stated in this ordinance.

SECTION 9. UNEXPENDED RESIDUE. In accordance with Section 2(b) of Article XIII B of the California Constitution, all revenues received by the Town in a fiscal year and the fiscal year immediately following it in excess of the amount which may be appropriated by the Town in compliance with Article XIII B during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

SECTION 10. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid such invalidity shall not affect any other provision or applications, and to this end the provisions of this ordinance are declared to be severable.

SECTION 11. DURATION AMENDMENT OR REPEAL. The authorization to levy a tax under this ordinance shall commence with the Fiscal Year 2001-2002, beginning July 1, 2001 and shall continue through and including June 30, 2005. This ordinance or any provision thereof may only be amended or repealed by approval of two-thirds of the voters voting on the proposition at any initiative or referendum election.

This ordinance shall be adopted if approved as an initiative measure by two-thirds of the voters voting at a consolidation election to be held on Tuesday, June 5, 2001, and go into effect ten (10) days after the City Council has, by resolution, declared that such initiative measure was approved by two-thirds of the voters voting thereon.”

SECTION 3. CONDENSED STATEMENT OF MEASURE. The manner in which the proposed measure shall appear on the ballot shall be:

“Shall an ordinance entitled “An Ordinance of the Town of Atherton Authorizing the Levy of a Special Tax for Municipal Services and Capital Improvements and for the Expenditure of Funds Derived from such Tax, and numbered 520 be adopted?”

SECTION 4. PUBLICATION. This ordinance shall be posted in at least three public places within the Town of Atherton, and shall become effective immediately upon its passage and approval. The City Clerk is authorized and directed to give notice of election in accordance with Chapter 2 (commencing with section 12100) of Division 12 of the California Elections Code.

SECTION 5. CONSOLIDATION. The election on the proposed ordinance shall be consolidated with any and all other elections to be held on June 5, 2001.

SECTION 6. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid such invalidity shall not affect any other provision or application, and to this end the provisions of the ordinance are declared to be severable.

SECTION 7. EFFECTIVE DATE. This ordinance calling an election shall become effective immediately upon its adoption by the City Council of the Town of Atherton.

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I hereby certify that the foregoing ordinance was adopted at a special meeting of the City Council of the Town of Atherton held on February 8, 2001, by the following roll call vote:

AYES: 5 Councilmembers: McKeithen, Janz, Carlson, Fisher, Conwell
NOES: 0 Councilmembers:
ABSTAIN: 0 Councilmembers:
ABSENT: 0 Councilmembers:

Dianne M. Fisher, Mayor
Town of Atherton

ATTEST:

Sharon Barker, City Clerk