



CITY OF BUELLTON

CITY COUNCIL AGENDA

**Regular Meeting of October 25, 2012 at 6:00 p.m.
City Council Chambers, 140 West Highway 246
Buellton, California**

Materials related to an item on this agenda, as well as materials submitted to the City Council after distribution of the agenda packet, are available for public inspection in the Office of the City Clerk, located at 107 West Highway 246, during normal business hours.

CALL TO ORDER

Mayor Holly Sierra

PLEDGE OF ALLEGIANCE

Council Member John Connolly

ROLL CALL

Council Members Ed Andrisek, John Connolly, Judith Dale, Vice Mayor Dave King, and Mayor Holly Sierra

REORDERING OF AGENDA

PUBLIC COMMENTS

Speaker Slip to be completed and turned in to the City Clerk prior to commencement of meeting. Limited to matters not otherwise appearing on the agenda. Limited to three (3) minutes per speaker. No action will be taken at this meeting.

CONSENT CALENDAR

(ACTION)

The following items are scheduled for consideration as a group. Any Council Member, the City Attorney, or the City Manager may request that an item be withdrawn from the Consent Agenda to allow for full discussion.

- 1. Minutes of October 11, 2012 Regular City Council Meeting**
- 2. List of Claims to be Approved and Ratified for Payment to Date for Fiscal Year 2012-13**

PRESENTATIONS

PUBLIC HEARINGS

COUNCIL MEMBER COMMENTS

COUNCIL ITEMS

WRITTEN COMMUNICATIONS

Written communications are included in the agenda packets. Any Council Member, the City Manager or City Attorney may request that a written communication be read into the record.

COMMITTEE REPORTS

This Agenda listing is the opportunity for Council Members to give verbal Committee Reports on any meetings recently held for which the Council Members are the City representatives thereto.

BUSINESS ITEMS

(POSSIBLE ACTION)

3. **Presentation from PG&E on Utility Service and Street Lighting**
❖ (Staff Contact: Planning Director Bierdzinski)
4. **Discussion Regarding Traffic Openings at Buellton Town Center**
❖ (Staff Contact: City Manager Kunkel)
5. **Consideration of a Request to Waive Reimbursement of Legal Fees - Buellton Self Storage LP v. Norman Williams, City of Buellton, et al. -- Santa Barbara Superior Court Case No.1375366**
❖ (Staff Contact: City Attorney Hanson)
6. **Discussion Regarding Patio Cover at Zaca Creek Golf Course – Rejection of Bid and Possible Alternatives**
❖ (Staff Contact: City Manager Kunkel)

CITY MANAGER'S REPORT

CLOSED SESSION ITEMS

(POSSIBLE ACTION)

7. **The City Council will conduct a Closed Session pursuant to California Government Code Section 54957 concerning the following:**

PUBLIC EMPLOYEE PERFORMANCE EVALUATION – CONTRACT REVIEW

Title: City Manager

ADJOURNMENT

The next meeting of the City Council will be held on Thursday, November 8, 2012 at 6:00 p.m.

CITY OF BUELLTON

CITY COUNCIL MEETING MINUTES
Regular Meeting of October 11, 2012
City Council Chambers, 140 West Highway 246
Buellton, California

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

Vice Mayor Dave King led the Pledge of Allegiance

ROLL CALL

Present: Council Members Ed Andrisek, John Connolly, Judith Dale, Vice Mayor Dave King, and Mayor Holly Sierra

Staff: City Manager John Kunkel, City Attorney Ralph Hanson (Via Telephone), Planning Director Marc Bierdzinski, Public Works Director Rose Hess, Finance Director Annette Muñoz, Station Commander Lt. Brad McVay and City Clerk Linda Reid

REORDERING OF AGENDA

None

PUBLIC COMMENTS

None

CONSENT CALENDAR

- 1. Minutes of September 27, 2012 Regular City Council Meeting**
- 2. List of Claims to be Approved and Ratified for Payment to Date for Fiscal Year 2012-13**

MOTION:

Motion by Vice Mayor King, seconded by Council Member Andrisek, approving Items 1 and 2 of the consent calendar as listed.

VOTE:

Motion passed by a roll call vote of 5-0.

PRESENTATIONS

None

PUBLIC HEARINGS

None

COUNCIL MEMBER COMMENTS

Mayor Sierra stated the Annual Pancake Breakfast prepared by the Fire Department is scheduled for Saturday, October 13 from 8:00 a.m. to 12:00 p.m. at Buellton Town Center and all proceeds will benefit Buellton schools.

Mayor Sierra reminded everyone of the Santa Barbara County Veterans Stand Down 2012 scheduled for Saturday, October 13, 2012 from 7:00 a.m. to 3:00 p.m. at the Santa Maria Fairpark.

Mayor Sierra also announced that if seniors need a ride to their polling place on Election Day (November 6) they can contact Pam Gnekow at the Senior Center.

Council Member Andrisek requested that staff advise the Council of the cost to have Highway 246 slurry sealed from Industrial Way to the Avenue of Flags.

COUNCIL ITEMS

Council Member Andrisek questioned the status of painting the curb red in front of Houston's Liquor.

Mayor Sierra discussed having the author of "For the Love of Cities" speak in Buellton. Mayor Sierra stated she will provide staff with more information in order to agendize this issue for discussion.

WRITTEN COMMUNICATIONS

None

COMMITTEE REPORTS

None

BUSINESS ITEMS**3. Discussion Regarding Honoring Russ Hicks****RECOMMENDATION:**

That the City Council determine how best to honor Russ Hicks and provide staff with direction on how to proceed.

STAFF REPORT:

City Manager Kunkel presented the staff report.

DOCUMENTS:

Staff report with attachments (Photos of memorial sign, boulder, bench, and proposed wording)

SPEAKERS/DISCUSSION:

Kit Nirenberg, Buellton, requested the City Council honor Russ Hicks for everything he did for the Buellton community.

Matt Hicks, Buellton, requested the City Council approve a sign signifying the BBQ area is dedicated in the name of Russ Hicks. Matt also requested a boulder be placed in the BBQ area with an engraved plaque that describes what Russ Hicks did for the community.

The City Council discussed the following issues:

- Creating a historical area in Buellton to honor other important members of the community
- Whether Council Members should spend City funds to honor Council Members
- Not adding a memorial sign in the roundabout area but installing a boulder/plaque or engraved bench with wording memorializing Russ Hicks
- Not spending City funds to honor Russ Hicks
- Adding the engraved bench to the BBQ area, which would be a practical use
- Fundraising efforts to purchase the bench

MOTION:

Motion by Council Member Connolly, seconded by Vice Mayor King directing staff to purchase a bench honoring Russ Hicks with the engraved memorial wording, paid by the City in the amount of \$2,065.

VOTE:

Motion passed by a roll call vote of 4-1, with Council Member Andrisek voting no.

4. Award of Contract for Citywide Landscape Maintenance Services

RECOMMENDATION:

That the City Council authorize the City Manager to enter into a contract for the Citywide landscape maintenance service with Valley Crest in the amount not to exceed \$88,740.00 per year and for an initial contract period of 20 months with possible four one-year extensions, effective November 1, 2012.

STAFF REPORT:

Public Works Director Hess presented the staff report.

DOCUMENTS:

Staff report with attachments (Landscape Maintenance Area Maps)

SPEAKERS/DISCUSSION:

The City Council discussed the following issues:

- Consider a contract for 12 months versus 20 months, with 1 year extensions thereafter
- Including the area between Thumbelina Drive and the landscaped area along Highway 246
- Additional cost for tree trimming

MOTION:

Motion by Council Member Andrisek, seconded by Council Member Dale for the City to enter into a contract with Valley Crest in an amount not to exceed \$88,740.00 per year and for an initial contract period of 20 months with possible four one-year extensions, effective November 1, 2012.

VOTE:

Motion passed by a roll call vote of 5-0.

CITY MANAGER'S REPORT

City Manager Kunkel announced that he met with the Buellton Union School Board last night and discussed the meeting. Mr. Kunkel also announced that he will be attending an Executive Committee meeting at California Joint Powers Insurance Authority (CJPIA) in La Palma on Monday, October 15.

CLOSED SESSION ITEMS

5. The City Council will conduct a Closed Session pursuant to California Government Code Section 54957 concerning the following:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION – CONTRACT REVIEW

Title: City Manager

The City Council met in closed session to discuss the City Manager's performance evaluation and continued the closed session to the meeting of October 25, 2012. There was no reportable action taken.

ADJOURNMENT

Mayor Sierra adjourned the regular meeting at 7:15 p.m. The next regular meeting of the City Council is scheduled for Thursday, October 25, 2012 at 6:00 p.m.

Holly Sierra
Mayor

ATTEST:

Linda Reid
City Clerk

BACK-UP/SUPPORT DATA IS AVAILABLE FOR COUNCIL REVIEW IN CITY HALL

The following is a list of claims to be ratified and approved for payment by the City Council at the **October 25, 2012** Council Meeting.

Listed below is a brief summary of the attached claims:

EXHIBIT A		\$ <u>169,342.34</u>
EXHIBIT B		\$ <u>31,151.45</u>
PAYROLL	10/15/12	\$ <u>39,787.95</u>
TOTAL AMOUNT OF CLAIMS:		\$ <u><u>240,281.74</u></u>

	<u>FY 2011-12</u>	<u>FY 2012-13</u>
The total amount of claims and demands paid by the City for the Fiscal Year through October 17, 2012	\$ 2,337,567.53	\$ 2,731,371.37

AUTHORIZATION IS HEREBY GIVEN TO THE CITY TREASURER TO PAY ALL CLAIMS AS REVENUES BECOME AVAILABLE.

Check-Run	Seq#	Date	Vendor Name	Checking	# Obls	Discount	Net amount	Status
27043-	535	1 10/11/2012	0 101 AUTO SHOP		1	.00	37.38	Logged
27044-	535	2 10/11/2012	0 PARENT CLICK INC.		1	.00	60.00	Logged
27045-	535	3 10/11/2012	0 CARLOS ALCANTARA		1	.00	7.24	Logged
27046-	535	4 10/11/2012	0 SUNSHINE VAN WAGNER		1	.00	45.85	Logged
27047-	535	5 10/11/2012	0 MARIA GARCIA		1	.00	50.00	Logged
27048-	535	6 10/11/2012	5 ABALONE COAST ANALYTICAL, INC.		1	.00	401.25	Logged
27049-	535	7 10/11/2012	32 ARROWHEAD		3	.00	85.77	Logged
27050-	535	8 10/11/2012	35 ASSOC TRANSPORTATION ENGINEERS		1	.00	1,712.50	Logged
27051-	535	9 10/11/2012	43 BARBARA KNECHT		1	.00	181.21	Logged
27052-	535	10 10/11/2012	62 BUELLTON MEDICAL CENTER		1	.00	231.00	Logged
27053-	535	11 10/11/2012	65 BURKE, WILLIAMS & SORENSEN, LL		5	.00	10,484.26	Logged
27054-	535	12 10/11/2012	90 Ca1PERS LONG-TERM CARE PROGRAM		1	.00	84.25	Logged
27055-	535	13 10/11/2012	101 CITY OF SOLVANG		1	.00	21,424.00	Logged
27056-	535	14 10/11/2012	105 CITY OF BUELLTON		1	.00	1,003.10	Logged
27057-	535	15 10/11/2012	118 COASTAL COPY, LP		3	.00	996.23	Logged
27058-	535	16 10/11/2012	121 COC/BBA/VISITORS INFORMATION		1	.00	9,649.57	Logged
27059-	535	17 10/11/2012	122 COMCAST CABLE		1	.00	160.39	Logged
27060-	535	18 10/11/2012	142 DANIEL FITZGERALD dba		1	.00	1,200.00	Logged
27061-	535	19 10/11/2012	172 ECHO COMMUNICATIONS		1	.00	59.16	Logged
27062-	535	20 10/11/2012	191 FERGUSON ENTERPRISES, INC #632		1	.00	506.04	Logged
27063-	535	21 10/11/2012	201 G E CAPITAL		3	.00	308.50	Logged
27064-	535	22 10/11/2012	255 JOE MEEHAN		1	.00	199.07	Logged
27065-	535	23 10/11/2012	268 KEVIN WOLFFCALE		1	.00	141.98	Logged
27066-	535	24 10/11/2012	273 KURT GREER		1	.00	216.91	Logged
27067-	535	25 10/11/2012	280 LEE CENTRAL COAST NEWSPAPERS		1	.00	582.50	Logged
27068-	535	26 10/11/2012	283 LAWTON PRINTING, INC		1	.00	58.00	Logged
27069-	535	27 10/11/2012	285 SANTA MARIA TIMES dba		1	.00	196.00	Logged
27070-	535	28 10/11/2012	342 NIELSEN BUILDING MATERIALS,INC		1	.00	43.79	Logged
27071-	535	29 10/11/2012	350 OLIVERA'S REPAIR, INC		1	.00	310.50	Logged
27072-	535	30 10/11/2012	353 MICHAEL J. BOGGESS dba		1	.00	3,385.00	Logged
27073-	535	31 10/11/2012	379 POSTMASTER		1	.00	595.00	Logged
27074-	535	32 10/11/2012	380 PRAXAIR DISTRIBUTION, INC.		1	.00	122.56	Logged
27075-	535	33 10/11/2012	387 PURCHASE ADVANTAGE CARD		1	.00	198.86	Logged
27076-	535	34 10/11/2012	438 SANTA YNEZ VALLEY HARDWARE		1	.00	485.06	Logged
27077-	535	35 10/11/2012	439 SANTA YNEZ VALLEY NEWS		1	.00	21.00	Logged
27078-	535	36 10/11/2012	450 SB CO SHERIFF'S DEPARTMENT		1	.00	499.25	Logged
27079-	535	37 10/11/2012	465 SP MAINTENANCE SERVICES, INC.		1	.00	2,821.00	Logged
27080-	535	38 10/11/2012	469 STAPLES CONTRACT & COMMERCIAL,		1	.00	152.30	Logged
27081-	535	39 10/11/2012	473 SPRINT SPECTRUM, L.P. dba		1	.00	34.11	Logged
27082-	535	40 10/11/2012	507 THE GAS COMPANY		2	.00	187.71	Logged
27083-	535	41 10/11/2012	521 TODD PIPE & SUPPLY		1	.00	34.43	Logged
27084-	535	42 10/11/2012	535 UNDERGROUND SERVICE ALERT		1	.00	12.00	Logged
27085-	535	43 10/11/2012	543 USA BLUEBOOK		1	.00	233.72	Logged
27086-	535	44 10/11/2012	555 VERIZON CALIFORNIA		1	.00	2,198.58	Logged
27087-	535	45 10/11/2012	668 ONE STOP AUTO PARTS		1	.00	61.41	Logged
27088-	535	46 10/11/2012	679 COURIER SYSTEMS		1	.00	204.43	Logged
27089-	535	47 10/11/2012	681 STATEWIDE SAFEY & SIGNS, INC,		1	.00	3,439.50	Logged
27090-	535	48 10/11/2012	728 KIMBERLEY LECLAIRE dba		1	.00	50.00	Logged
27091-	535	49 10/11/2012	744 GE CAPITAL INFO TECH SOLUTIONS		1	.00	585.17	Logged
27092-	535	50 10/11/2012	748 MEYERS,NAVE,RIBACK,SILVER & WI		1	.00	1,512.50	Logged
27093-	535	51 10/11/2012	762 LANDSCAPE STRUCTURES, INC.		1	.00	352.77	Logged
27094-	535	52 10/11/2012	767 ROCKWOOD GENERAL CONTRACTORS,		1	.00	100,594.26	Logged
27095-	536	1 10/16/2012	0 DAN BAUMANN		1	.00	418.77	Logged

Run date: 10/18/2012 @ 12:55
Bus date: 09/30/2012

City of Buellton
Check Summary Report

EXHIBIT A
Page 2 of 2

Check-Run	Seq#	Date	Vendor Name	Checking	# Obls	Discount	Net amount	Status
27096-	536	2 10/16/2012	698 CALIFORNIA STATE DISBURSEMENT		1	.00	706.50	Logged
						.00		
** Total check discount **						.00		
** Total check amount **					169,342.34			
						.00		

Payments via Electronic Fund Transfer (EFT):

Retirement Contribution	10/5/12	20,583.97
Payroll Taxes	10/16/12	10,567.48

Total \$ 31,151.45

FISCAL YEAR 2012-13 REVENUE AND EXPENDITURE RECAP

As of September 30, 2012
25.0%
of the year elapsed

<u>GENERAL FUND</u>	<u>Budgeted</u>	<u>Year to Date</u>	<u>% of Budget YTD</u>
Total Revenues	\$4,296,365.00	\$560,767.39	13%
Total Expenditures	\$5,017,791.00	\$1,135,092.47	23%
<u>SPECIAL FUNDS</u>	<u>Budgeted</u>	<u>Year to Date</u>	<u>% of Budget YTD</u>
Total Revenues	\$501,419.00	\$61,930.27	12%
Total Expenditures	\$1,164,304.00	\$282,770.61	24%
<u>WATER/SEWER</u>	<u>Budgeted</u>	<u>Year to Date</u>	<u>% of Budget YTD</u>
Total Revenues	\$2,051,250.00	\$592,605.33	29%
Total Expenditures	\$2,698,458.00	\$581,570.01	22%

The Revenue Status Report and Expenditure Status Report are available for your review.

The Cash Balances as of October 17, 2012 are as follows:

Checking	Balance as of:	<u>FY 2011-12</u>	<u>FY 2012-13</u>
Rabobank	10/17/12	209,943.02	116,044.04
Montecito Bnk&Trust	10/17/12	215,958.72	0.00
Total Checking		<u>425,901.74</u>	<u>116,044.04</u>
Savings/Investments			
LAIF-savings	9/30/12	12,955,130.06	12,203,409.04
Rabobank-money mkt	9/30/12	202,234.11	203,202.20
Morgan Stanley-bonds	9/30/12	250,000.00	377,688.13
Great Pacific-treasuries	9/30/12	0.00	503,055.00
First Empire-bonds	9/30/12	3,235,248.26	3,247,596.79
Total Savings/Investments		<u>16,642,612.43</u>	<u>16,534,951.16</u>
% of cash invested		21.60%	26.01%
Total Cash		<u>17,068,514.17</u>	<u>16,650,995.20</u>

Note: General Fund includes Storm Water, Parks and Rec and Landscape Maintenance

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: JHK
Council Agenda Item No.: 4

To: The Honorable Mayor and City Council

From: John Kunkel, City Manager

Date: October 25, 2012

Subject: Discussion Regarding Traffic Openings at Buellton Town Center

BACKGROUND

The issue of allowing traffic access between the Buellton Town Center, located at the S/W corner of Highway 246 and McMurray Ave., and adjacent properties to the east has been a topic of discussion since 1995.

In 1996 the City's planning director indicated a "desire to have in place vehicular access improvements" at the locations noted on Attachment 1. (Location A is the area between Albertsons and Sunrise Coffee, and location B the area between Blockbuster and Tom's gas station)

In 1997 the City was notified that the access points could not be done as there was not agreement from all of the property owners at that time.

In 1999 the Council directed the planning director to proceed with design and report on reciprocal access points between Buellton Town Center and the properties to the east as there were new property owners and they had indicated an interest in the openings. For whatever reasons, neither the report nor the preliminary designs were ever done.

In 2007 the Council approved for the preparation of construction drawings for the opening labeled as point A, which were done. However, the City could not enter into agreements with the property owners of Buellton Town Center, due to potential conflicts of interest.

Last year staff was asked to look into the above issues. After meeting with all affected property owners, permission was achieved for not only opening "A" but for opening "B" as well. While issues of conflict of interest still apply, the property owners themselves can reach an agreement and the City can loan the money to the property owners to complete this project. This loan would be "forgiven" as long as, 1) the openings are built and 2) the access remains open for traffic.

Staff feels that the construction of the two openings between the shopping centers will improve traffic circulation in these areas and also provide some economic benefit as well to the businesses on both sides of the openings.

FISCAL IMPACT

The Engineers estimate for both openings is \$102,787.30. Staff would recommend that 10% be added to the total for overages.

RECOMMENDATION

That Council direct staff to proceed with working with the property owners to secure an agreement for the construction of openings A and B and authorize the loan of \$113,066.03 to the property owners for the construction of said openings.

ATTACHMENTS

- Attachment 1 – Vicinity Map
- Attachment 2 – Photos of Area “A”
- Attachment 3 – Photos of Area “B”
- Attachment 4 – Plan from 1995
- Attachment 5 – Property Owner Map

ATTACHMENT 1



Opening “A”



Looking East



Looking West

Opening "B"



Looking East



Looking West



Legend

 Parcels

"A" and "B" - Requested Access Points



0 30 60 90 120 Feet


CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: JHK
Council Agenda Item No.: 5

To: The Honorable Mayor and City Council

From: Ralph D. Hanson, City Attorney

Meeting Date: October 25, 2012

Subject: Consideration of a Request to Waive Reimbursement of Legal Fees - Buellton Self Storage LP v. Norman Williams, City of Buellton, et al. -- Santa Barbara Superior Court Case No.1375366

“The following is in response to a request made by Mark Edwards, on behalf of Norm Williams, to waive the repayment of the City's legal fees incurred in connection with the defense of the above-reference action.”

BACKGROUND

On July 10, 2008, the City Council adopted Resolution No. 08-12 to approve the applications of Mr. Williams for a Mitigated Negative Declaration, Final Development Plan, Lot Line Adjustment and Tentative Tract Map for the 10 condominium units at 655 Central Avenue. As is a standard condition of the approval of all development entitlements in the City of Buellton, Resolution No. 08-12 included the following condition:

"6. Indemnity. Applicant agrees, at its sole cost and expense, to defend, indemnify, and hold harmless the City, its officers, employees, agents, and consultants, from any claim, action, or proceeding brought by a third party against the City, its officers, agents, and employees, which seeks to attack, set aside, challenge, void, or annul all, or any part, of the approval, decision or action of the City Council, Planning Commission, or other decision-making body, or staff action concerning the Project."

Subsequently, the above-referenced action was filed by the adjacent property owners, Buellton Self Storage LP, alleging a variety of claims, including, but not limited to, contesting the validity of the approval of Resolution No. 08-12.

As the defense of this lawsuit progressed it became abundantly clear that the underlying purpose of the lawsuit was not to contest the actions of the City of Buellton, rather this matter stemmed from prior disputes between the adjacent property owners concerning the purchase of the property that now is developed with the self-storage facility. Simply, this action was a tactical maneuver to tie up the development of development project and put pressure on Mr. Williams. In fact, all parties tacitly agreed to this premise and a stipulation was entered that the City of Buellton would not be required to respond or make a formal appearance in the action.

The action finally resulted in a Settlement Agreement; however, only between the property owners. The City of Buellton was not a party to the Settlement Agreement; admitted no wrongdoing, did not change any of the project approved, did not pay any damages or fees as a result of the action and was dismissed, with prejudice, from the action. Nevertheless, in getting to that final result, because the City was a named party and because the City needed to act as a "middleman" in facilitating the final settlement, the City, through our office, expended considerable time and effort resulting in fees totaling over \$11,000.00. Based on the above indemnity provision, that amount, together with other applicable planning fees, has been submitted to the applicant for repayment.

At the time of the settlement, the attorneys for Mr. Williams requested Mark Mulkerin (the litigation attorney from Burke, Williams and Sorensen who handled this action) to request and recommend that the City waive reimbursement of attorney's fees. In fact, he did. Attached is a recent e-mail exchange between Mr. Mulkerin and Mr. Edwards explaining the actions and positions of the parties at the time of the settlement agreement.

Based upon the original request for waiver, it was, and continues to be, the recommendation of the City Attorney's office, the Planning Department and the City Manager that fees not be waived. Nonetheless, despite that collective recommendation, it has repeatedly stressed to Mr. Williams and Mr. Edwards that only the City Council has the authority to waive such fees, not City Staff or the City Attorney's office. Accordingly, this matter is now before the City Council.

DISCUSSION

The City's standard development condition for indemnity in case of a third-party lawsuit is an extension of the longstanding and fiscally prudent policy of the City that services and programs should, to the greatest extent possible, be on a cost-recovery basis and that those who take advantage of City services should not become a burden on the other taxpayers (residents and businesses) of the City.

In the context of development, it has been the policy of Buellton (like virtually every other City in California) that developers seeking the privilege of development (and, presumably profit) should not have their personal profit-making venture become a cost to the existing residents and businesses. For example, developers are expected to install and pay for all public improvements associated with the project and pay all necessary impact fees and planning costs associated with the review and approval of the project. The indemnity provision is simply an extension of that policy.

Notwithstanding the foregoing, the City Council does have the authority to waive any or all applicable development fees, including the reimbursement of legal fees in this matter.

FISCAL IMPACT

Potential waiver of the reimbursement of \$11,466.44.

RECOMMENDATION

Staff recommends that the City Council deny the request for waiver. However, should Council desire to waive reimbursement of any or all of the costs, that Council determine and provide direction to staff.

ATTACHMENT

Attachment 1 - September 28, 2012 E-mail / Mark Mulkerin to Mark Edwards

Subject: FW: 655 Central Ave - Buellton Legal Fees

From: Mulkerin, Mark J.
Sent: Friday, September 28, 2012 5:48 PM
To: 'Mark Edwards'
Cc: Hanson, Ralph D.; Jack Collison; 'John Kunkel'; 'Marc Bierdzinski'; 'Norman Williams'
Subject: RE: 655 Central Ave - Buellton Legal Fees

Mr. Edwards:

The City never agreed to waive its fees in connection with this matter. The City was brought into this case on a claim of questionable merit as part of what I believe was a tactical move in a dispute regarding the project. The City facilitated the settlement discussions by providing information and attempting to get the parties to resolve their differences. Ultimately, that occurred and the matter was dismissed. The City was not a party to the settlement and did not waive its fees.

At the time of the settlement, Mr. Collison asked me if the City would waive its fees and costs. I did not agree to do so. Rather, I expressed to Mr. Collison that I would make that recommendation to the City. Following my discussion with Mr. Collison, you will note that there is no written confirmation of any agreement by the City to waive fees and costs. Also, the City was not asked to be part of the settlement agreement.

If Mr. Collison's recollection is that I conveyed to him that I would make a recommendation to the City, he is absolutely correct. However, I will not discuss the content of any attorney-client communications.

Regards,

Mark Mulkerin

Mark J. Mulkerin | Partner
1851 East First Street, Suite 1550 | Santa Ana, CA 92705
d - 949.265.3410 | t - 949.863.3363 | f - 949.863.3350
mmulkerin@bwslaw.com | [vCard](#) | bwslaw.com



From: Mark Edwards [<mailto:medwards@parton-edwards.com>]
Sent: Friday, September 28, 2012 5:08 PM
To: Mulkerin, Mark J.
Cc: Hanson, Ralph D.; Jack Collison; 'John Kunkel'; 'Marc Bierdzinski'; 'Norman Williams'
Subject: 655 Central Ave - Buellton Legal Fees

Mark,

I am Mark Edwards, and I work with 655 Central Ave, LLC in the City of Buellton. More than a year and a half ago, the LLC was involved in a neighbor litigation, and was being represented by Jack Collison - you were representing the City. Just prior to a time when the City would have had to earnestly enter into that litigation, Jack has relayed that he had a conversation with you wherein he requested that you (the City) would

not charge any legal costs to the LLC if the litigation could be settled immediately. This was a material consideration at the time, and paved the way for a timely settlement of the lawsuit.

It has been our understanding that the request for a consideration to standstill on the legal fees was agreed upon, and evidenced since no fees were charged to project at closeout in May of 2011. Further, this understanding was strengthened in that no legal bills were presented until April of 2012, at which time we were simply trying to have our maintenance bonds released. Obviously, these newly presented billings have raised questions as to their appropriateness, based on our past understandings, even to a point of integrity.

Please be advised that we have met with the City, Mr. John Kunkel and Mr. Marc Bierdzinski, regarding these recently presented invoices. After their review, Mr. Kunkel has directed that he does not have authority to resolve this issue, and any further pursuit must be taken before the City Council. Accordingly, we have requested a hearing with the Council to be scheduled on October 11th.

Now, it has been my sincere hope that, upon refreshment of the history of this issue, all parties would recall and agree that these fees were not to be charged to 655 Central Ave., LLC, and the current billings would be withdrawn. To that end, it is my understanding that our attorney, Mr. Jack Collison has contacted you in regard to his previous request to not charge fees. Jack has relayed to me that, via a recent voicemail, you have confirmed that you did in fact make this request to forgive the fees back in 2011. As a matter of my due dilligence and discovery, I now need to know to whom you made this request, and the exact response. Please advise.

Mark Edwards

(805) 570-7518

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: JHK
Council Agenda Item No.: 6

To: The Honorable Mayor and City Council

From: John Kunkel, City Manager

Meeting Date: October 25, 2012

Subject: Discussion Regarding Patio Cover at Zaca Creek Golf Course –
Rejection of Bid and Possible Alternatives

BACKGROUND

In August, the City published a Notice for Bidders regarding the Zaca Creek Golf Course Patio Improvements. On September 27, 2012, one bid, received from J&P Construction, was publicly opened. Their bid of \$109,309.50 exceeds the engineer's cost estimate. Staff recommends that Council reject the bid.

At this time staff has been reviewing alternatives to meet the safety and coverage needs at the Golf Course. Staff has also talked with Mike Brown of Sierra Turf, who is managing the Golf Course and has determined that a patio cover is not needed and that tables, chairs, and umbrellas would work well in the patio area and screening the area similar to what is currently at the putting green would provide sufficient protection from errant golf balls. Staff can purchase the tables, chairs, umbrellas and provide them to the Golf Course and the screening can be installed under the \$5,000.00 signing authority of the City Manager.

FISCAL IMPACT

Undetermined, based on the cost of tables, chairs and umbrellas, and screening.

RECOMMENDATION

That the City Council a) reject the bid received and b) authorize the City Manager to purchase tables, chairs, umbrellas to be placed in the patio area and install screening in the same area of the Golf Course in an amount not to exceed \$5,000.