



**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
AUGUST 04, 2020
110 EAST MAIN STREET
LOS GATOS, CA**

*Marcia Jensen, Mayor
Barbara Spector, Vice Mayor
Rob Rennie, Council Member
Marico Sayoc, Council Member
Vacant, Council Member*

PARTICIPATION IN THE PUBLIC PROCESS

How to participate: The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you wish to speak to an item on the agenda, please complete a “speaker’s card” located on the back of the chamber benches and return it to the Town Council. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period. The time allocated to speakers may change to better facilitate the Town Council meeting.

Effective Proceedings: The purpose of the Town Council meeting is to conduct the business of the community in an effective and efficient manner. For the benefit of the community, the Town of Los Gatos asks that you follow the Town’s meeting guidelines while attending Town Council meetings and treat everyone with respect and dignity. This is done by following meeting guidelines set forth in State law and in the Town Code. Disruptive conduct is not tolerated, including but not limited to: addressing the Town Council without first being recognized; interrupting speakers, Town Council or Town staff; continuing to speak after the allotted time has expired; failing to relinquish the podium when directed to do so; and repetitiously addressing the same subject.

Deadlines for Public Comment and Presentations are as follows:

- Persons wishing to make an audio/visual presentation on any agenda item must submit the presentation electronically, either in person or via email, to the Clerk’s Office no later than 3:00 p.m. on the day of the Council meeting.
- Persons wishing to submit written comments to be included in the materials provided to Town Council must provide the comments as follows:
 - For inclusion in the regular packet: by 11:00 a.m. the Thursday before the Council meeting
 - For inclusion in any Addendum: by 11:00 a.m. the Monday before the Council meeting
 - For inclusion in any Desk Item: by 11:00 a.m. on the day of the Council Meeting

***Town Council Meetings Broadcast Live on KCAT, Channel 15 (on Comcast) on the 1st and 3rd Tuesdays at 7:00 p.m.
Rebroadcast of Town Council Meetings on the 2nd and 4th Mondays at 7:00 p.m.
Live & Archived Council Meetings can be viewed by going to:
www.losgatosca.gov/Councilvideos***

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]

**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
AUGUST 04, 2020
7:00 PM**

IMPORTANT NOTICE REGARDING THE AUGUST 4, 2020 COUNCIL MEETING

This meeting is being conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29- 20 dated March 17, 2020, regarding the COVID- 19 pandemic. The live stream of the meeting may be viewed on television and/or online at <https://meetings.municode.com/PublishPage/index?cid=LOSGATOS&ppid=4bc370fb-3064-458e-a11a-78e0c0e5d161&p=0>. **In accordance with Executive Order N-29- 20, the public may only view the meeting on television and/or online and not in the Council Chamber.**

PARTICIPATION

If you are not interested in providing oral comments real-time during the meeting, you can view the live stream of the meeting on television (Comcast Channel 15) and/or online at <https://www.youtube.com/channel/UCFh35XRBWer1DPx-F7vvhcg>.

If you are interested in providing oral comments real-time during the meeting, you must join the Zoom webinar at <https://zoom.us/j/98980959289>. Password: 333285.

During the meeting:

- When the Mayor announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press *9 on your telephone keypad to raise your hand. If you are participating by calling in, press #2 on your telephone keypad to raise your hand.
- When called to speak, please limit your comments to three (3) minutes, or such other time as the Mayor may decide, consistent with the time limit for speakers at a Council meeting.

If you are unable to participate in real-time, you may email to PublicComment@losgatosca.gov with the subject line “Public Comment Item #__” (insert the item number relevant to your comment) or “Verbal Communications – Non Agenda Item.” Comments will be reviewed and distributed before the meeting if received by 5:00 p.m. on the day of the meeting. All comments received will become part of the record. The Mayor has the option to modify this action on items based on comments received.

REMOTE LOCATION PARTICIPANT

The following Council Members are listed to permit them to appear electronically or telephonically at the Town Council meeting: MAYOR MARCIA JENSEN, VICE MAYOR BARBARA SPECTOR, COUNCIL MEMBER ROB RENNIE, COUNCIL MEMBER MARICO SAYOC. All votes during the teleconferencing session will be conducted by roll call vote.

MEETING CALLED TO ORDER

ROLL CALL

CLOSED SESSION REPORT

CONSENT ITEMS *(Items appearing on the Consent Items are considered routine and may be approved by one motion. Any member of the Council or public may request to have an item removed from the Consent Items for comment and action. A member of the public may request to pull an item from Consent by following the Participation instructions contained on page 2 of this agenda. If an item is pulled, the Mayor has the sole discretion to determine when the item will be heard. Unless there are separate discussions and/or actions requested by Council, staff, or a member of the public, it is requested that items under the Consent Items be acted on simultaneously.)*

1. Approve Draft Minutes of the June 16, 2020 Closed Session Town Council Meeting.
2. Approve Draft Minutes of the June 16, 2020 Town Council Meeting.
3. Ratify the Town Council Selection Committee's Recommended Youth Commissioner Appointments.
4. Appoint Council Member Marico Sayoc as the Town's Voting Delegate and Council Member Rob Rennie as the Town's Alternate for the League of California Cities Annual Conference Scheduled for October 7-9, 2020.
5. Accept Report on Town Manager Approved Actions During the 2020 Town Council Legislative Recess.
6. Authorize the Town Manager to Execute Long Term Lease Agreements with Tait Firehouse LLC and Forbes Mill LLC for the Property Located at 4 Tait Avenue and 75 Church Ave, Los Gatos.
7. Adopt a Resolution Establishing the FY 2020/21 GANN Appropriations Limit for the Town of Los Gatos.
8. Adopt Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Vehicle Sales, Town Wide. Town Code Amendment Application A-20-003. Applicant: Town of Los Gatos.
9. Authorize the Town Manager to Amend an Agreement for Employee Safety Compliance and Training Consultant Services with BSI EHS Services and Solutions (West) Inc., in an Amount not to Exceed \$175,350.
10. Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Work of Crisp Company and Authorize Recording by the Town Clerk for PPW Job No. 18-813-0234 One-Way Downtown Street Pilot.
11. Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Work of Rosas Brothers Construction and Authorize Recording by the Town Clerk for PPW Job No. 19-813-9921 Annual Curb, Gutter, and Sidewalk Maintenance Project.
12. Authorize the Town Manager to Execute a Fourth Amendment to the Agreement for Services with St. Francis Electric to Increase Compensation for Unforeseen Services in FY 2019/20 in an Amount of \$12,818 and Extend Services for Four Months in FY 2020/21 in an Amount Not to Exceed \$50,000.

13. Authorize the Following Actions for the Massol Intersection Improvements Project (19-813-0236):
- a. Authorize the Town Manager to Award and Execute a Construction Agreement with Tennyson Electric in an Amount of \$328,792, and Authorize \$65,758 as a Construction Contingency for a Total Amount Not to Exceed \$394,550;
 - b. Authorize Staff to Execute Future Contract Change Orders in an Amount Not to Exceed Twenty Percent of the Agreement Amount;
 - c. Approve a Budget Transfer of \$57,148 in FY 2020/21 from the School Bus Pilot Program.

VERBAL COMMUNICATIONS *(Members of the public are welcome to address the Town Council on any matter that is not listed on the agenda consistent with the Participation instructions contained on page 2 of this agenda. To ensure all agenda items are heard and unless additional time is authorized by the Mayor, this portion of the agenda is limited to 30 minutes and no more than three (3) minutes per speaker. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications will be opened prior to adjournment.)*

PUBLIC HEARINGS *(Applicants/Appellants, their representatives, and members of the public wishing to address the Council on any Public Hearing item should register in advance to obtain the Zoom link for this meeting by following the Participation instructions contained on page 2 of this agenda. Applicants/Appellants and their representatives may be allotted up to a total of five minutes maximum for opening statements. Members of the public may be allotted up to three minutes to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of three minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.)*

14. Open and Close a Public Hearing to Consider Objections to the 2020 Weed Abatement Program Assessment Report and Adopt a Resolution Confirming the Report and Authorizing Collection of the Assessment Charges.
15. Introduction by Title Only of an Ordinance of the Town of Los Gatos Amending Chapter 18, by Adding Article IX, Sections 18.90.010- 18.90.050 of the Los Gatos Town Code Entitled Drones and Unmanned Aircraft Systems.

OTHER BUSINESS *Up to three minutes may be allotted for each comment on any of the following items consistent with the Participation Instructions contained on page 2 of this agenda.)*

16. Adopt a Resolution Authorizing the Town Manager to Execute the North 40 In Lieu Traffic Fee Credit Agreement, North 40 Transportation Demand Management Agreement (Bellterra), and North 40 Transportation Demand Management Agreement (Market Hall) for Phase 1 of the North 40 Development.
17. Approve the Santa Clara County Fire District Emergency Route Recommendation for Alpine Avenue and Remove Parking on One Side of the Street.

ADJOURNMENT *(Council policy is to adjourn no later than midnight unless a majority of Council votes for an extension of time.)*

Writings related to an item on the Town Council meeting agenda distributed to members of the Council within 72 hours of the meeting are available for public inspection at the front desk of the Los Gatos Town Library, located at 100 Villa Avenue, and are also available for review on the official Town of Los Gatos website. Copies of desk items distributed to members of the Council at the meeting are available for review in the Town Council Chambers.

Note: The Town of Los Gatos has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a decision of the Town Council must be brought within 90 days after the decision is announced unless a shorter time is required by State or Federal law.



**DRAFT
Minutes of the Town Council Special Meeting - Closed Session
June 16, 2020**

The Town Council of the Town of Los Gatos conducted a Special Meeting via Teleconference, due to COVID-19 Shelter in Place guidelines, on Tuesday, June 16, 2020, to hold a Closed Session at 6:00 p.m.

MEETING CALLED TO ORDER AT 6:03 P.M.

ROLL CALL

Present (all participating remotely): Mayor Marcia Jensen, Vice Mayor Barbara Spector, Council Member Rob Rennie, Council Member Marico Sayoc.

Absent: None

VERBAL COMMUNICATIONS

None.

THE TOWN WILL MOVE TO CLOSED SESSION ON THE FOLLOWING ITEM:

1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Government Code Section 54956.8)

- a. Property: 75 Church St. (Forbes Mill) (APN: 529-54-050)
Negotiating Parties: Town of Los Gatos
Negotiator: Laurel Prevetti, Town Manager and Imwalle Asset Management,
Potential Buyer and/or Lessee
Negotiations: Price and terms of potential sale or lease
- b. Property: 4 Tait Avenue (Museum) (APN: 510-44-054)
Negotiating Parties: Town of Los Gatos
Negotiator: Arn Andrews, Assistant Town Manager and Imwalle Asset Management,
Potential Buyer and/or Lessee
Negotiations: Price and terms of potential sale or lease

ADJOURNMENT

Closed Session adjourned at 6:25 p.m.

Attest:

Submitted by:

Jenna De Long, Deputy Clerk

Laurel Prevetti, Town Manager



**DRAFT
Minutes of the Town Council Meeting
June 16, 2020**

The Town Council of the Town of Los Gatos conducted a regular meeting via Teleconference, due to COVID-19 Shelter in Place guidelines, on Tuesday, June 16, 2020, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:01 P.M.

ROLL CALL

Present: (all participating remotely) Mayor Marcia Jensen, Vice Mayor Barbara Spector, Council Member Rob Rennie, Council Member Marico Sayoc.

Absent: None

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Vice Mayor Spector stated she attended via teleconference the West Valley Sanitation District Board of Directors meeting.
- Council Member Rennie stated he participated via teleconference in the Silicon Valley Clean Energy (SVCEA) Board and Risk Oversight Committee, Valley Transportation Authority (VTA) Board, VTA Governance and Audit Committees, and with Council Member Sayoc he attended the Conceptual Development Advisory Committee (CDAC) and Council Finance Committee meetings.
- Council Member Sayoc stated she attended via teleconference the Cities Association and League of California Cities Board meetings.
- Mayor Jensen stated she attended via teleconference the Valley Transportation Authority (VTA) Policy Advisory Committee and mentioned that she has a meeting with Senator Beall via teleconference on Friday, June 19, 2020.

Council Member Rennie requested a high level overview of the Los Gatos/Monte Sereno Police Department budget, and an item to address racism in the community be added to a future agenda. Council Member Sayoc seconded the request.

Manager Matters

- Commented that the Los Gatos Police Department continually reviews and updates its policies, including the use of force policy to ensure best practices are used.
- Announced the recruitment for the Youth Commission is open, applications are due July 10, 2020 by 4:00 p.m., and interviews will be held on July 21, 2020.

Manager Matters – continued

- Announced that the General Plan Advisory Committee meeting will be Thursday, June 18, 2020 at 7:00 p.m. via Zoom.

CLOSED SESSION REPORT

Robert Schultz, Town Attorney, stated Council met in Closed Session as duly noted on the agenda and there is no report.

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

1. Approve Draft Minutes of the May 26, 2020 Special Town Council Meeting.
2. Approve Draft Minutes of the June 2, 2020 Town Council Meeting.
3. Approve the Draft Minutes of the June 8, 2020 Special Town Council Meeting.
4. Adopt a Resolution Requesting that the County of Santa Clara Board of Supervisors Consolidate a General Municipal Election to be Held on November 3, 2020 with the State-wide Presidential General Election to be Held on that Date Pursuant to Section 10403 of the Elections Code and Authorizing Other Related Actions. **RESOLUTION 2020-025**
5. Approve Town Council Meeting Schedule For 2020-21 Fiscal Year.
6. Authorize the Town Manager to Execute an Agreement with the Los Gatos Chamber of Commerce to Provide a Subsidy for the Los Gatos Chamber of Commerce to Manage the Town's Visitors Information Center and Assist with Related Community Vitality Initiatives in an Amount Not to Exceed \$55,000.
7. Authorize the Town Manager to Execute a Second Amendment to Extend the Existing Agreement for Cablecasting and Livestreaming Services with KCAT-TV until August 31, 2020 while Town Staff and KCAT Representatives Finish Negotiating Terms for a New Five-Year Agreement.
8. Approve an Amendment to the Classification Plan to Create a Flexibly Staffed Equipment Mechanic Job Series and Correct the Title of Assistant Parks and Public Works Director.
9. Local Government Planning Support Grant Program Funds
 - a. Adopt a Resolution to Authorize Application for, and Receipt of, Local Government Planning Support Grant Program Funds. **RESOLUTION 2020-026**
 - b. Authorize FY 2020/21 Revenue and Expenditure Budget Adjustments in the Amount of \$150,000 to Recognize Receipt and Expenditure of California Department of Housing and Community Development Grant Funds.
10. Authorize the Town Manager to Execute a First Amendment to the Agreement with Kimley-Horn and Associates, Inc., Modifying the Scope and Increasing the Total Compensation by \$139,430.32 for a Total Contract Amount not to Exceed \$339,430.32 for Engineering Design for the Winchester Boulevard Class IV Bikeway Project (CIP# 411-813-0240).
11. Adopt a Resolution to Adopt a List of Projects for Fiscal Year 2020/21 Funded by State Senate Bill 1 (SB1), The Road Repair and Accountability Act of 2017. **RESOLUTION 2020-027**
12. Receive the Final Report on the Wildland Urban Interface (WUI) Area Hazardous Vegetation (Brush) Abatement Annual Program for 2020.

Consent Items – continued

MOTION: Motion by Vice Mayor Spector to approve the Consent Items, inclusive of the Desk Item for item #4. **Seconded by Council Member Sayoc.**

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Maria Ristow

- Thanked the Town for coordinating virtual meetings. Requested that the Town continue to utilize teleconferencing capabilities after the Shelter-in-Place Order is lifted.

Sue Farwell

- Thanked the Town for the quick installation of K-rail downtown. Requested K-rail spaces be maintained by the adjacent business and requested the Council consider paying for the cost of supplying temporary power to businesses during Public Safety Power Shutoffs (PSPS) from the Economic Recovery Fund, if necessary.

Catherine Somers

- Requested the Town take additional actions to support local business, including signage, and social media messages regarding COVID-19 safety precautions, portable bathrooms on Grays Lane, music, street pole banners, and additional bike racks. Asked for the Town's support of an open-air market in August.

Abby Harowitz

- Commented regarding the time between the death of George Floyd and a proclamation by the Town to stand in solidarity with the Black community, and expressed concern that there is no commitment to action.

PUBLIC HEARINGS

13. Consider Approval of Amendments and Introduce the Draft Ordinance by Title Only to Amend Chapter 29 (Zoning Regulations) of the Town Code Regarding Vehicle Sales, Town Wide. Town Code Amendment Application A-20-003. Applicant: Town of Los Gatos.

Sean Mullin, Associate Planner, presented the staff report.

Mayor Jensen opened public comment.

No one spoke.

Mayor Jensen closed public comment.

Public Hearing Item #13 – continued

Council discussed the matter.

MOTION: Motion by Council Member Sayoc to approve the amendments and introduce the draft Ordinance by title only to amend Chapter 29 (Zoning Regulations) of the Town Code regarding Vehicle Sales. **Seconded** by Council Member Rennie.

VOTE: Motion passed unanimously.

Town Clerk Neis read the title of the ordinance.

14. Authorize the Following Actions for Landscape and Lighting Assessment Districts No. 1 and 2:
- a. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Blackwell Drive Benefit Zone. **RESOLUTION 2020-028**
 - b. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Kennedy Meadows Benefit Zone. **RESOLUTION 2020-029**
 - c. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Santa Rosa Heights Benefit Zone. **RESOLUTION 2020-030**
 - d. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 1-Vasona Heights Benefit Zone. **RESOLUTION 2020-031**
 - e. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 1-Hillbrook Drive Benefit Zone. **RESOLUTION 2020-032**
 - f. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 2-Gemini Court Benefit Zone. **RESOLUTION 2020-033**

Stefanie Hockemeyer, Executive Assistant, presented the staff report.

Mayor Jensen opened public comment.

No one spoke.

Mayor Jensen closed public comment.

Public Hearing Item #14 – continued

Council discussed the matter.

MOTION: Motion by Council Member Sayoc to authorize the actions for Landscape and Lighting Assessment Districts No. 1 and 2 as contained in the staff report, inclusive of the Desk Item. **Seconded by Mayor Jensen.**

VOTE: Motion passed unanimously.

OTHER BUSINESS

15. Postpone the Extension of School Bus Service with Santa Barbara Transportation Corporation Doing Business as Student Transportation of America for the 2020/21 School Year.

Ying Smith, Transportation and Mobility Manager, presented the staff report.

Mayor Jensen opened public comment.

No one spoke.

Mayor Jensen closed public comment.

Council discussed the matter.

MOTION: Motion by Council Member Rennie to cancel the school bus service with Santa Barbara Transportation Corporation doing business as Student Transportation of America. **Seconded by Mayor Jensen.**

VOTE: Motion passed unanimously.

ADJOURNMENT

The meeting adjourned at 7:47 p.m.

Submitted by:

Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 3

DATE: July 24, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Ratify the Town Council Selection Committee's Recommended Youth Commissioner Appointments

RECOMMENDATION:

Ratify the Town Council Selection Committee's recommended Youth Commissioner appointments.

BACKGROUND:

Since June of 2004, Council has appointed students in Grades 8 through 12 as members of the Youth Commission.

The Town used a variety of mechanisms to recruit for the Youth Commission. The Town distributed a letter to the local schools requesting they help promote the Youth Commission opportunities. The letter was sent to Los Gatos High School, Leigh High School, Westmont High School, Fisher Middle School, Union Middle School, Rolling Hills Middle School, and Hillbrook School. In addition, the Town placed advertisements in local publications and posted the opportunity on the Town's What's New email blast, the Town's website, the Youth Commission Facebook page, the Town's Facebook page, on Nextdoor.com, and on KCAT.

Due to the COVID-19 Shelter in Place Public Health Order, at its April 21, 2020 meeting, the Town Council extended the expiring terms by one year for all but the five twelfth graders and extended the application deadline for the five vacancies to July 10, 2020.

PREPARED BY: Shelley Neis
Town Clerk

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

PAGE 2 OF 2

SUBJECT: Ratify Youth Commission Appointments

DATE: July 23, 2020

DISCUSSION:

By the application deadline on July 10, 2020, ten (10) applications were received. On July 21, 2020, the Town Council Selection Committee, comprised of Mayor Jensen, Vice Mayor Spector, Captain D'Antonio, and Youth Commission Chair Isabella Scott, interviewed eight (8) applicants for five (5) available positions. Two of the applicants did not attend the interview and therefore were not considered for appointment. All the applicants demonstrated initiative and community spirit in applying for leadership positions to serve the Los Gatos community and the Selection Committee's recommended appointments are listed in Attachment 1.

CONCLUSION:

The Town Council Selection Committee recommends that Council appoint members as shown in Attachment 1. The recommendations for appointment are based on composite assessments from the interviews and applications. Following the Youth Commission enabling resolution (Attachment 2), appointments for the five (5) newly appointed Commissioners are for one year.

FISCAL IMPACT:

The Town-wide Commission training budget is available to provide funds as needed.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Recommended Youth Commissioner Appointments
2. Youth Commission Enabling Resolution 2018-008

RECOMMENDED YOUTH COMMISSIONER APPOINTMENTS

NAME	GRADE IN FALL	NEW OR REAPPOINTED	TERM
Esha Bagora	9	New	1 year
Sasha Balasingam	10	New	1 year
Vicky Bai	11	New	1 year
Quincy Scott	10	New	1 year
Owen Thompson	11	New	1 year

ATTACHMENT 1

RESOLUTION 2018-008

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
RESCINDING RESOLUTION 2016-059 AND
ESTABLISHING RULES FOR THE YOUTH COMMISSION**

WHEREAS, it is recognized that a youth perspective on issues which pertain to the youth in the community is an important part of decision making in Town; and

WHEREAS, there is value in increasing communication between adults and youth; and

WHEREAS, there is value in having a mechanism for youth to have a voice in Town affairs and issues relating to youth; and

WHEREAS, the Town Council of the Town of Los Gatos found and determined that the purpose of the Youth Commission is to foster and encourage civic and neighborhood pride and a sense of identity through the knowledge, understanding, and increased involvement of the Town's youth in the Town's present and future municipal affairs.

NOW THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOS GATOS THAT:

1. There is a need for a Youth Commission to function in the Town of Los Gatos, which would establish a formal body by which the youth of Los Gatos would have a voice in the community.
2. There is hereby established a Youth Commission which shall generally be responsible for studying various problems, activities and other issues of concern to the youth in general, and for advising Council on matters pertaining to issues involving the youth of Los Gatos.
 - a. Membership/Organization
 - i. The Youth Commission shall consist of twenty (20) members. The members shall be students who are entering grades 8 through 12. Membership for the students requires residency in the incorporated limits of the Town of Los Gatos or residency in the unincorporated areas of the County of Santa Clara, which have a Los Gatos mailing address.
 - ii. Members shall serve a term of two (2) years and until their successors are appointed and qualified. Members who are entering grade 12 when appointed and first time appointees shall serve a term of one (1) year.

ATTACHMENT 2

- iii. The Commission shall appoint one (1) primary member and one (1) alternate to serve as one voting member on the following Town Boards and Commissions:
 1. Arts and Culture Commission
 2. Bicycle and Pedestrian Advisory Commission
 3. Community and Senior Services Commission
 4. Library Board
 5. Parks Commission
 6. Transportation and Parking Commission
 - iv. In addition to all Youth Commission meetings, the primary member shall attend all meetings of the Board or Commission they are appointed to. If the primary member is not able to attend the meeting of the Board or Commission they are assigned, it shall be the responsibility of the alternate to attend the meeting. If the primary member misses three (3) meetings of the Board or Commission the Youth Commission shall appoint a new primary member, and if necessary, a new alternate.
 - v. Liaisons shall provide a monthly report to the Youth Commission and be responsible for conveying the Youth Commission's input to the Board or Commission.
 - vi. A majority of members shall constitute a quorum for the purpose of transacting business.
 - vii. Commission members shall serve without compensation, provided that, with advance budgetary approval of the Town Council, the actual and necessary expenses (if any) incurred by the members in the conduct of Town business shall be reimbursable pursuant to the current Council policy.
3. The Commission shall hold a regular meeting at least once each month between September and June. The Commission shall establish a regular time and location for its meetings and shall otherwise call and conduct its meetings in compliance with the provisions of the Ralph M. Brown Act (Government Code Sections 54950 and following.)
 4. The Commission shall elect a Chair and Vice-Chair, both of whom shall serve at the pleasure of the Commission. Terms of office shall be for one (1) year and shall begin on the first meeting in September and end the following June.
 5. Minutes of the actions taken during its meetings shall be kept and filed with the Town Clerk Administrator.

6. Meeting attendance requirements will conform with all current Town Resolutions and Policies.
7. The duties of the Commission shall include the following:
 - a. Foster greater involvement of youth in municipal government affairs.
 - b. Study problems, activities, and concerns of youth, especially as they relate to municipal programs or projects of the Town of Los Gatos.
 - c. Hold forums on problems, activities and concerns of youth, either alone or in conjunction with other governmental agencies and community organizations, as the Commission deems desirable.
 - d. Review municipal matters referred to the Commission by the Town Council or other Town boards, committees, or commissions and, as appropriate, make recommendations on those matters.

BE IT FURTHER RESOLVED that Resolution 2016-059 is hereby rescinded.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 20th day of March, 2018, by the following vote:

COUNCIL MEMBERS:

AYES: Marcia Jensen, Steve Leonardis, Marico Sayoc, Barbara Spector, Mayor Rob Rennie

NAYS: None.

ABSENT: None.

ABSTAIN: None.

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 3/21/18

ATTEST:



CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 3/22/18



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 4

DATE: July 29, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Appoint Council Member Marico Sayoc as the Town's Voting Delegate and Council Member Rob Rennie as the Town's Alternate for the League of California Cities Annual Conference Scheduled for October 7-9, 2020

RECOMMENDATION:

Appoint Council Member Marico Sayoc as the Town's voting delegate and Council Member Rob Rennie as the Town's alternate for the League of California Cities Annual Conference scheduled for October 7-9, 2020.

REMARKS:

Each year the League of California Cities conducts an annual conference to discuss key legislative, social, fiscal and service issues affecting California municipalities. One important aspect of the conference is its annual business meeting at which the League membership takes action on conference resolutions. Annual conference resolutions guide cities and the League in efforts to improve the quality, responsiveness, and vitality of local government in California.

To expedite the annual business meeting, participating cities/towns have been asked to designate a primary voting delegate and optionally, an alternate voting delegate. The voting delegate is typically the Town's appointed Representative or the appointed Alternate. As the current appointed Representative to the League, Council Member Marico Sayoc will be attending the conference and has agreed to serve as the Town's voting delegate. As the current appointed Alternate Representative to the League, Council Member Rob Rennie has agreed to serve as the Town's alternate voting delegate.

At the time of this report's preparation, the Town had not yet received the 2020 League of California Cities Conference Resolutions Packet. It has been the Town's past practice to have

PREPARED BY: Janette Judd
Executive Assistant to the Town Manager

Reviewed by: Town Manager, Assistant Town Manager, and Town Attorney

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SUBJECT: Appoint Voting Delegate and Alternate for League of California Cities Annual
Conference

DATE: July 29, 2020

the appointed voting delegate determine the Town's position based on resolution discussion and feedback at the League Annual Business Meeting.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 5

DATE: July 29, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Accept Report on Town Manager Approved Actions During the 2020 Town Council Legislative Recess

RECOMMENDATION:

Accept report on Town Manager approved actions during the 2020 Town Council legislative recess.

BACKGROUND:

On June 20, 2019, the Town Council adopted a Resolution (Attachment 1) authorizing the Town Manager to execute the following duties during periods of official Town Council legislative recess in consultation with the Mayor:

1. Approval of plans and specifications for capital projects and authorization to advertise for bids.
2. Award of construction contracts and construction contract change orders in excess of the amount included in the contingency.
3. Execution of agreements and amendments to agreements in excess of \$50,000 that ordinarily require Town Council approval.

DISCUSSION:

The Town Council took an official legislative recess from June 17, 2020 to August 3, 2020. During this recess, and pursuant to authority granted by the Town Council, the Town Manager executed the following action, in consultation with the Mayor:

- Agreement for Microsoft software licensing with "SoftwareONE" in the amount of \$63,872.56 (IT Department Memorandum, Attachment 2)

PREPARED BY: Janette Judd
Executive Assistant to the Town Manager

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

PAGE 2 OF 2

SUBJECT: Accept Report on Town Manager Approved Actions During the 2020 Town Council Legislative Recess

DATE: July 29, 2020

DISCUSSION (Continued):

The Town Manager determined that immediate action on the above item was necessary in order to maintain critical services. The item above has already been approved by the Town Manager and Mayor, and Council members may request additional information or provide additional direction regarding this item.

CONCLUSION:

Staff recommends that the Town Council accept this report on the Town Manager approved action taken during the 2020 Town Council legislative recess, as authorized by Town Council Resolution 2019-033 and in consultation with the Mayor.

Attachments:

1. Resolution 2019-033
2. IT Department Memorandum RE: Agreement with SoftwareONE

RESOLUTION 2019-033

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AUTHORIZING THE TOWN MANAGER TO EXECUTE THE FOLLOWING DUTIES
DURING PERIODS OF OFFICIAL TOWN COUNCIL RECESS,
IN CONSULTATION WITH THE MAYOR:
APPROVAL OF PLANS AND SPECIFICATIONS FOR CAPITAL PROJECTS AND
AUTHORIZATION TO ADVERTISE FOR BIDS;
AWARD OF CONSTRUCTION CONTRACTS AND CONSTRUCTION CONTRACT CHANGE
ORDERS IN EXCESS OF THE AMOUNT INCLUDED IN THE CONTINGENCY;
EXECUTION OF AGREEMENTS IN EXCESS OF \$50,000
THAT ORDINARILY REQUIRE TOWN COUNCIL APPROVAL.**

WHEREAS, the Town Council is taking an official legislative recess from June 19, 2019 to August 6, 2019; and

WHEREAS, the Town Council may take official legislative recesses in the future; and

WHEREAS, it is possible that issues may arise during official Town Council recesses that would normally require Town Council approval; and

WHEREAS, in order to avoid the possibility of critical scheduling delays or increased expenses resulting from delays during the official Town Council recess, the Town Manager should be authorized during official Town Council recesses to take certain actions, in consultation with the Mayor.

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town of Los Gatos, County of Santa Clara, that the Town Manager is authorized, in consultation with the Mayor, during periods of official Town Council recesses, to:

- 1) Approve plans and specifications for capital projects and authorize staff to advertise for bids;
- 2) Award construction contracts and construction contract change orders in excess of the amount included in the contingency; and
- 3) Execute agreements and amendments to agreements in excess of \$50,000 that ordinarily require Town Council approval.

ATTACHMENT 1

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 18th day of June, 2019 by the following vote:


COUNCIL MEMBERS:

AYES: Marcia Jensen, Rob Rennie, Marico Sayoc, Barbara Spector, Mayor Steven Leonardis


NAYS: None

ABSENT: None

ABSTAIN: None

SIGNED: 
MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA
DATE: 6/20/19

ATTEST:


TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 6/24/19



MEMORANDUM

Town Manager's Office

TO: LAUREL PREVETTI, TOWN MANAGER **MAYOR REVIEW 7/22/20**

FROM: CHRIS GJERDE, IT MANAGER

SUBJECT: **MICROSOFT SOFTWARE LICENSING**
SOFTWAREONE

DATE: June 30, 2020

RECOMMENDATION:

It is recommended that the Town Manager purchase Microsoft software licensing from SoftwareONE in an amount not to exceed \$63,872.56.

BACKGROUND:

The Fiscal Year 2020/21 Operating Budget anticipated the annual renewal of Microsoft software licensing in the Town's Information Technology Budget Operating Expenditures line.

Generally, the Town Council does not review routine software licensing purchase requests; however, as software usage has increased and since the combined purchase price for these licenses exceeds the Town Manager's purchasing authority of \$50,000, this purchase requires Council approval pursuant to the Town Purchasing Policy.

DISCUSSION:

This Microsoft software purchase includes annual licensing for server operating systems, server management, server applications, the Office suite, and security software on both staff desktops and in the cloud.

In accordance with the Town Purchasing Policy Section 7c regarding Cooperative Purchasing, the prices for Microsoft software license renewals are negotiated by the County of Riverside and sold by volume licensing partner SoftwareONE. Most California agencies, from large ones

PREPARED BY: Holly Zappala
Management Analyst

Reviewed as necessary: Town Manager, Assistant Town Manager, Town Attorney, Finance Director

DISCUSSION (continued):

such as the Department of Motor Vehicles, to small cities and special districts, use this purchasing arrangement to obtain the best prices.

The Town's current Volume Licensing Agreement is valid through June 30, 2022. The agreement has no monetary value and is a means of securing pricing. SoftwareONE is the vendor the Town purchases the license through, and the agreement is with Microsoft.

An interruption in Microsoft licensing software would halt the daily computer operations of Town staff.

CONCLUSION:

Staff recommends that the Town Manager purchase Microsoft software licensing from SoftwareONE for FY 2020/21 in an amount not to exceed \$63,872.56.

COORDINATION:

The Finance Department, IT, and Town Manager's Office coordinated this report.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA and no further action is required.

FISCAL IMPACT:

There are sufficient funds available in the IT budget to purchase these software licenses.

Attachments:

1. SoftwareONE Invoice
2. Volume Licensing Agreement



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 6

DATE: July 27, 2020
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Authorize the Town Manager to Execute Long Term Lease Agreements with Tait Firehouse LLC and Forbes Mill LLC for the Property Located at 4 Tait Avenue and 75 Church Ave, Los Gatos

RECOMMENDATION:

Authorize the Town Manager to execute long term Lease Agreements with Tait Firehouse LLC and Forbes Mill LLC for the property located at 4 Tait Avenue and 75 Church Ave, Los Gatos.

BACKGROUND:

The Town has been actively searching for potential tenants for the properties located at 4 Tait Avenue and 75 Church Street ("Properties") since the Museum vacated both in 2016. In 2018, Imwalle Asset Management Company ("Imwalle") approached the Town and requested that negotiations take place regarding the potential renovation, management, and master leasing of these properties. In March 2019, the Town and Imwalle entered into an Exclusive Negotiating Agreement to help guide the negotiations of a Lease Agreement. The attached draft Lease Agreements have now been negotiated between Town staff and Imwalle and are ready to be presented in open session for approval.

DISCUSSION:

The Lease Agreements for both properties are for a long term (34 years and 11 months) and creates a Master Tenant/Landlord relationship wherein Imwalle would be 100% responsible for all costs related to the project of rehabilitation, build out, leasing, and ongoing management and maintenance of the properties. Both properties need significant improvements easily in excess of \$1,000,000 each to be brought to a leasable market condition. The Lease Agreements require Imwalle to proceed with normal CEQA review and planning and development

PREPARED BY: Robert Schultz
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, and Finance Director

DISCUSSION (cont.):

application requirements and care would be taken to restore the historic aspects of both properties while delivering modern upgrades expected in the current commercial market. Pursuant to the Lease Agreements, payments to Los Gatos would be a hybrid of fixed base monthly payments and profit participation.

Imwalle has completed almost 100 small scale projects over the last 40 years and has experience with ground leases, master leases, and public private partnerships in San Jose and Morgan Hill. Staff performed a side-by-side comparison of the draft lease agreement submitted to the Town by Imwalle and that of the City of Morgan Hill who has a similar contractual relationship. Following are some key elements of the Lease Agreements that Town Staff has been able to negotiate with Imwalle:

- Percentage Rent of the Sublease Income to the Town is 60% instead of 50%.
- Master Tenant management fee equal to 3% of Sublease Income has been deleted.
- Improvement loans funded by Master Tenant shall receive 3% interest instead of 8%.
- Landlord approval required for subtenants.
- Landlord approval required for permitted uses.
- The term is 34 years and 11 months, instead of 25 years with 2 five-year options.
- Prohibition in change of Master Tenant; the Master Tenant Team now consists of Imwalle, Jim Farley and Jason Farwell.

COORDINATION:

This report was coordinated with the office of the Town Manager's Department.

FISCAL IMPACT:

There is no fiscal impact to the Town at this time. In the long term the Town will generate Lease income from the properties.

ENVIRONMENTAL ASSESSMENT:

The proposed lease agreements are exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b)(3) of the CEQA Guidelines. Further environmental review will be conducted once the project at each lease site is defined and a planning permit is requested.

PAGE 3 OF 3

SUBJECT: Lease Agreements for 4 Tait Avenue and 75 Church Ave, Los Gatos

DATE: July 27, 2020

CONCLUSION:

Staff recommends that Council authorize the Town Manager to execute long term Lease Agreements with Tait Firehouse LLC and Forbes Mill LLC for the property located at 4 Tait Avenue and 75 Church Ave, Los Gatos.

Attachments:

1. Draft Lease Agreement for 4 Tait Avenue.
2. Draft lease Agreement for 75 Church Avenue.

LEASE AGREEMENT

MASTER LEASE

by and between

TOWN OF LOS GATOS, a California municipal corporation
(**"Landlord"**)

and

TAIT FIREHOUSE, LLC, a California limited liability company
(**"Master Tenant"**)

Los Gatos, California

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<u>Exhibit D</u>	Condition of Premises Upon Delivery
<u>Exhibit E</u>	Insurance Requirements for Master Tenant and Subtenants
<u>Exhibit F</u>	Memorandum of Lease Agreement

[Type here]

MASTER LEASE

This Master Lease ("Lease") is made and effective as of this _____ day of _____, 2020 ("Effective Date"), by and between THE TOWN OF LOS GATOS, a California Municipal Corporation (hereinafter "Landlord" or the "Town"), and TAIT FIREHOUSE, LLC, a California Limited Liability Company ("Master Tenant").

RECITALS

A. The Town owns certain improved real property, commonly referred to as the Tait Property, legally described on Exhibit A attached hereto and made a part hereof, suitable for office, restaurant, retail and other commercial operations (the "Property"). The building situated on such real property shall be referred to as the "Tait Building."

B. The Town has solicited proposals to develop the Tait Building and the future development of the Property will require significant capital improvements to make the area usable for commercial operators.

C. Master Tenant has been selected by the Town to develop the Tait Building and to sublease space within the Property to subtenant(s) consented to by the Town.

Now therefore, in consideration of their mutual promises as set forth in this Lease, the Town and Master Tenant agree as follows:

SECTION 1. BASIC LEASE PROVISIONS AND DEFINITIONS.

1.1 Master Tenant's Managing Member. Imwalle Asset Management, LLC, a California Limited Liability Company.

1.2 Premises and Address of Premises: The Premises consist of the Property and the Tait Building situated thereon. The address of the Premises is as follows:

4 Tait Avenue
Los Gatos, CA 95030

1.3 Rentable Area of Tait Building. As depicted in Exhibit B, the Rentable Area of the Tait Building is approximately 3400 square feet.

1.4 Lease Term. As provided in Section 3 below, the Term of the Lease commences on the Commencement Date and terminates, unless earlier terminated 34 years and 11 months from the Commencement Date as provided in Section 3.1 below.

1.5 Lease Contingency. This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master Tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before the date twelve (12) months following the Effective Date, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

1.6 Minimum Monthly Rent. The Minimum Monthly Rent shall be \$0.40 per Rentable Area of Tait Building (which equates to \$1,360 per month) payable to Landlord as provided in Section 4 below.

1.7 Percentage Rent. The Percentage Rent shall be that Rent specified in Section 4.3 below.

1.8 Capital Reserve Fund. For each month that Master Tenant pays to Landlord the Minimum Monthly Rent, Landlord shall deposit on a monthly basis to the account described in Section 8.6 below, the Minimum Monthly Rent received by Landlord.

1.9 Maintenance of Premises. The Master Tenant's obligations for Maintenance of the Premises are as set forth in Section 8 below.

1.10 Rent Commencement Date. The Rent Commencement Date shall be the date the first Subtenant opens for business on the Premises. The Rent Commencement Date shall be memorialized between Landlord and Master Tenant as set forth in Exhibit D (Form of Notice of Lease Terms).

1.11 Subtenant. The individual commercial operator(s) physically occupying the Premises to provide the services required under this Lease, as selected by Master Tenant and accepted by the Town (subject to Section 7.2 and Section 14.2 below). The Master Tenant cannot also be a Subtenant.

1.12 Permitted Uses. The operation of businesses providing office, retail, restaurant, and other services approved by Master Tenant and Town, and any other lawful use, except as otherwise prohibited under this Lease pursuant to Section 5.2.

1.13 Town Manager. The Town Manager of the Town ("Town Manager") or his or her designated representative, shall serve as the Town's principal contact and liaison for coordinating all Town requests of Master Tenant and responses to Master Tenant's requests, and shall assist in the implementation of the Town's obligations hereunder, during the term of this Lease. The Town Manager may change his or her authorized representative at any time by giving written notice of the change to Master Tenant.

1.14 Master Tenant's Work and Tenant Improvement Loan Amortization. "Master Tenant's Work" is defined in Section 6.2. "Tenant Improvement Loan Amortization" is defined in Section 6.3.

SECTION 2. LEASED AREA.

2.1 Premises. Landlord hereby leases to Master Tenant, and Master Tenant hereby leases from Landlord the Premises referred to in Section 1.2 above, located at 4 Tait Avenue, Los Gatos, California 90530, as depicted on Exhibit B.

SECTION 3. TERM.

3.1 Term. The "Term" of this Lease shall commence as of the Effective Date ("Commencement Date") and shall end, unless earlier terminated or extended pursuant to the terms and conditions of this Lease, on the date 34 years and 11 months after the Commencement Date ("Termination Date").

SECTION 4. RENT.

4.1 General. From and after the Rent Commencement Date, Master Tenant agrees to pay Landlord as rent for the Premises, in the manner and at the times set forth in this Lease, the Minimum Monthly Rent and the Percentage Rent, as further described in this Section 4.

4.1.1 All rent payments shall be sent to the Landlord's address in Section 21.1 and shall be addressed to the attention of the Town Finance Department, and shall be free from all credits, claims, demands, off-sets or counterclaims of any kind against the Town.

4.1.2 Minimum Monthly Rent shall be paid by Master Tenant to Landlord on a monthly basis in advance on or before the first day of each month during the Term.

4.1.3 Percentage Rent shall be paid in arrears on or before April 15 each calendar year for the amount due and owing for the preceding calendar year (or 90 days after any Termination Date).

4.2 Minimum Monthly Rent. The Minimum Monthly Rent shall be the amount indicated in Section 1.6. Minimum Monthly Rent shall be paid in advance on or before the first day of each calendar month during the Lease Term.

4.3 Percentage Rent.

4.3.1 Manner and Time of Payment. Percentage Rent shall equal 60% of the Sublease Income received by Master Tenant during each calendar year, remaining after Distribution of Sublease Income in accordance with Section 4.3.4(a) through Section 4.3.4(d) below.

4.3.2 Definition of Sublease Income. "Sublease Income" shall mean the sum of (a) all base rents actually received by Master Tenant from its Subtenants of the Premises (excluding reimbursements from Subtenants for any operating costs such as, but not limited to, taxes, insurance, utilities, and maintenance and repair costs, to the extent such reimbursements do not exceed Master Tenant's actual costs of such operating costs), (b) any interest earned on security deposits of Subtenants, (c) security deposits forfeited by Subtenants (to the extent applied to delinquent rentals owing by such applicable Subtenant) and any fees paid by Subtenants to Master Tenant for cancellation of their subleases; and (d) proceeds of business interruption or rental loss insurance actually collected by Master Tenant as a result of loss of sublease income. Sublease Income shall not include (i) the proceeds of any casualty insurance or condemnation awards, (ii) any management fee reimbursements received by Master Tenant from a Subtenant of the Premises, or (iii) the proceeds from any financing of any interest in the Premises or any Improvements. Sublease Income shall be determined on a cash basis for each calendar year.

4.3.3 Definition of Sublease Expenses. "Sublease Expenses" shall be determined on a cash basis for each calendar year and shall mean the sum of:

(a) all tenant improvement and remodeling costs paid by Master Tenant (other than costs of Master Tenant's Work or other Improvements, which will be repaid to Master Tenant through Tenant Improvement Loan Amortization Amounts);

(b) all leasing commissions paid by Master Tenant (excluding leasing commissions paid to Master Tenant or to persons or entities affiliated with Master Tenant);

(c) all legal and accounting expenses incurred and paid by Master Tenant in connection with the Premises and/or any Subleases;

(d) all possessory interest taxes and other property taxes paid by Master Tenant (to the extent not reimbursed to Master Tenant by Subtenants);

(e) all insurance costs paid by Master Tenant in connection with the Premises (to the extent not reimbursed to Master Tenant by Subtenants);

(f) all other costs incurred and paid by Master Tenant in connection with operating, maintaining, repairing, replacing, and subleasing the Premises, or applicable portion thereof, including, without limitation, costs incurred and paid by Master Tenant pursuant to Section 20.1 and/or Section 20.2(b) of this Lease (to the extent not reimbursed to Master Tenant by Subtenants).

Sublease Expenses shall not include any management fee of Master Tenant; however, Master Tenant may, through its agent or otherwise, collect a management fee on any sublease.

4.3.4 Distribution of Sublease Income. All Sublease Income shall be used by Master Tenant for the following uses and shall be distributed by Master Tenant in the following priority:

(a) First, to pay to Landlord the Minimum Monthly Rent as set forth in Section 4.2 above, which sum is payable by Master Tenant to Landlord whether or not Master Tenant collects and receives Sublease Income;

(b) Second, to pay Master Tenant its Sublease Expenses as defined in Section 4.3.3 above;

(c) Third, to pay Master Tenant funded Master Tenant Work Improvement Loans as provided by Section 6.3 below.

(d) Forth, to pay to Master Tenant the amount of Minimum Monthly Rent paid in that calendar year.

(e) Fifth, as provided by Section 4.3.1 above, to pay Percentage Rent to Landlord and the balance to Master Tenant.

4.3.5 Annual Statements. On or before April 15 of each calendar year, with the payment of Percentage Rent, Master Tenant shall furnish to the Town a statement (the "Annual Statement") duly certified by the Chief Financial Officer or the Managing Member or the equivalent of the Master Tenant, setting forth in reasonable detail the Sublease Income from the Premises and the amount of the Percentage Rent which was required to be paid to the Town during the preceding calendar year in accordance with the provisions of this Lease. The Annual Statement shall also contain a detailed breakdown showing how Master Tenant calculated Sublease Income and Sublease Expenses. In addition, Master Tenant shall provide to Landlord a copy of Master Tenant's federal income tax return promptly following filing same with the Internal Revenue Service. The amounts reported to Landlord by Master Tenant for Sublease Income and Sublease Expenses shall conform to the amounts reported on Master Tenant's federal income tax return filed with the Internal Revenue Service. Master Tenant's federal income tax return shall cover only income and expenses from the Premises and shall not include income and expenses from any other property.

4.3.6 Books and Records. Master Tenant shall keep and maintain at its headquarters full, complete and appropriate books, records and accounts relating to the Premises, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Master Tenant's calculation of the Percentage Rent. Books, records and accounts relating to Master Tenant's compliance with the terms, provisions, covenants and conditions of this Lease shall be kept and maintained on a cash basis (except as otherwise expressly provided herein), in accordance with generally accepted accounting principles consistently applied, and shall be consistent with the requirements of this Lease which provide for the calculation of Percentage Rent. All such books, records

and accounts shall be open to and available for inspection by the Town, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Master Tenant may be required to furnish any governmental agency which would evidence or substantiate Master Tenant's calculation of the Percentage Rent shall at all reasonable times be open for inspection by the Town at the place that the books, records and accounts of Master Tenant are kept. Master Tenant shall preserve records on which any statement of Percentage Rent is based for a period of not less than four years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to Subsection 4.3.6 hereof then pending.

4.3.7 Town Audits. The receipt by the Town of any statement pursuant to Subsection 4.3.5 above, or any payment by Master Tenant or acceptance by the Town of any Percentage Rent for any period shall not bind the Town as to the correctness of such statement or such payment; provided, however, the Town shall accept the correctness of such statement if it conforms to the amounts shown on Master Tenant's federal income tax return for the period covered by such statement. Within four years after the receipt of any such statement, the Town or any designated agent or employee of the Town at any time and at the Town's cost (except as provided below) shall be entitled to audit the books, records and accounts pertaining to the Premises and the operation thereof. Such audit shall be conducted during normal business hours at the principal place of business of Master Tenant and other places where records are kept. Provided that Master Tenant has fully cooperated, any audit undertaken pursuant to this Subsection shall be completed within 180 days of the commencement thereof, subject to extensions of time for any periods of delay by any third party due to no fault of the Town or its auditors, and in no event later than four years after the Town's receipt of the statement or statements being audited. Immediately after the completion of an audit, the Town shall deliver a copy of the results of such audit to Master Tenant. The Town shall not be entitled to more than one audit for any particular year, unless it shall appear from a subsequent audit that fraud or concealment may have occurred with respect to the Sublease Income of a previously audited year. If it shall be determined as a result of such audit that there has been a deficiency in any Percentage Rent, then such deficiency shall become immediately due and payable with interest at the legal rate of 10% per annum, such payment to be determined as of and accruing from the date that said payment should have been made. In addition, if Master Tenant's statement for any calendar year shall be found to have intentionally understated Sublease Income by more than five percent and the Town is entitled to a supplementary payment as a result of said understatement, then Master Tenant shall pay, in addition to the interest charges referenced hereinabove, all of the Town's reasonable costs and expenses connected with any audit or review of Master Tenant's accounts and records.

4.4 Late Payment Fees. Any rentals, fees or charges required to be paid by Master Tenant pursuant to the terms of this Lease shall be paid on or before the dates specified in Subsection 4.1 above ("due date") without any requirement of notice from the Town and without deduction or offset. Master Tenant hereby acknowledges that late payment to the Town of any fee, charge or other sum due hereunder will cause the Town to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any such fee, charge or other sum due from Master Tenant is not received by the Town within 30 days after its due date (10 days for Minimum Monthly Rent), then Master Tenant shall pay to the Town a late payment fee equal to one percent per month of the amount not paid, calculated, for each day or portion thereof, from the due date until the date that payment is received by Town. The parties hereby agree that such late fee represents a fair and reasonable estimate of the cost that the Town will incur by reason of Master Tenant's late payment. The Town's acceptance of such late fees shall not constitute a waiver of Master Tenant's default with respect to such overdue amount or stop the Town from exercising any of the other rights and remedies granted hereunder or at law or in equity. A failure to pay any fee on the due date shall constitute an event of default under this Lease. Notwithstanding any right or remedy of the Town on account of any nonpayment by Master Tenant, the obligation to pay the outstanding amounts due shall survive termination of this Lease.

SECTION 5. USE OF PREMISES.

5.1 Restricted Use. The Premises shall be used and occupied by Master Tenant, and any Subtenants approved by Town in accordance with Section 14 below only for Permitted Uses, and for no other purpose.

5.2 Prohibited Uses. Master Tenant shall not:

5.2.1 use or knowingly allow the use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees for any unlawful purpose; or

5.2.2 cause, maintain, or knowingly permit any nuisance in, on, or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; commit or suffer to be committed any physical waste in or upon the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.3 display or sell merchandise outside the defined exterior walls and doorways of the Tait Building; however, said restriction shall not apply to outside seating for a restaurant or other permitted use; or

5.2.4 cause or knowingly permit the undue accumulation of garbage, trash, rubbish or any other refuse in or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.5 use or knowingly permit the use of any advertising such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees in such a manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the Tati Building, and will keep all mechanical apparatus free of objectionable vibration and noise which may be transmitted beyond the interior of the Premises; or

5.2.6 Cause or knowingly permit obnoxious odors to emanate or be dispelled from the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.7 Cause or knowingly permit any use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees which violates any Town zoning code applicable to the Premises; or

The preceding to the contrary notwithstanding, Landlord agrees that if any Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee acts or fails to act in any manner that causes Master Tenant to be in violation of any of the provisions of Section 5.2.1 through Section 5.2.7 above, then Master Tenant shall not be in breach or default under this Lease due to such act(s) or failure(s) to act by such applicable Subtenant or any of its agents, employees, contractors, other representatives or invitees so long as Master Tenant exercises commercially reasonable efforts to prevent such violation(s) from occurring and shall have taken steps in good faith within thirty (30) days after receipt of written notice from Landlord to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful

detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant.

As used in the provisions of Section 5.2.1 through Section 5.2.7, the term “knowingly” includes what Master Tenant reasonably should have known with the exercise of reasonable inquiry and investigation.

5.3 Compliance with Laws. Master Tenant shall carry out, or cause to be carried out, all obligations under this Lease, including without limitation Master Tenant’s Work, in conformity with all applicable state, federal, and local laws and regulations, including all applicable state labor laws and standards; Town zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the Town of Los Gatos Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* (“Applicable Laws”). Master Tenant’s obligations under this Section 5.3 shall include the obligation to undertake all appropriate inquiries with state and federal governmental enforcement and regulatory agencies as necessary to fully comply with all Applicable Laws, including any applicable prevailing wage requirements in connection with the construction of the Master Tenant’s Work. Master Tenant also shall require that its Subtenants (to the extent expressly made applicable to such Subtenants) and their respective agents, employees, contractors and subcontractors, comply with all Applicable Laws in connection with the construction of the Subtenant’s Work and Improvements.

SECTION 6. LEASEHOLD IMPROVEMENTS.

6.1 Condition of the Premises. Landlord shall deliver the Premises to Master Tenant on the Effective Date clean and free of debris, and in the condition of the Premises upon delivery as described in Exhibit D.

6.2 Leasehold Improvements. Master Tenant agrees to install, or cause to be installed, in the Premises all improvements, fixtures, furniture and equipment within the Premises, as reasonably necessary for Master Tenant to attract and retain high quality Subtenants. Within one hundred eighty (180) calendar days after the Effective Date, Master Tenant shall provide Landlord a detailed description of work it proposes to undertake to ready the Premises for initial lease up to Subtenants (“Initial Master Tenant’s Work”). In addition to providing Landlord all relevant information regarding a proposed Subtenant necessary for Landlord to evaluate and provide its consent to a proposed Subtenant pursuant to Section 14.2, Master Tenant shall provide Landlord a detailed description of the additional work, if any, to be undertaken by Master Tenant (“Additional Master Tenant’s Work”) as well as the work to be undertaken by a Subtenant (“Subtenant’s Work”) in connection with said applicable sublease.

The Initial Master Tenant’s Work and all Additional Master Tenant’s Work undertaken in connection with a sublease consented to by Landlord in accordance with 14.2 below, shall collectively be referred to herein as the “Master Tenant’s Work”. The term “Master Tenant’s Work” does not include “Subtenant’s Work” to be performed by Subtenants. It is acknowledged and agreed that the Subtenants of Master Tenant will install additional improvements, fixtures, furniture, and equipment as necessary for conduct of their operations, and shall all be responsible for complying with all applicable federal, state, and local statutes, laws, ordinances, rules, and regulations, and obtaining all necessary permits, to perform such work.

6.3 Master Tenant Work Improvement Loans.

6.3.1 As provided in Section 4.3.4 above, Master Tenant may utilize Sublease Income to repay itself for funds it advances or borrows from a third party lender for Master Tenant’s Work, and any subsequent Improvements within the Premises that are neither Subtenant’s Work nor funded by the Town’s Capital Reserve Fund (“Master Tenant Work Improvement Loans”), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 3% per annum if funded by Master Tenant, or at the actual rate of interest charged by Master Tenant's lender if funded by a third-party lender, as of the date of each advance.

(b) Repayment Term. Whether funded by Master Tenant or a third-party lender, the repayment term shall be no greater than the Lease Term.

(c) Amortization. For each Master Tenant Work Improvement Loan funded by Master Tenant, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term. If funded by a third-party lender, the loan shall be fully amortized in accordance with the terms of the loan.

6.4 Liens. All Master Tenant's Work and Subtenant's Work shall be completed free of mechanic's liens, with first-class materials and workmanship, and in compliance with all applicable rules, regulations, and laws applicable to the Premises.

6.5 Letter of Credit (LOC). All Master Tenant's Work or Subtenant's Work shall be approved by Landlord (which consent shall not be unreasonably withheld, conditioned or delayed). Such consent shall be deemed given if not denied in writing to Master Tenant within ten (10) business days following Landlord's receipt of such information required for Landlord to evaluate such applicable Master Tenant's Work or Subtenants Work. Master Tenant shall furnish to Town, at no cost or expense to the Town, a letter of credit ("LOC") in the amount not less than the sum of One Hundred Percent of the cost estimate of the Master Tenant's Work, in a form subject to the review and approval by the Town Manager or his or her designee (which approval shall not be unreasonably withheld, conditioned or delayed), which LOC shall secure Master Tenant's obligation to complete, and pay for the cost of completion of, the construction of the Master Tenant's Work within the time reasonably fixed by the Landlord, or such extension thereof as may be allowed. Master Tenant shall refrain from performing, or causing the performance of, any work related to the construction of Master Tenant's Work until Master Tenant furnishes a LOC satisfying this Section 6.5.

In the event Master Tenant fails to complete the Master Tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant fails to promptly commence action to complete the Master Tenant's Work within ten (10) calendar days of receipt of such notice, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete the Master Tenant's Work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant). In the event that Master Tenant fails to complete the Master tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant commences action to complete Master Tenant's Work within ten (10) calendar days of receipt of such notice but thereafter fails to diligently process such cure to completion, then, Landlord shall give a second, written notice to Master Tenant and if Master Tenant does not commence action to complete the Master tenant's Work within fifteen (15) days following Master Tenant's receipt of such second, written notice or thereafter diligently process such cure to completion, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete Master Tenant's work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant).

6.6 Ownership and Removal. All personal property not affixed in any way to the Premises including inventory, kitchen equipment, those nonstructural alterations as the Town approves for removal as were installed under this Lease and do not affect the structure of the Tait Building or the Premises, together with Master Tenant's Trade Fixtures, (collectively, "Master Tenant's Property") shall remain the

property of Master Tenant. Upon the termination or expiration of the Lease Term, if Master Tenant is not then in default under the Lease, Master Tenant may remove Master Tenant's Property from the Premises no later than the termination or expiration date. In addition, Master Tenant may remove from the Premises all items and Alterations installed by Master Tenant that are indicative of Master Tenant's business and may otherwise "de-identify" the Premises, as Master Tenant reasonably believes necessary or appropriate for the protection of Master Tenant's interest in Master Tenant's trademarks, trade names or copyrights. Master Tenant shall repair any damage to the Premises caused by such removal, including patching and filling holes. In no event shall Master Tenant remove or be required to remove any restrooms, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements.

6.6.1 Subtenant's Personal Property. Landlord waives any statutory liens and rights of distress with respect to the personal property (non-affixed trade fixtures, equipment, inventory and merchandise) of each Subtenant from time to time located with the Premises, or applicable part thereof ("Subtenant's Personal Property"). This Lease (and each sublease entered into between Master Tenant and a Subtenant) does not grant a contractual lien or any other security interest to Landlord or in favor of Landlord with respect to Subtenant's Personal Property. In the event Landlord becomes the direct lessor or landlord of a Subtenant, then, respecting any lender of any Subtenant having a security interest in any Subtenant's Personal Property ("Subtenant's Lender"), Landlord agrees: (i) to provide such Subtenant's Lender, upon written request of a Subtenant (accompanied by the name and address of Subtenant's Lender), with a copy of any default notice given to Subtenant under its sublease, concurrently with delivery of such default notice to Subtenant, and (ii) to allow Subtenant's Lender, prior to any termination of the sublease or repossession by Landlord of the applicable premises subleased by such Subtenant, the same period of time, after its receipt of such copy of default notice, to cure such default as is allowed the Subtenant under its sublease, and (iii) to permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property anytime within thirty (30) days after the effective date of any termination of the applicable sublease or any repossession of the subleased premises by Landlord (with Landlord having given Subtenant's Lender prior written notice of such date of termination or possession). Landlord will not be required to allow Subtenant's Lender to enter the subleased premises after entry of judgment in a forcible entry and detainer action, but agree to delay the filing of any such forcible entry and detainer action for thirty (30) days after delivery of written notice of such action to Subtenant's Lender, and will permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property any time within such thirty (30) days. Landlord further agrees to execute and deliver such instruments reasonably requested by Subtenant's Lender from time to time to evidence and effect this waiver and agreement of Landlord.

6.7 Abandonment. Any of Master Tenant's Property not removed from the Premises within sixty (60) business days of the date the Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of Landlord. Landlord may possess and dispose of such property provided that Landlord shall not use or permit anyone holding under Landlord to use on the Premises (a) any trademark, trade name, millwork, copyrighted floor plan, copyrighted color palette, or sign used by Master Tenant in the Premises; or (b) any item similar to any other item protected by Master Tenant's intellectual property rights. This provision shall apply under all circumstances, including default by Master Tenant under this Lease.

SECTION 7. MASTER TENANT OBLIGATIONS – OPERATION OF PREMISES.

7.1 Responsibility of Master Tenant. Master Tenant shall serve as the master developer and sublandlord for the Subtenants and shall be obligated to ensure that the Premises are properly and fully operated, in good condition, for the approved commercial uses. Master Tenant shall be the primary point of contact for the Town with regard to all operational, administrative, and compliance issues under this Lease.

7.2 Leasing Standards. Subject to the provisions of Section 14.1 and 14.2 below, Master Tenant shall use its commercially reasonable efforts, consistent with good property management practices, to obtain first class commercial Subtenants for the Premises. However, if after reasonable

effort, Master Tenant is unable to attract Subtenants of similar type and quality on terms and conditions satisfactory to Master Tenant, Master Tenant may, subject to Section 14.2 below, sublease to Subtenants who may be considered less desirable in terms commercial type and quality. Landlord shall not unreasonably withhold its approval of any potential Subtenant who Master Tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant.

7.3 Continuous Operations. Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason during the first three (3) years after the Commencement Date the Premises in their entirety are left unleased for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If for any reason after the first three (3) years following the Rent Commencement Date the Premises are more than fifty percent (50%) unleased for six (6) consecutive months, then Landlord may require Master Tenant to prepare and provide to Landlord, for its review and approval, a marketing plan to lease said unleased space. Master Tenant shall prepare and provide said marketing plan to Landlord within thirty (30) calendar days following written notice from Landlord to prepare said marketing plan. Landlord shall complete its review and approval of the marketing plan within thirty (30) calendar days following its submission by Master Tenant to Landlord. If for any reason the Premises remain more than fifty percent (50%) unleased for six (6) consecutive months following Landlord's approval of the marketing plan, and Master Tenant can document to Landlord's reasonable satisfaction that Master Tenant has diligently, and in good faith, pursued the lease of said unleased space in accordance with the approved marketing plan, then Landlord shall provide Master Tenant no less than an additional six (6) month period of time to lease the unleased space. If following said additional period of time granted by Landlord, the Premises are more than fifty percent (50%) unleased, then either the Landlord or Master tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If Landlord terminates the Lease pursuant to this Section 7.3, then Landlord shall assume the repayment of all outstanding Master Tenant Work Improvement Loans with the right to prepay such loans at Landlord's election without penalty. However, the Town's general fund shall assume no obligation for repayment of the Master Tenant Work Improvement Loans, which shall be repaid solely from future Sublease Income generated from the future operation of the Premises. Landlord's obligations under the immediately preceding sentence shall survive the termination of this Lease pursuant to this Section 7.3. If Master Tenant terminates the Lease pursuant to this Section 7.3, then Master Tenant shall assume the repayment of all outstanding Master Tenant Work Improvement Loans and no portion of Sublease Income or any other revenue generated by the Premises shall be obligated or utilized for repayment of said outstanding.

7.4 Signage and Displays. With respect to signage on the Premises, Landlord and Master Tenant agree as follows:

7.4.1 Landlord may allow Master Tenant may place a sign(s) on the exterior of the Tait Building to the extent such signage is allowed by law, provided that (i) the design and location of any such sign is approved in advance in writing by Landlord, and (ii) Master Tenant secures all necessary permits and approvals from the Town and/or any other applicable governmental authority. Any such signage shall be designed and installed in a manner that maintains the existing building system warranties, if any, applicable to the Tait Building. Upon expiration or earlier termination of this Lease, Master Tenant shall

remove Master Tenant's sign(s) from the exterior of the Tait Building, if applicable, and restore the exterior of the Tait Building to condition existing prior to the placement of such sign(s) on the exterior of the Tait Building, unless otherwise approved by Landlord.

7.5 Utilities. Master Tenant shall pay, or cause to be paid, for any and all costs, fees and expenses of water, gas, electricity, telephone, trash collection and recycling used by Master Tenant or any Subtenant in connection with the Premises during the Term of this Lease.

7.6 Deliveries. All deliveries shall be made at the hours not in violation of municipal ordinances.

7.7 Wireless Communications Equipment or Devices. The location of any equipment or device for the purpose of telecommunication or wireless access to services over the internet, by any party or for Master Tenant's or any Subtenants business operations, shall be coordinated with the Town and shall be subject to Town's reasonable approval.

7.8 PBID. Master Tenant will exercise commercially reasonable efforts to encourage its Subtenants to pay, if applicable, all Los Gatos Downtown Property Based Improvement District ("PBID") assessments for the Premises, which accrue during the term of this lease.

SECTION 8. MAINTENANCE, REPAIRS, AND ALTERATIONS.

8.1 Master Tenant's Obligations. Subject to the provisions of Section 8.2 below, and except for damage caused by fire or other casualty, whether or not insured or insurable, Master Tenant, at Master Tenant's sole cost and expense, shall keep, or cause to be kept, the Premises, in good condition and repair, including maintaining and repairing, or causing to be maintained or repaired, as necessary, all Master Tenant's Work, and all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises, and any Master Tenant signage, and all doors and plate glass windows (both interior and exterior), interior walls, and flooring in the Premises. Master Tenant shall provide a contract for regular maintenance of the HVAC with an HVAC company reasonably approved by Landlord. Master Tenant shall be required to implement a program, reasonably acceptable to Landlord, for control and elimination of rodents and vermin on or around the Premises. Master Tenant shall be required to maintain any Outdoor Use Areas located on the Premises. Master Tenant shall remove graffiti from the exterior of the Premises within a reasonable time and shall always otherwise keep the exterior of the Premises in a clean and well-maintained condition. Notwithstanding any provision to the contrary, Master Tenant's obligations under this Section 8.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants; (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Master Tenant or (c) any capital repairs or capital improvements not funded by the Capital Reserve Fund.

8.2 Landlord's Obligations.

8.2.1 Except for repairs and maintenance to the Premises that Master Tenant must make under Section 8.1 above, Landlord shall be responsible, at its sole cost and expense, for the remediation of any Hazardous Materials discovered in, on, or about the Premises during the work performed under Section 6 above or discovered thereafter, provided, said discovery and presence of Hazardous Materials are not directly arising out of or attributable to Master Tenant or any subtenants use and/or occupancy of the Premises. Further, Landlord shall be responsible for, at its sole cost and expenses, the roof structure, roof membrane and supports, HVAC (excluding Master Tenant's maintenance contract), sprinkler system, foundation, exterior walls, and all structural components of the Tait Building. In the event of an emergency, Master Tenant may give Landlord such notice as is practicable under the circumstances (if any), and if Landlord fails to make such repairs immediately, Master Tenant may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to Landlord for reimbursement. Notwithstanding any provision to the contrary, Landlord's obligations under this Section 8.2.1 shall not include making (a) any repair or improvement necessitated

by the negligence or willful misconduct of Master Tenant, Subtenants, or their agents, employees or servants; or (b) any repair or improvement caused by Master Tenant's failure to perform its obligations (including obligations which a Sublease obligates a Sublessee) hereunder or under any other agreement between Landlord and Master Tenant.

8.3 Surrender. Upon the expiration or termination of this Lease, Master Tenant shall surrender the Premises to Landlord in good order and condition, except for ordinary wear and tear, condemnation, and damage caused by fire or other casualty, whether or not insured or insurable, alterations and leasehold improvements made by Master Tenant and Subtenants, and in a broom clean condition.

8.4 Landlord's Rights. If Master Tenant fails to perform Master Tenant's obligations under Section 8.1 above, Landlord may, but shall not be required to, enter upon the Premises, after twenty (20) calendar days prior written notice to Master Tenant, and put the same in good order, condition and repair, and the actual costs thereof and an administrative fee of not more than 10% of the actual costs thereof, shall become due and payable as additional rent to Landlord together with Master Tenant's next Minimum Monthly Rent installment payment falling due after Master Tenant's receipt of an invoice for such costs; provided, however, Landlord shall not be able to exercise such remedies so long as Master Tenant commences to cure its failure within said twenty (20) day period and diligently pursues the cure to completion.

8.5 Improvements. The installation of the leasehold improvements necessary for Master Tenant's operation of its business in the Premises shall be performed in accordance with Section 6. Once such improvements are completed, Master Tenant shall not thereafter make any alterations, improvements, additions, upgrades or utility installations in, on or about the Premises, or install any further fixtures, furniture, or equipment therein (together, "Improvements") without Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that minor interior Improvements that do not exceed the amount of \$50,000, and do not otherwise require permits under Applicable Laws ("Minor Improvements"), shall not require Landlord's consent under this Lease. All other Improvements exceeding \$50,000 for construction, or which require permits under Applicable Laws, or involve alterations to the exterior of the Premises ("Major Improvements") shall be subject to Landlord's review and approval under this Lease. Landlord may review all proposed Improvements for their consistency with the final as-built plans for the Tait Building and may approve variations from such drawings in its reasonable discretion. Town Manager is authorized to make such determination to approve Major Improvements which otherwise comply with Applicable Laws under this Lease. Notwithstanding Landlord's approval of Major Improvements under this Lease, Master Tenant shall be required to obtain all required permits for such Major Improvements under Applicable Law.

8.6 Capital Reserve Fund. On or before the fifteenth day following Landlord's receipt of the Minimum Monthly Rent, Landlord shall deposit the Minimum Monthly Rent to the account described in this Section 8.6 ("Capital Reserve Fund").

8.6.1 Maintenance of Capital Reserve Fund. The Capital Reserve Fund shall be maintained in a state or nationally chartered bank, the Local Agency Investment Fund Pooled Money Investment Account, or other such institution acceptable to Landlord.

8.6.2 Use of Capital Reserve Fund. Landlord may use monies in the Capital Reserve Fund to fund capital improvements to maintain the quality of the Premises or other purposes reasonably related to this Lease, subject to the reasonable consent of Master Tenant. The use of monies in the Capital Reserve Fund shall be controlled and directed by Landlord in its sole discretion, with input by Master Tenant, but will be used primarily for capital improvements to the Premises. Unused amounts in the Capital Reserve Fund on the Termination Date will be retained by the Town.

8.6.3 Master Tenant shall utilize Sublease Income to repay Landlord for funds it advances from the Capital Reserve Fund for uses identified in Section 8.6.2 above ("Capital Reserve Fund Improvement Loans"), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 4% per annum, as of the date of each advance.

(b) Repayment Term. The repayment term shall be the lesser of ten years or the initial term of the applicable Sublease if the Capital Reserve Fund Improvement Loan is related to Subtenant Work.

(c) Amortization. For each Capital Reserve Fund Improvement Loan, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due if the Capital Reserve Fund Improvement Loan is related to Subtenant Work, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term.

SECTION 9. INSURANCE.

9.1 General. Prior to commencing any work or operations under this Lease, and for the full term of this Lease and any extensions thereof, Master Tenant and any Subtenants, at each parties' sole cost and expense, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Master Tenant and its Subtenants, agents, employees and contractors, meeting at least the minimum insurance requirements set forth in Exhibit E on terms and conditions and in amounts as reasonably required by Town from time to time and with insurers reasonably acceptable to the Town and within commonly applicable industry standards for the type of operation. The Town shall not be obligated to take out insurance on Master Tenant's or Subtenant's property, including the Master Tenant's Work. Master Tenant shall be responsible for obtaining property insurance to cover the cost of repair or replacement of the Master Tenant's Work. Master Tenant and its Subtenants shall provide the Town with certificates of insurance or copies of all policies and such endorsements as may be reasonably required by the Town. These requirements are subject to reasonable amendment or waiver if so approved in writing by the Town Manager. From time to time at the request of the Finance Department of the Town of Los Gatos, Master Tenant shall provide a written statement of the replacement cost of the Master Tenant's Work.

During the term of the Lease, Landlord shall maintain general liability insurance in an amount of no less than \$2,000,000 per occurrence for bodily injury, property damage and personal injury, as well as property insurance covering the cost of repair or replacement of the Premises (excluding therefrom the Master Tenant's Work).

SECTION 10. INDEMNIFICATION BY MASTER TENANT.

10.1 General. Master Tenant shall defend, indemnify, and hold Landlord and Landlord's agent, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) in connection with any and all third party claims to the extent arising out of Master Tenant's use of the Premises ("Claims"), including, but not limited to: (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Master Tenant or Master Tenant's officers, agents, employees, subtenants, or contractors; (c) any breach or default in the performance of any obligation on Master Tenant's part to be performed under this Lease; (d) any violation by Master Tenant or any of its officers, agents, employees, subtenants or contractors of any law, ordinance or regulation governing the use of the Premises, (e) any injuries (including death of any person), claims, or causes of action relating to or involving the sale of alcoholic beverages on the Premises; or (f) the failure of any representation or warranty made by Master Tenant herein to be true when made. This indemnity does not include any Claims caused by or arising out of the intentional or negligent acts or omissions of Landlord or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of the Lease.

SECTION 11. ENVIRONMENTAL LIABILITY.

11.1 Environmental Law. The term “Environmental Law” means collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S. Code § 1251, *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.*, (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.*, (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.*, (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.*, (xvi) Health & Safety Code § 25501, *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.*, (xix) California Fish and Game Code §§ 5650-5656, (xx) the Polanco Redevelopment Act, as amended, Health & Safety Code § 33459, *et seq.*, (xxi) Health & Safety Code § 25403, *et seq.* (Hazardous Materials Release Cleanup), and (xxii) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety, or industrial hygiene.

11.2 Hazardous Materials. “Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as “hazardous,” “extremely hazardous,” “hazardous waste,” “extremely hazardous waste,” “restricted hazardous waste,” “hazardous substance” or “hazardous material” under any Environmental Laws, including, without limitation, chlorinated solvents, petroleum, or any fraction thereof, friable asbestos, and polychlorinated biphenyls.

11.3 Release of Hazardous Materials. Except as provided below in Section 11.4, Master Tenant shall not store, dispose of, transport, generate or otherwise introduce any Hazardous Material in, on or around the Premises. If any Hazardous Material is deposited, released, stored, disposed, transported, generated or otherwise introduced by Master Tenant in, on, or around the Premises, Master Tenant, at Master Tenant’s sole cost and expense, shall comply with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, to remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Materials.

11.4 Master Tenant’s Use of Hazardous Materials. Notwithstanding the above and provided that Master Tenant complies with all Applicable Laws and Environmental Laws, Master Tenant shall have the right to use Hazardous Materials on the Premises to the extent such Hazardous Materials (i) are contained in restaurant and/or household products, office supply products or janitorial products customarily used in the maintenance, rehabilitation, operation or management of facilities similar to the Premises; or (ii) are commonly used by a significant portion of the population living within the region of the Premises, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as Master Tenant provides the appropriate warning, if required to do so under any Applicable Law or Environmental Law.

11.5 Environmental Indemnity. Master Tenant shall protect, indemnify, and hold harmless Landlord and Landlord’s officer’s employees, agents, representatives, contractors, and subcontractors from and against any and all loss, damage, cost, expense, or liability (including attorneys’ fees), and the

costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to Master Tenant's undertaking any activity related to any Hazardous Substance, directly arising out of or attributable to Master Tenant's or Master Tenant's agents', contractors', employees' or Subtenants' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. Landlord shall protect, indemnify, and hold harmless Master Tenant and Master Tenant's employees, agents, parents, representatives, subtenants, contractors, subcontractors and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises, or applicable portion thereof, to the physical condition existing prior to undertaking any activity related to any Hazardous Substance directly arising out of or attributable to Landlord's or Landlord's agents', contractors', or employees' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. The provisions of this Section 11.5 shall survive the termination of this Lease.

SECTION 12. TAXES AND ASSESSMENTS/ POSSESSORY INTEREST TAX.

12.1 General. Master Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Master Tenant agrees to pay and discharge, as additional rent for the Premises during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes") which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises or any improvements which are now or hereafter located thereon, or against any of Master Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Master Tenant acquired pursuant to this Lease on account of any taxable possessory right which Master Tenant may have acquired pursuant to this Lease. Master Tenant shall pay or reimburse Landlord, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Master Tenant hereunder.

SECTION 13. PROHIBITION AGAINST CHANGE IN MASTER TENANT AND CONTROL OF MASTER TENANT AND THE PREMISES, AND TRANSFER OF MASTER TENANT'S RIGHTS UNDER THIS LEASE.

13.1 Qualifications of Master Tenant. Master Tenant acknowledges that the qualifications and identity of Master Tenant, including in particular Master Tenant's Managing Members, are of particular concern to the community and the town, in view of the following:

13.1.1 The importance of the proper subleasing of the Premises to the general welfare of the community;

13.1.2 The reliance by the Town upon Master Tenant to assure the quality of the Premises and its use, operation and maintenance;

13.1.3 The fact that a change in Master Tenant or control of all or a portion of Master Tenant, or any act or transaction involving or resulting in a change in Master Tenant is for practical purposes a Transfer or disposition of the Premises; and

13.1.4 The importance to the Town and the community of the standards for the use, operation and maintenance of the Premises and associated areas.

13.2 Acknowledgment of Importance of Qualifications. Master Tenant further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease with Master Tenant. No voluntary or involuntary successor-in-interest of Master Tenant shall acquire any rights or powers under this Lease except as expressly set forth in this Lease.

13.3 Completion of Master Tenants Work. Prior to the completion of Master Tenant's Work, Master Tenant shall not (i) assign all or any part of its rights or obligations under this Lease, (ii) lease or sublease any portion of the Premises (other than subleases of portions of the Premises to permitted Subtenants as otherwise provided in the Lease), (iii) make or permit to be made any changes in the composition of Master Tenant's ownership, limited liability company status, or members, or (iv) effect any transaction which would in any way change the Master Tenant's ownership, management, control or obligations relating to the Premises.

13.4 Permitted Transfers. Following the period described in Section 13.3 above (i.e. completion of Master Tenant's Work), Master Tenant may, with the prior review and approval of the Town Manager (which shall not be unreasonably withheld, conditioned or delayed), make changes in the composition of Master tenant's ownership, corporate or other entity status, shareholders, members or partners (if applicable), provided that Master Tenant's managing Member, retains the power to control Master Tenant's active, day-to-day management responsibilities ("Day-to-Day management"). For purposes of the immediately preceding sentence, "control" shall mean the power to direct or cause the direction of the Day-to-Day Management of the Master tenant. Five years from the Commencement Date, provided Master Tenant has performed all of its obligations under this Lease, Master Tenant may appoint, with the consent of Landlord which shall not be unreasonably withheld, a new Master Tenant Managing Member.

13.5 Notification of Changes in Ownership or Control. During the term of this Lease, the Master Tenant shall promptly notify the Town of any and all changes whatsoever in the Master tenant's ownership, corporate or other status, management or control of the Master tenant and the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

13.6 Termination for Transfer. This Lease shall terminate pursuant to Section 18 if there is any voluntary or involuntary assignment or Transfer other than provided in in Section 13.4 or as otherwise expressly provided in this Lease.

SECTION 14. ASSIGNMENT AND SUBLETTING.

14.1 General. Except for those Subtenants approved by Town as provided herein, Master Tenant shall not assign, let or sublet the whole or any portion of the Premises.

14.2 Conditions for Landlord's Consent to Subtenants. Landlord's decision to grant or withhold its consent to a Subtenant may be based upon standards relevant to the type of subtenant and its proposed operation, including but not limited to: (i) experience or lack of experience in operating a retail establishment; (ii) the operating standards of such subtenant and whether it will provide the premium caliber of facilities and services acceptable to Landlord; (iii) the financial capacity to perform the provisions of this Lease and produce a fair return to Landlord; (iv) the experience of the proposed subtenant; (v) the ability of the Master Tenant and subtenants to perform the provisions of this Lease. However, Landlord shall not unreasonably withhold, condition or delay its approval of any potential Subtenant who Master tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant, so long as Master tenant has made reasonable efforts to attract the highest quality potential Subtenants available on terms and conditions satisfactory to Master tenant.

14.3 Conditions for Landlord's Consent to Assignment. Landlord's decision to grant or withhold its consent to any assignment of this Lease by Master tenant shall be at the Landlord's sole and

exclusive discretion, but otherwise may be based upon standards of commercial reasonableness, including but not limited to the financial capacity, experience and ability of assignee to perform the provisions of the Lease.

14.4 Approval by Town Manager. Any such consent, if given by Landlord, shall be in writing and may be approved by the Town Manager on behalf of Landlord.

14.5 Recognition Agreement. In connection with each Sublease consented to by Landlord, Landlord shall agree in writing in favor of the applicable Subtenant that if this Lease terminates, then Landlord shall attorn to such applicable Subtenant on the terms and conditions of such Subtenant's sublease. In the event of such attornment, Landlord shall assume all of the Master Tenant's obligations under the applicable sublease accruing from and after the date the Master Lease terminates. Landlord shall indemnify, defend and hold Master Tenant harmless from and against any and all claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) arising from any breach or default by Landlord of any of its assumed obligations under the applicable sublease; however, such indemnification, defense and hold harmless obligation shall not be applicable to any claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) to the extent arising from any breach by Master Tenant of any obligations of the sublessor under the applicable sublease occurring prior to the date Landlord attorns to the applicable Subtenant under the terms of the applicable Subtenant's sublease. Landlord's obligations under this Section 14.5 shall survive the termination of this Lease.

SECTION 15. MORTGAGE OF LEASEHOLD.

15.1 Prohibited Encumbrances. Except as permitted in Section 0 below, Master Tenant shall not:

15.1.1 Engage in any financing or other transaction placing any mortgage or deed of trust upon the Property, or upon Master Tenant's leasehold estate therein or the improvements constructed thereon; or

15.1.2 Place or suffer to be placed upon Master Tenant's leasehold estate or the improvements thereon any lien, levy, attachment or other encumbrance (other than a lien upon said leasehold estate for taxes and assessments levied but not delinquent or payable with penalty); provided, however, the foregoing notwithstanding, Master Tenant shall have the right to contest or appeal the validity of any such lien, levy, encumbrance or attachment, provided that Master Tenant shall first furnish adequate security to the reasonable satisfaction of Landlord to protect the Premises during the pendency of such contest or appeal.

Any such mortgage, deed of trust, levy, attachment, encumbrance or lien (collectively, "encumbrance") not permitted pursuant to the terms of this Lease and caused or created by Master Tenant shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless Master Tenant shall, within twenty (20) days of such date of execution or filing of record, remove such encumbrance or provide adequate security to the reasonable satisfaction of Landlord to protect the Premises and the improvements thereon from such encumbrance.

15.2 Permissible Encumbrances.

15.2.1 Anything in this Lease to the contrary notwithstanding, with Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant's Work may be funded by debt, and accordingly Master Tenant may assign or encumber the estate created by this Lease, by way of leasehold mortgages, leasehold deeds of trust, or otherwise.

15.2.2 With Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant may assign or encumber the estate created by this Lease by way of not more than two leasehold mortgages and/or leasehold deeds of trusts at any one time encumbering Master Tenant's leasehold interests, provided that such leasehold mortgages and/or leasehold deeds of trusts comply with the requirements of this Section 15. Landlord shall have no obligation to make any changes to this Lease to accommodate any Permitted Mortgagee but agrees to work with Master Tenant in good faith in Master Tenant's efforts to obtain a Permitted Mortgage.

15.2.3 The fee title to the Premises cannot be encumbered pursuant to this Section 15; only the leasehold interest of the Master Tenant under this Lease (including, without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property and any personal property of any Subtenant) may be so encumbered.

15.2.4 An encumbrance permitted by this Section 15 shall be referred to as a "Permitted Mortgage." The holder of a Permitted Mortgage is herein referred to as a "Permitted Mortgagee."

15.3 Notice to Landlord. Except when Landlord's prior approval or consent shall be required, Master Tenant shall notify Landlord within twenty (20) days of the time of creation of any lien or encumbrance which has been created on or attached to Master Tenant's leasehold estate therein or the Master Tenant improvements thereon, whether by act of Master Tenant or otherwise. If such lien or encumbrance is not created by an act of Master Tenant, Master Tenant shall notify Landlord of such creation as of the time Master Tenant first knows of such creation or attachment.

15.4 Mortgages Subordinate to Lease. Any mortgage permitted under Section 15 hereof shall be subject and subordinate to this Lease and, except as otherwise expressly provided herein or in any separate written agreement between Landlord and a Permitted Mortgagee, the rights of Landlord hereunder.

15.5 Extent of Encumbrance. A Permitted Mortgage shall encumber no interest in property other than Master Tenant's interest in the leasehold and improvements to the Premises, including without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property, and any personal property of any Subtenant.

15.6 Disposition of Insurance Proceeds and Condemnation Awards. A Permitted Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Lease. In the event that the Premises, or any portion thereof, are damaged or destroyed or condemned by power of eminent domain, in whole or in part, to the extent required by the provisions of the Permitted Mortgage, the proceeds therefrom shall be held by the Permitted Mortgagee, to be applied in the case of damage or destruction pursuant to the terms of the Permitted Mortgage with any excess to be paid to Landlord and Tenant as their interests may appear and to be applied in accordance with Section 17.3 hereof in the case of condemnation.

15.7 Permitted Mortgagee. Except as otherwise approved in writing by Landlord, a Permitted Mortgage may be given only to a responsible bona fide institutional lender. For the purposes hereof, the term "institutional lender" shall mean any one of the following lending institutions: a commercial or savings bank; a state bank or national bank, a trust company; an insurance company; a savings and loan association; a building and loan association; a credit union; an investment banking firm; an educational institution; a pension, retirement or welfare fund; a charity; a real estate investment trust ("REIT") but only if the REIT is publicly traded and registered with the U.S. Securities & Exchange Commission, and the amount of the Permitted Mortgage does not exceed two percent of the value of the REIT's assets; an endowment fund or foundation authorized to make loans in the State of California; or any other responsible financial institution.

15.8 Continuing Terms and Covenants. Except as otherwise expressly provided in this Lease or in a separate document executed by Landlord, all rights acquired by said Permitted Mortgagee under

said Permitted Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Permitted Mortgage, except as expressly provided in this Lease or in a separate document executed by Landlord. Notwithstanding any foreclosure of any Permitted Mortgage and so long as this Lease has not been terminated, unless and until a Permitted Mortgagee takes possession of the Premises (subject to any Subleases then in existence, if applicable) and to the extent Master Tenant is receiving the revenues from the Premises, Master Tenant shall remain liable for the payment of Minimum Monthly Rent, Percentage Rent and all other payments payable pursuant to this Lease, and for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Master Tenant.

15.9 Affirmation of Lease in Bankruptcy. In the event of the filing of a petition in bankruptcy by the Master Tenant, and the Master Tenant rejects this Lease under Section 365 of the Bankruptcy Code, the Landlord shall, upon the request of a Permitted Mortgagee, affirm this Lease, and the Landlord will enter into a new Lease on the same terms and conditions with the Permitted Mortgagee immediately upon Master Tenant's rejection of this Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Lease and the Master Tenant does not affirm it, a Permitted Mortgagee will have the authority to affirm the Lease on behalf of the Master Tenant and to keep the Lease in full force and effect.

15.10 Notice Required. Master Tenant shall submit to Landlord within the times set forth in this Section 15 a written notice of its intention to enter into a Permitted Mortgage, and shall submit to Landlord such information and detail as will enable Landlord to determine the compliance of such intended Permitted Mortgage with the provisions of this Section 15 and this Lease. If Landlord has not objected to the intended Permitted Mortgage on the grounds of noncompliance with provisions of this Lease within 45 days of receipt by Landlord of such notice and information, the intended Permitted Mortgage shall be deemed to comply with the provisions of this Section 15 and this Lease and be deemed approved by Landlord, provided that in no event shall any such deemed approval act or operate to subordinate Landlord's fee title to the Property to the Permitted Mortgage. Master Tenant shall thereafter promptly submit to Landlord final documents in connection with such Permitted Mortgage upon their execution or receipt by Master Tenant, or upon the funding of the loan secured by the Permitted Mortgage, for review by Landlord for compliance with the provisions of this Section 15 and this Lease.

15.11 Landlord's Right to Cure Master Tenant's Defaults on Leasehold Mortgages. Master Tenant agrees that any Permitted Mortgage shall provide:

15.11.1 That the Permitted Mortgagee shall in writing by certified or registered mail (or recognized overnight courier service) give notice to Landlord of the occurrence of any event of default under said Permitted Mortgage; and

15.11.2 That Landlord shall be given at least 30 days' notice of default in debt service payments or any other obligation of Master Tenant under a Permitted Mortgage before such Permitted Mortgagee will initiate any mortgage foreclosure action or accelerate the indebtedness or exercise its power of sale. If any payments required to be made under the provisions of the Permitted Mortgage shall not be paid, or any other act or omission shall occur which constitutes a default under the terms of such Permitted Mortgage, Landlord may cure such default during any period that Master Tenant is in default thereunder, provided that Landlord shall comply with the provisions of Section 18 hereof calling for prior notice to Master Tenant except in cases of emergency where earlier action is required, notifying Master Tenant of Landlord's intention to cure such default on Master Tenant's behalf. Landlord shall not commence to cure such default if (a) Master Tenant shall have cured such default within said 30-day period, or (b) except for defaults in the payment of money, Master Tenant shall have commenced to cure such default and is diligently pursuing such cure in full compliance with the terms of the Permitted Mortgage, or (c) Master Tenant shall have obtained from the Permitted Mortgagee a written extension of time in which to cure such default, together with a separate written extension of time granting Landlord reasonable additional time to cure said default if said default is not cured within said extended time, and

executed copies thereof are delivered to Landlord. Any Permitted Mortgage shall further expressly provide that, in the event Master Tenant fails to cure any default thereunder, Landlord shall have a reasonable period of time (considering the nature of the default) to cure such default following the expiration of all periods (including any extensions of time and periods during which performance is waived) allowed for Master Tenant's cure of such default.

15.11.3 If Landlord shall elect to cure any default under a Permitted Mortgage, Master Tenant shall pay the costs reasonably incurred by Landlord in curing such default to Landlord, together with interest thereon at the "Reference Rate" of the Bank of America plus three percent and not to exceed the maximum rate for which the parties may lawfully contract, as Additional Rent. Master Tenant hereby authorizes Landlord, in Landlord's name, without any obligation or duty to do so, to do any act or thing required of or permitted to Master Tenant to prevent any default under said Permitted Mortgage or any acceleration thereof, or the taking of any portion of the security for the Permitted Mortgage by foreclosure or other action to enforce the collection of the indebtedness, and Master Tenant agrees to indemnify and hold Landlord harmless from any costs, damages, expenses or liabilities (including reasonable attorneys' fees) resulting from Landlord exercising its rights pursuant to this Section 15. Notwithstanding any provisions of this Lease to the contrary, if Landlord shall elect to cure any default under a Permitted Mortgage and such Permitted Mortgage is non-recourse to Master Tenant, Master Tenant shall not be obligated to reimburse Landlord for any costs incurred by Landlord, provided; however, any payments made by Landlord shall be payable to the extent Master Tenant is receiving rental payments under this Lease and such payments to Landlord shall be payable prior to any other payments.

15.12 Notice to Landlord. No Permitted Mortgagee shall have the rights or benefits mentioned in this Section 15 nor shall the provisions of this Section 15 be binding upon Landlord, unless and until the name and address of the Permitted Mortgagee shall have been delivered to Landlord, notwithstanding any other form of notice, actual or constructive.

15.13 Rights and Obligations of Permitted Mortgagees. If Master Tenant, or Master Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section 15, then, so long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

15.13.1 Landlord, upon serving upon Master Tenant any notice of default pursuant to the provisions of Section 18 hereof, or any other notice under the provisions of or with respect to this Lease, shall also serve a copy of such notice upon any Permitted Mortgagee at the address of such Permitted Mortgagee provided pursuant to Section 15.12 above, and no notice by Landlord to Master Tenant hereunder shall affect any rights of a Permitted Mortgagee unless and until thirty (30) days after a copy thereof has been so served to such Permitted Mortgagee. Notwithstanding any event of default by Master Tenant under this Lease, Landlord shall have no right to terminate this Lease unless Landlord shall have given the Permitted Mortgagee written notice of such default and Permitted Mortgagee shall have failed to remedy such default as provided below or acquire Master Tenant's estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof, as all set forth in, and within the time specified by this Section 15.13.

15.13.2 In case Master Tenant shall have failed to cure any default hereunder within the period provided for Master Tenant to cure such default, Landlord shall so notify any Permitted Mortgagee of such failure and any Permitted Mortgagee shall, within thirty (30) days of receipt of such notice have the right, but not the obligation, to remedy such default or cause the same to be remedied, and Landlord shall accept such performance by or at the instance of the Permitted Mortgagee as if the same had been made by Master Tenant; provided, however, that if the breach or default is with respect to the Master Tenant's Work, nothing contained in this Section or any other Section or provision of this Lease shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the improvements beyond the extent necessary to conserve or protect the improvements or construction already made without first having expressly assumed the obligation to Landlord to complete, in the

manner provided in this Lease, the improvements on the Premises or the part thereof to which the lien or title of such Permitted Mortgagee relates.

15.13.3 For the purposes of this Section 15 no event of default, other than an event of default due to a default in the payment of money, shall be deemed to exist under Section 18 hereof with respect to the performance of work required to be performed, or of acts to be done or of conditions to be remedied, if steps shall, in good faith, have been commenced by Master Tenant or a Permitted Mortgagee within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity as Section 18 hereof provides.

15.13.4 Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money (for which the Permitted Mortgagee shall have no more than thirty (30) days following receipt of written notice from Landlord to cure such monetary default), Landlord shall take no action to effect a termination of this Lease without first giving to any Permitted Mortgagee written notice thereof and a reasonable time thereafter which shall not be less than ninety (90) days within which to either (a) obtain possession of the mortgaged property (including possession by a receiver), or (b) institute, prosecute and complete foreclosure proceedings or otherwise diligently acquire Master Tenant's interest under this Lease. A Permitted Mortgagee, upon acquiring Master Tenant's interest under this Lease, shall be required promptly to cure all defaults then reasonably susceptible to being cured by such Permitted Mortgagee; provided, however, that: (1) such Permitted Mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured; (2) nothing herein contained shall preclude Landlord, subject to the provisions of this Section 15, from exercising any rights or remedies under this Lease with respect to any other default by Master Tenant (subject to Permitted Mortgagee's cure rights set forth in this Section 15), during the pendency of such foreclosure proceedings; and (3) such Permitted Mortgagee shall agree with Landlord, in writing, to comply during the period of such forbearance with such of the terms, conditions and covenants of this Lease as are reasonably susceptible to being complied with by such Permitted Mortgagee (however, consistent with the provisions of Section 15.13.10 below, the provisions of this clause (3) shall not obligate such Permitted Mortgagee to cure any defaults of the Master Tenant, or to expend any monies or to take any actions to comply with the terms, conditions or covenants of this Master Lease, prior to such Permitted Mortgagee acquiring Master Tenant's interest under this Lease). Any default by Master Tenant not reasonably susceptible to being cured by such Permitted Mortgagee, or the occurrence of any of the events specified in Section 18, shall be deemed waived by Landlord upon completion of such foreclosure proceedings or upon such acquisition of Master Tenant's interest in this Lease, except that any such events of default which are reasonably susceptible to being cured after such completion and acquisition shall then be cured with reasonable diligence. Such Permitted Mortgagee, or its designee or other purchaser in foreclosure proceedings, may become the legal owner of the leasehold estate of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. A Permitted Mortgagee or its designee or other party which becomes the legal owner of the leasehold estate of this Lease through foreclosure proceedings or by an assignment of this Lease in lieu of foreclosure shall be deemed by such acquisition to have assumed all of Master Tenant's rights and obligations under this Lease accruing during the period of such Permitted Mortgagee's or its designee's ownership of the leasehold estate of this Lease. If a Permitted Mortgagee is prohibited by any process or injunction, or any bankruptcy, insolvency or other judicial proceeding involving Master Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Permitted Mortgagee shall have fully cured any default in the monetary obligations of Master Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due, and provided that the Permitted Mortgagee shall diligently attempt to remove any such prohibition.

15.13.5 In the event of the termination of this Lease prior to the natural expiration of the then current Term due to default of Master Tenant or operation of law (except by eminent domain) as provided in Section 18, including, without limitation, due to any rejection of this Lease in any bankruptcy,

insolvency or other debtor relief proceeding, Landlord shall immediately serve upon the holder of the senior Permitted Mortgage written notice that the Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The senior Permitted Mortgagee or its nominee, purchaser or assignee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

(a) Upon the written request of said Permitted Mortgagee, within sixty (60) days after service of such notice that the Lease has been terminated, or within sixty (60) days after the expiration of this Lease if Master Tenant was unable to renew the Term hereof, Landlord shall enter into a new lease of the Property and improvements thereon with such holder, or its designee or assignee, as follows:

(i) Such new lease shall be the same priority as this Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and the use provisions for restaurant and food service purposes specified above. Such new lease shall require that the tenant perform any unfulfilled obligation of Master Tenant under this Lease which is reasonably susceptible to being performed by such tenant. Upon the execution of such new lease, the tenant named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Property, and the preparation, execution and delivery of such new lease. Upon the execution and delivery of the new lease, title to all leasehold improvements (including, without limitation, all of the Master Tenant's Work) as well as all Master Tenant's Property, shall automatically vest in the Permitted Mortgagee or its nominee as the new Master Tenant under this Lease until the expiration of the term or sooner termination of the new lease.

(ii) Effective upon the commencement of the term of any new lease executed pursuant to this Subsection 15.13.5, all subleases then in effect shall be assigned and transferred without recourse by Landlord to the tenant under such new lease, and all monies on deposit with Landlord which Master Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease, unless credited against expenses in accordance with Subsection 15.13.5(a)(i) above.

15.13.6 Any notice or other communication which Landlord shall desire or is required to give to or serve upon the holder of a Permitted Mortgage under this Lease shall be in writing and shall be served by certified mail, return receipt requested, addressed to such holder at the address provided for pursuant to Section 15.12 hereof, or at such other address as shall be designated by such holder in writing given to Landlord by certified mail, return receipt requested. Any notice or other communication which the holder of a Permitted Mortgage under this Lease shall desire or is required to give to or serve upon Landlord shall be deemed to have been duly given or served if (a) sent by certified mail, return receipt requested, addressed to Landlord at Landlord's address as set forth in Subsection 21.1 of this Lease or at such other addresses as shall be designated by Landlord by notice in writing given to such holder by certified mail, return receipt requested, and (b) sent by certified mail, return receipt requested, to the Landlord's other mortgages, if any.

15.13.7 Anything herein contained to the contrary notwithstanding, the provisions of this Section 15 shall inure only to the benefit of the holders of Permitted Mortgages. Neither a Permitted Mortgagee nor any other holder or owner of the indebtedness secured by a leasehold mortgage or otherwise shall be liable upon the covenants, agreements or obligations of Master Tenant contained in this Lease, unless and until such Permitted Mortgagee or that holder or owner acquires the interest of Master Tenant.

15.13.8 During such period of time that any Permitted Mortgage is in existence, Landlord shall not agree to any mutual termination or accept any surrender of this Lease (except upon the expiration of the term of this Lease, or upon the earlier termination of this Lease (x) in connection with a casualty or condemnation in accordance with the provisions of this Lease, or (y) by reason of a default by Master Tenant that is not cured or remedied within the applicable notice and cure period set forth in this Lease in accordance with the provisions of this Lease, in either case subject to the Permitted Mortgagee's rights under this Lease, including, without limitation, the provisions of this Section 15.13), nor shall Landlord consent to any amendment or modification of this Lease, without the prior consent of a Permitted Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed and shall be given within ten (10) business days of written request therefor.

15.13.9 Landlord shall mail or deliver to Permitted Mortgagee at the address of Permitted Mortgagee provided to Landlord a duplicate copy of all notices which Landlord may from time to time give to Master Tenant pursuant to this Lease.

15.13.10 Foreclosure of a Permitted Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power of sale contained in the Permitted Mortgage, or any conveyance of the leasehold estate created hereby from Master Tenant to Permitted Mortgagee by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, sale or conveyance, Landlord shall recognize the Permitted Mortgagee, or any other foreclosure sale purchaser, as Master Tenant hereunder and such party shall attorn to Landlord, be subject to the provisions regarding assignment set forth in Section 15.14 below and shall fully perform Master Tenant's obligations hereunder. The preceding notwithstanding, a Permitted Mortgagee shall have no liability for Master Tenant's obligations under this Lease unless and until it becomes the Master Tenant under this Lease by means of foreclosure or deed in lieu thereof or pursuant to any new lease obtained pursuant to the terms above, and thereafter the Permitted Mortgagee or its successor or assign or designee shall be liable under this Lease or such new lease only for the period of time that such Permitted Mortgagee or its successor, assign or designee remains tenant hereunder or thereunder. Nothing herein shall be construed to obligate any Permitted Mortgagee to remedy any default of Master Tenant, and any failure of a Permitted Mortgagee to complete any such cure after commencing the same shall not give rise to any liability of the Permitted Mortgagee to Landlord or Master Tenant.

15.14 Assignment by Mortgagee. If any Permitted Mortgagee shall acquire title to Master Tenant's interest in this Lease by foreclosure of a mortgage thereon, or by assignment in lieu of foreclosure or by an assignment from a designee or wholly-owned subsidiary corporation of such mortgagee, or under a new lease pursuant to this Section 15, such Permitted Mortgagee or its successor, assign or designee may assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Master Tenant's part to be performed and observed from and after the date of such assignment, provided that Landlord shall receive an executed counterpart copy of such assignment, together with the name and address of the assignee.

SECTION 16. DAMAGE TO PREMISES.

16.1 Landlord's Obligation to Repair. If subsequent to completion of Master Tenant's Work, a material part of the Premises provided by Landlord in Exhibits B and D, shall, by reason of fire, earthquake, the elements, acts of God or other unavoidable casualty, be destroyed or so damaged as to become unusable in whole or in part and the damage can, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, Landlord shall promptly and diligently repair the damage (subject to the limitations set forth in Section 20.2) and this Lease shall remain in full force and effect. If a material part of the Premises provided by Landlord in Exhibits B and D, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, this Lease may be terminated by Landlord by written

notice given to Master Tenant within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.

16.2 Election to Terminate. If subsequent to completion of Master Tenant's Improvements a material part of the Premises provided by Landlord in Exhibits B and D, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, and Landlord has not terminated this Lease pursuant to Subsection 16.1 above, then this Lease may be terminated by Master Tenant by written notice given to Landlord within sixty (60) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty. If Master Tenant does not make the foregoing election within the required period and Landlord has not terminated the Lease, then Landlord shall promptly and diligently repair the damage and this Lease shall remain in full force and effect (subject to the provisions of Subsection 16.3 below regarding completion of Landlord's repairs). If Landlord is required or elects to repair the Premises under the provisions of Subsection 16.1 and fails to complete such repair within 365 days after the casualty described in Subsection 16.1 above (or at least to complete such repair, within such 365 day period, to the extent that permits substantial resumption of Master Tenant's business (and the businesses of the Subtenants in existence as of the date of the damage or destruction) in the Premises, provided that Landlord thereafter continuously and diligently pursues any remaining required repairs to completion), then thereafter Master Tenant, at Master Tenant's option, may terminate this Lease by giving Landlord written notice of Master Tenant's election to do so at any time prior to the substantial completion of such repair. In such event this Lease shall terminate as of the date of Master Tenant's notice.

16.3 Abatement of Rent. If a material part of the Premises provided by Landlord in Exhibits B and D, is damaged, and Landlord is required or elects to repair them pursuant to the provisions of Subsection 16.1, the Minimum Monthly Rent and Percentage Rent payable pursuant to Section 4 shall be abated from the date of the casualty until such Premises is sufficiently restored to allow Master Tenant to occupy the Premises and operate within the same manner as existed immediately prior to such damage or destruction. If, however, Master Tenant is able to occupy and operate its business within a portion of the Premises, Minimum Monthly Rent or Percentage Rent shall be abated only for the portion of the Premises that Master Tenant cannot occupy and operate within in the same manner as existed immediately prior to such damage or destruction. Such partial abatement shall be calculated on a square foot basis. The abatement of Minimum Monthly Rent and Percentage Rent (and Master Tenant's right to terminate this Lease as provided in Subsection 16.2 above, shall be Master Tenant's sole remedies due to the occurrence of the casualty. Landlord shall not be liable to Master Tenant or any other person or entity for any direct, indirect or consequential damage due to or arising from the casualty.

16.4 Application of Insurance Proceeds. If any part of the Master Tenant's Work or any other leasehold improvements constructed by or on behalf of Master Tenant is damaged or destroyed, and at the time of such damage or destruction, the leasehold interest of the Master Tenant hereunder, or applicable portion thereof, was encumbered by a Permitted Mortgage, then the proceeds of insurance allocable to such Master Tenant's Work or other leasehold improvements constructed by or on behalf of Master Tenant first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage unless the applicable Permitted Mortgagee allows such insurance proceeds to be used to restore such Master Tenant's Work or other leasehold improvements.

SECTION 17. CONDEMNATION.

17.1 Total Condemnation. If, during the term of this Lease, the whole of the Premises shall be taken pursuant to any condemnation proceeding or a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable for the purposes for which Master Tenant was using the Premises prior to the taking, then this Lease shall terminate as of the date that actual physical possession of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations arising under this Lease.

17.2 Partial Condemnation. If, during the term of this Lease, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for

which Master Tenant was using the Premises prior to the taking in the sole discretion of Master Tenant, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations under this Lease with respect to such portion of the Premises taken.

17.3 Condemnation Award. If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to the value of Master Tenant's leasehold interest of the unexpired term of this Lease, any Master Tenant's Property, Subtenant's Personal Property and/or any unsalvageable trade fixtures or furnishings owned by Master Tenant, any amounts specifically awarded or agreed upon by the Master Tenant and the condemning authority for the unamortized portion of Master Tenant's leasehold improvements and each Subtenant's leasehold improvements shall be the property of Master Tenant (except that the portion of the condemnation award allocable to each Subtenant's Personal Property and each Subtenant's leasehold improvements shall be awarded to Master Tenant or the applicable Subtenant(s), as their interests may appear, or as provided in the applicable Sublease) ("Master Tenant's Award"). The foregoing notwithstanding, if the whole or a portion of the Premises shall be taken pursuant to any condemnation proceeding and at that time the leasehold interest of the Master Tenant, or applicable portion thereof, was encumbered by a Permitted Mortgage, then Master Tenant's Award first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage. Master Tenant shall require in any sublease of the Premises, that any Subtenant waive any and all rights against any public entity and/or the Landlord for any portion of the condemnation award relating to the Subtenant(s) value of the leasehold interest of any unexpired term.

17.4 Effect of Termination. In the event this Lease is canceled or terminated pursuant to any of the provisions of this Section 17 all rentals and other charges payable on the part of Master Tenant to Landlord hereunder shall be paid either as of the date upon which actual physical possession shall be taken by the condemner, or as of the date upon which Master Tenant ceases doing business in, upon or from the Premises, whichever first occurs; and the parties shall thereupon be released from all further liability hereunder, except for any liability arising prior to the date upon which actual physical possession shall be taken by the condemner.

SECTION 18. DEFAULT, REMEDIES, AND TERMINATION.

18.1 Master Tenant's Default. If: (i) Master Tenant shall fail to comply with any of the provisions herein providing for the construction of the Master Tenant's Work, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity; or (ii) Master Tenant shall fail to pay any rent or other monies due under this Lease after the same are due, and such failure shall continue for ten (10) days after receipt of written notice thereof to Master Tenant, or (iii) Master Tenant shall fail to perform any other term, covenant, or condition herein contained, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant, or (iv) the Master Tenant's interest herein or any part thereof be assigned or transferred, either voluntarily or by operation of law, except pursuant to a Permitted Transfer or Section 14.2 or Section 15, whether by judgment, execution, death or any other means, or (v) the Master Tenant shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against the Master Tenant and such petition remains undischarged for a period of 90 days; or if any receiver of the business or of the property or assets of Master Tenant shall be appointed by any court (except a receiver appointed at the instance or request of the Landlord) and Master Tenant fails to obtain dissolution of the receiver within 90 days after appointment of the receiver; or (vi) Master Tenant shall

make a general or any assignment for the benefit of its creditors; or (vii) Master Tenant shall abandon (other than a temporary cessation of operations in connection with renovations of the Premises to which Master Tenant has obtained Landlord's approval, if applicable, as required by the terms hereof) the Premises; or (viii) Master Tenant has made any written or oral representation to the Landlord in connection with this Lease that Master Tenant knows was false in any material respect as of the date made or submitted, Master Tenant knew or should have known that the Landlord would rely on such false representation, and the Landlord relies on such false representation to its detriment in any material respect, then in any of such events Landlord shall have the following options, subject to the provisions of Section 15:

18.1.1 To collect, by suit or otherwise, each installment of rent or other sum as it becomes due hereunder, or to enforce by suit or otherwise, any other term or provision hereof on the part of Master Tenant required to be kept or performed; and/or

18.1.2 To reenter the Premises, remove all persons therefrom, take possession of the Premises and of all equipment, fixtures and personal property thereon or therein, and either with or without terminating this Lease to make commercially reasonable efforts to relet the Premises or any portion thereof (but nothing contained herein shall be construed as obligating Landlord to relet the whole or any portion of the Premises) for such term or terms (which may be for a term extending beyond the term of the Lease) and at such reasonable rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. In addition to the foregoing, Landlord shall have the right, but not the obligation to, make such alterations and repairs to the Premises, or to divide or subdivide the Premises, as may be required or occasioned by any such reletting. Provided, however, Landlord's right to make alterations, repairs or improvements to the Premises after Master Tenant's default shall be limited to those alterations, repairs, and/or improvements necessary for the purpose of reletting the Premises. In the event Landlord relets the Premises, or any portion thereof, it shall execute any such lease in its own name, but the Master Tenant in such lease of reletting shall be under no obligation whatsoever to see to the application by Landlord of any rent collected by Landlord for the account of Master Tenant, nor shall Master Tenant hereunder have any right or authority whatsoever to collect any rent as the Master Tenant in the lease of reletting. Upon any such reletting, the rents received on any such reletting shall be applied first to the expenses of reletting and collecting, including necessary renovations and alterations of the Premises and reasonable attorneys' fees and any real estate commissions actually paid, and thereafter toward payment of all sums due or to become due to Landlord hereunder; if a sufficient sum shall not be thus realized to pay such rent and other charges, Master Tenant shall pay to Landlord monthly any deficiency, and Landlord may sue therefor as each such deficiency shall arise, but if the Premises are relet for an amount in excess of that necessary to pay such rent and other charges, Master Tenant shall not be entitled to any such excess; and/or

18.1.3 To terminate this Lease, in which event Master Tenant agrees immediately to surrender possession of the Premises and to pay to the Landlord as the amount of damage sustained by Landlord by reason of Master Tenant's breach of this Lease, the following:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Master Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Master Tenant proves could be reasonably avoided.

As used in Sections 18.1.3(a) and 18.1.3(a) above, the term "worth at the time of award" is computed by allowing interest from the date such amount becomes due and payable at one percent (1%) per annum above the rate which the Bank of America announces publicly at its San

Francisco or Los Angeles executive offices as its "Reference Rate" for unsecured commercial loans.

As used in Section 18.1.3(b) above, the term "worth at the time of the award" is computed by discounting the amount determined pursuant to Section 18.1.3(b) at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

18.1.4 Pursuant to its rights of re-entry, Landlord may remove all persons from the Premises (but not any Subtenants to which Landlord is obligated to attorn) using such force as may be reasonably necessary therefor and may, but shall not be obligated to, remove all property therefrom, including, but not limited to, Master Tenant's property (but not any Subtenant's Personal Property), and may, but shall not be obligated to, enforce any rights Landlord may have against said property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of Master Tenant or the owners or owner thereof, or to treat all or portions of said property as having no value and to dispose of said property accordingly. Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Master Tenant to pay any rent or other sum of money thereafter to accrue hereunder, or Master Tenant's liability for damages under any of the provisions hereof, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall have notified Master Tenant in writing that Landlord has so elected to terminate this Lease. Master Tenant covenants and agrees that the service by Landlord of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the service of such notice, and Landlord's election be evidenced by written notice thereof to Master Tenant) be deemed to be a termination of this Lease, or the termination of any liability of Master Tenant hereunder to Landlord.

18.2 Landlord's Default. If Landlord fails to comply with or defaults in the performance of any provision of the Lease, Master Tenant shall have the right (but not the obligation) in addition to any and all other rights and remedies available to Master Tenant at law or in equity, to cure such nonconformance or default on behalf of Landlord, upon 30 days prior written notice to Landlord and to any mortgagee of Landlord, if the name and address of such mortgagee has been previously provided to Master Tenant by Landlord, except in an emergency, Master Tenant may cure such nonconformance or default without such written notice so long as Master Tenant makes reasonable efforts to notify Landlord of such emergency. Upon receipt from Master Tenant of notice of such cure and demand for payment, Landlord shall repay any expenditure made by Master Tenant within 30 days of written request therefor. If Landlord fails to make such repayment within such 30 day period, then, anything herein to the contrary notwithstanding, Master Tenant may offset the amount owed it by Landlord pursuant to this Section 18.2 against the Minimum Monthly Rent and/or Percentage Rent payable by Master Tenant to Landlord hereunder until fully offset.

SECTION 19. TOWN REQUIREMENTS.

19.1 Non-discrimination. Master Tenant shall not restrict the rental, use, occupancy, tenure, or enjoyment of the Premises or any portion thereof, on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin of any person. During the term hereof, any contracts or subleases relating to the construction, use or occupancy of the Premises or any portion thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

"There shall be no discrimination against or segregation of, any person, or group of persons, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, or vendees of the land."

19.2 Enforcement of Town Requirements. In enforcing Section 19.1, Landlord may require Master Tenant to terminate the sublease of any Subtenant that fails to comply with that Section. Failure of Master Tenant to commence actions to terminate the subleases of noncomplying Subtenants within 90 days of notice from Landlord shall constitute an event of default by the Master Tenant.

SECTION 20. COMPLIANCE WITH LAW.

20.1 General. During the Lease term, Master Tenant, at its sole cost and expense, shall comply promptly with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances ("Laws") pertaining to Master Tenant's use of the Premises or the improvements thereon, including those which require the making of any structural, unforeseen or extraordinary changes to the Premises, whether or not any such Laws which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the governmental body enacting the same. In connection with the foregoing, Master Tenant acknowledges that Landlord, acting not as Landlord but in its governmental capacity, has certain governmental regulatory authority over the Premises and agrees that "Law" as defined herein includes any legal requirement imposed by Landlord acting not as Landlord but in its capacity as a governmental regulatory body.

20.2 Regulations Requiring Modifications to Premises. If, under its regulatory authority, Town adopts new laws, rules or ordinances that are generally applicable to commercial buildings and which require upgrades, changes, or modifications to the Premises in order to comply with such Town-adopted laws, rules, or regulations, then the cost or expense of compliance shall be as follows:

(a) Town shall bear the cost or expense of compliance to the extent that such laws, rules or regulations require modifications to the structure or shell of the Premises in the condition delivered to Master Tenant in Exhibit D.

(b) During the first ten years following the Rent Commencement Date, Master Tenant shall bear the cost or expense of compliance to the extent that such new laws, rules, or regulations require modifications to Master Tenant's Work and any subsequent alterations thereto. After the tenth year following the Rent Commencement Date, Landlord and Master Tenant shall split equally all such costs.

SECTION 21. GENERAL PROVISIONS.

21.1 Notices, Demands, and Communications Between the Parties. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, by email, by overnight courier service, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

Town: Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attention: Town Manager
Email: manager@losgatosca.gov

With copy to: Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attention: City Attorney
Email: attorney@losgatosca.gov

To Tenant:

Tait Firehouse, LLC
223 West Main Street Suite B
Los Gatos CA 95030
Attn: Donald Imwalle, Jr.
Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against Town, its officers or employees shall also be served in the manner specified above to the following address:

Town of Los Gatos
City Attorney's Office
110 E. Main Street
Los Gatos, CA 95030

Notice shall be deemed effective on the date of personal delivery by hand or the date of receipt of facsimile transmission (with verification of receipt) or email, or if sent by overnight courier service, then one business day after delivery of such notice to such courier service or, if mailed, three days after deposit in the mail.

21.2 Warranty Against Payment of Consideration for Agreement. Master Tenant warrants that it has not paid or given, and will not pay or give, any third party (other than Colliers International who introduced Landlord and Master Tenant to one another) any money or other consideration for obtaining this Agreement.

21.3 Non-liability of Town Officials and Employees. No member, official, or employee of the Town shall be personally liable to Master Tenant or any successor in interest of Master Tenant, in the event of any default or breach by the Town or for any amount which may become due to Master Tenant or to its successor, or on any obligations under the terms of this Agreement.

21.4 Enforced Delay; Extension of Time of Performance. The specific provisions of this Agreement to the contrary notwithstanding, except for payment of any monetary payments required under this Agreement, neither party shall be in default under this Agreement if an obligation to perform is delayed due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; inability to obtain or delay in obtaining materials due to lack of supply; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or enjoining to the performance of the terms of this Agreement. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten days of the commencement of the cause. The foregoing notwithstanding, the total time period excused under this Section shall not exceed two years.

21.5 Approvals and Town Manager's Authority. Approvals required of the Town (except for approvals expressly identified herein as being in the sole discretion of the Town) or Master Tenant shall not be unreasonably withheld, and approval or disapproval shall be given within a reasonable time. The Town Manager or his/her designee shall have the authority to act on behalf of the Town with regard to any and all actions required of the Town under this Lease. Such actions include but are not limited to the issuance of approvals and disapprovals and execution of all documents, including minor amendments to this Lease.

21.6 Holding Over. If Master Tenant shall hold over the term of this Lease, without Landlord's prior written consent, such holding over shall be construed as a tenancy from month to month, on the same terms and conditions as this Lease, and at 150% of the Minimum Monthly Rent or the monthly Percentage Rent, whichever is higher, in effect during the final full calendar of the term of this Lease.

21.7 Time of the Essence. Time is of the essence hereof, and waiver by the Landlord or Master Tenant of a breach of any term, covenant or condition herein contained, whether express or implied, shall not constitute a waiver of any subsequent breach thereof, or a breach of any other term, covenant, or condition herein contained, and acceptance of rent hereunder shall not be a waiver of any breach, except a breach of covenant to pay the rent so accepted. No acceptance by Landlord of any partial payment of any sum due hereunder shall be deemed an accord and satisfaction or otherwise bar Landlord from recovering the *full* amount due, even if such payment is designated "payment in full," bears any restrictive endorsement, or is otherwise conditionally tendered. The times for Master Tenant's performance of any obligations set forth in this Lease and the Exhibits may be extended by the Landlord's Town Manager, if he finds, at his sole discretion, that Master Tenant has been delayed for reasons not in Master Tenant's control. Any such extension shall be in writing.

21.8 Successors and Assigns. Subject to the provisions of Section 14 hereof, this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

21.9 Landlord's Access. Landlord and its agents shall have the right, subject to the rights of the Subtenants then in effect, to enter the Premises upon 72 hours prior written notice for the purpose of inspecting the same, and making such alterations, repairs, improvements or additions to the Premises as are deemed necessary or desirable consistent with this Lease. Notwithstanding the foregoing, in the event of an emergency requiring Landlord's entry into the Premises, Landlord may give Master Tenant shorter notice in any manner that is practicable under the circumstances. When entering or performing any repair or other work in the Premises, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Master Tenant's personnel immediately upon entering the Premises, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with Master Tenant's (or any of its Subtenants') use, business or operations on the Premises or obstruct the visibility of or access to the Premises.

21.10 Legal Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Master Tenant. Landlord and Master Tenant expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Master Tenant other than the relationship of Landlord and Master Tenant.

21.11 Consents. Whenever the right of approval or consent is given to a party pursuant to this Lease, the party shall not unreasonably withhold, condition or delay its consent unless this Lease expressly provides otherwise. All approvals and reviews required of Landlord under this Lease may be undertaken and/or given by Landlord's Town Manager.

21.12 General. The terms "Landlord" and "Master Tenant" herein or any pronouns used in place thereof shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof. The headings of Sections herein are inserted only for convenience and reference and shall in no way define or limit the scope or intent of any provisions of this Lease. This Lease shall be construed under the laws of the State of California, and venue shall be in in the applicable courts located in Santa Clara County, California.

21.13 Quiet Enjoyment. Upon payment of the rent as aforesaid and upon the observance and performance by Master Tenant of all of the terms and provisions to be observed by Master Tenant under

this Lease, Master Tenant shall peaceably hold and enjoy the Premises for the term hereof without hindrance or interruption by Landlord or any other person, except as herein expressly provided.

21.14 Regulatory Authority. Master Tenant acknowledges that, at any time when the Town is the Landlord hereunder, Landlord shall have certain governmental regulatory authority over the Premises. Master Tenant agrees and expressly acknowledges that any approval or consent required or permitted hereunder by the Town, acting in its capacity as Landlord under this Lease, (1) is distinct from any approval or consent of such entity acting in the capacity of governmental regulatory authority, whether or not related to the same matter, and (2) shall not compromise, diminish or in any way limit the authority of such entity to give, deny or condition its approval or consent when acting as a governmental regulatory authority.

21.15 Costs and Expenses. Whenever this Lease provides that either party shall be entitled to recover fees, costs or expenses from the other, such fees, costs or expenses shall be reasonable in nature.

21.16 Entire Agreement. This Lease and the exhibits attached hereto (which are incorporated herein by this reference) represent the entire agreement between the parties concerning the subject matter hereof and supersede any prior written or verbal agreements or understandings with respect thereto.

21.17 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

21.18 Joint and Several. If Master Tenant is more than one party, then the parties and entities who comprise Master Tenant under this Agreement from time to time, are jointly and severally liable to the Town for the performance of all of the promises and obligations of Master Tenant under this Agreement. In the event of any default by Master Tenant hereunder, the Town may proceed against any one or more of the aforementioned parties who comprise Master Tenant without waiving its rights to proceed against any of the others.

21.19 Memorandum of Agreement. The parties hereto shall execute, acknowledge and record the Memorandum of Agreement, in the form attached hereto as Exhibit F, within ten days after the Rent Commencement Date.

21.20 CASp Inspection. Pursuant to California Civil Code Section 1938, Landlord hereby discloses, and Tenant hereby acknowledges, that the Premises has not been inspected by a Certified Access Specialist ("CASp"). California Civil Code Section 1938 also requires that this Lease contain the following statement:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs to correct violations of the construction related accessibility standards within the premises."

In accordance with the foregoing, Master Tenant, upon at least thirty (30) days' prior written notice to Landlord, shall have the right to require a CASp inspection of the Premises. If Master Tenant requires a CASp inspection of the Premises, then: (i) Landlord and Tenant shall mutually agree on the

arrangements for the time and manner of the CASp inspection during such thirty (30) day period; (ii) Master Tenant shall be solely responsible to pay the cost of the CASp inspection as and when required by the CASp. It is understood by the parties that Landlord shall not be required to perform, or cause to be performed, any and all repairs needed to correct violations of the construction related accessibility standards within or relating to the Premises and Master Tenant can terminate this lease if it is determined, by Master Tenant that any repairs to correct violations would be too costly. .

21.21 First Right of Refusal. If Landlord receives from a third party a bona fide offer to purchase the Premises, before Landlord may accept such an offer, Landlord must first give written notice to Master Tenant of said offer. Master Tenant shall have thirty (30) days from the date of receipt of said offer, to provide Landlord with written acceptance of the offer, upon the same terms and conditions as set forth therein (but in addition thereto, such sale shall include all rights of Landlord in and to this Lease). If Master Tenant accepts said offer, closing shall take place within sixty (60) days from the date of acceptance. Master Tenant may elect to assign Master Tenant's rights to purchase the Premises to the parent of or a subsidiary of the Master Tenant, or other entity wholly owned by Master Tenant or its Managing Member. If Master Tenant fails to accept said offer within the thirty (30) days provided herein, Landlord may proceed to sell to said third party in accordance with the terms of the offer. If Landlord has not consummated a sale within one hundred eighty (180) days after the expiration of Master Tenant's option rights hereunder, the restrictions and options herein provided shall be restored and shall continue in full force and effect, and so long as these restrictions and options remain in effect the Landlord shall not thereafter sell or transfer the Premises without first giving Master Tenant notice as herein provided and otherwise complying with the foregoing provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD:

THE TOWN OF LOS GATOS

By: _____
Print Name: _____
Officer Title: _____

Approved as to form:

Attest:

Town Attorney

Town Clerk

MASTER TENANT:

Tait Firehouse, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

Exhibit A

Legal Description of Premises

Exhibit A

Exhibit B

Site Plan of Premises

Exhibit B

Exhibit C

Form of Notice of Lease Term Dates

[On Town Letterhead]

[Date]

Tait Firehouse, LLC
223 West Main Street Suite B
Los Gatos, CA 95030
Attn: Donald Imwalle, Jr.
Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com

Re: Master Lease – 4 Tait Ave, Los Gatos, CA 95030

Dear Mr. Imwalle:

In accordance with that certain Master Lease dated _____, 2020, by and between the Town of Los Gatos and Tait Firehouse, LLC for the above referenced property, this letter is to confirm that the Rent Commencement Date as defined in Section 1.11 of the Master Lease is [insert date]. Please countersign this letter in the space below to acknowledge your agreement.

Please don't hesitate to contact me should you have any questions.

Sincerely yours,

_____, Town Manager

Acknowledged and Agreed this _____ day of _____, 202_,

on behalf of

Tait Firehouse, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

Exhibit D

Condition of Premises Upon Delivery

[TO BE INSERTED]

Exhibit D-1

Exhibit E

Insurance Requirements for Master Tenant and Subtenants

Master Tenant is required to procure and provide proof of the insurance coverage required by Master Tenant as outlined in this Exhibit in the form of certificates and endorsements. Master Tenant shall obtain and maintain insurance against claims which may arise from or in connection with the activities of Master Tenant and its Subtenants, including agents, invitees, employees, and contractors of Master Tenant and its Subtenants, and must remain in full force and effect at all times during the period covered by the Lease Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Master Tenant fails to provide any of the required coverage in full compliance with the requirements set forth herein, Town may, at its sole discretion, terminate the Lease for default. Master Tenant further understands that the Town reserves the right to reasonably modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Master Tenant, at any time as deemed necessary to protect the interests of the Town.

(A) **Insurance Types and Limits.** The following insurance types and limits are required unless otherwise specified in the Lease Agreement:

- (1) **Commercial General Liability Insurance ("CGL"):** Master Tenant shall maintain CGL and shall include coverage for liability arising from Master Tenant and its Subtenants, including invitees, employees, agents, or contractors of Master Tenant and its Subtenants, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
 - i. **Liquor Liability:** Master Tenant shall maintain Liquor Liability, either under its CGL policy or as a separate policy, providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) each claim.
- (2) **Workers' Compensation Insurance and Employer's Liability:** Master Tenant shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of One Million Dollars (\$1,000,000.00) for any one accident or occurrence. If Master Tenant is self-insured, Master Tenant must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (3) **Automobile Liability:** Master Tenant shall maintain Automobile Liability covering all owned, non-owned and hired automobiles, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
- (4) **Property:** Master Tenant shall maintain All Risk Property coverage for the appropriate limit to cover all personal property of Master Tenant, in, on, or about the Premises, covering the full replacement cost of such personal property to include furniture, installed fixtures, improvements, equipment, inventory and any other personal property of the Master Tenant. Master Tenant, and not any of the Subtenants, also shall maintain All Risk Property coverage for the full replacement cost of the Master Tenant's Work.

- i. **Business Interruption:** Master Tenant shall maintain adequate protection against business interruption and loss of income, either as part of a comprehensive Business Owner's Policy or under its Property Insurance.

(B) **Required Endorsements.** Master Tenant shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the Town of Los Gatos and the Town's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

- a. "Additionally Insured" - The Town of Los Gatos, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;
- c. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subtenants.** Master Tenant must ensure that each Subtenant is required to maintain the equal or greater insurance coverages required in this Exhibit, including those requirements related to the additional insureds and waiver of subrogation. However, Subtenants which do not engage in the sale and/or serving of alcohol in, on, or about the Premises, are not required to maintain Liquor Liability. Also, Subtenants shall not be obligated to insure the Master Tenant's Work.

(D) **Qualification of Insurers.** All insurance required pursuant to this Lease Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A-" or better and a financial size rating of "VII" or better.

(E) **Certificates.** Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Master Tenant as outlined herein, whether new or modified, promptly upon receipt. Further, upon request by the Town, Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Subtenants as outlined herein, whether new or modified. No policy subject to the Master Tenant's Lease with the Town shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to Town, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to Town. Certificates, including renewal certificates, may be mailed electronically to _____ or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

Town of Los Gatos
Attn: Risk Management
110 E. Main Street
Los Gatos, CA 95030

Exhibit F

Memorandum of Lease Agreement

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95037
Attn: Town Manager

THIS DOCUMENT IS EXEMPT FROM
RECORDING FEES PURSUANT TO CALIFORNIA
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement (this "**Memorandum**") is dated as of _____, 2020, and is between the Town of Los Gatos, a California municipal corporation ("**Landlord**"), and Tait Firehouse, LLC, a California limited liability company ("**Master Tenant**").

Recitals

A. Landlord and Master Tenant entered into that certain Lease Agreement, effective _____, 2020 ("**Lease**"), pursuant to which Landlord leased to Master Tenant and Master Tenant leased from Landlord the space located on the real property described in the attached Exhibit A (the "**Premises**").

B. Landlord and Master Tenant desire to execute this Memorandum to provide constructive notice of Master Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Agreement

1. Term. Landlord leases the Premises to Master Tenant for an initial term of thirty-four years and eleven months (34 years 11 months) commencing on the Commencement Date of _____, 202_, and expiring on _____, 205_.

2. Lease Terms. The lease of the Premises to Master Tenant is pursuant to the Lease, which is incorporated in this Memorandum by reference.

3. Assignment. Except as otherwise expressly provided in the Lease, Master Tenant's rights and obligations under the Lease may not be assigned without Landlord's prior written consent, which consent may be granted or withheld by Landlord in its sole and exclusive discretion, and any assignment without this consent will be void.

4. Successors and Assigns. This Memorandum and the Lease are binding and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease on assignment.

5. Governing Law. This Memorandum and the Lease are governed by California law.

Executed as of the date first above written.

LANDLORD:

Town of Los Gatos,
a California municipal corporation

By: _____
Print Name: _____
Title: _____

MASTER TENANT:

Tait Firehouse, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____ ss.

On _____, before me, _____, Notary Public, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature) (Seal)

EXHIBIT A

Legal Description of the Premises

[Need legal description of Premises]

Exhibit A

LEASE AGREEMENT

MASTER LEASE

by and between

TOWN OF LOS GATOS, a California municipal corporation
(**"Landlord"**)

and

FORBES MILL, LLC, a California limited liability company
(**"Master Tenant"**)

Los Gatos, California

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<u>Exhibit F</u>	Memorandum of Lease Agreement

[Type here]

MASTER LEASE

This Master Lease ("Lease") is made and effective as of this _____ day of _____, 2020 ("Effective Date"), by and between THE TOWN OF LOS GATOS, a California Municipal Corporation (hereinafter "Landlord" or the "Town"), and FORBES MILL, LLC, a California Limited Liability Company ("Master Tenant").

RECITALS

A. The Town owns certain improved real property, commonly referred to as the Forbes Mill Property, legally described on Exhibit A attached hereto and made a part hereof, suitable for office, restaurant, retail and other commercial operations (the "Property"). The building situated on such real property shall be referred to as the "Forbes Mill Building."

B. The Town has solicited proposals to develop the Forbes Mill Building and the future development of the Property will require significant capital improvements to make the area usable for commercial operators.

C. Master Tenant has been selected by the Town to develop the Forbes Mill Building and to sublease space within the Property to subtenant(s) consented to by the Town.

Now therefore, in consideration of their mutual promises as set forth in this Lease, the Town and Master Tenant agree as follows:

SECTION 1. BASIC LEASE PROVISIONS AND DEFINITIONS.

1.1 Master Tenant's Managing Member. Imwalle Asset Management, LLC, a California Limited Liability Company.

1.2 Premises and Address of Premises: The Premises consist of the Property and the Forbes Mill Building situated thereon. The address of the Premises is as follows:

75 Church Street,
Los Gatos, CA 95030

1.3 Rentable Area of Forbes Mill Building. As depicted in Exhibit B, the Rentable Area of the Forbes Mill Building is approximately 3400 square feet.

1.4 Lease Term. As provided in Section 3 below, the Term of the Lease commences on the Commencement Date and terminates, unless earlier terminated 34 years and 11 months from the Commencement Date as provided in Section 3.1 below.

1.5 Lease Contingency. This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master Tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before the date twelve (12) months following the Effective Date, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

1.6 Minimum Monthly Rent. The Minimum Monthly Rent shall be \$0.40 per Rentable Area of Forbes Mill Building (which equates to \$980 per month) payable to Landlord as provided in Section 4 below.

1.7 Percentage Rent. The Percentage Rent shall be that Rent specified in Section 4.3 below.

1.8 Capital Reserve Fund. For each month that Master Tenant pays to Landlord the Minimum Monthly Rent, Landlord shall deposit on a monthly basis to the account described in Section 8.6 below, the Minimum Monthly Rent received by Landlord.

1.9 Maintenance of Premises. The Master Tenant's obligations for Maintenance of the Premises are as set forth in Section 8 below.

1.10 Rent Commencement Date. The Rent Commencement Date shall be the date the first Subtenant opens for business on the Premises. The Rent Commencement Date shall be memorialized between Landlord and Master Tenant as set forth in Exhibit D (Form of Notice of Lease Terms).

1.11 Subtenant. The individual commercial operator(s) physically occupying the Premises to provide the services required under this Lease, as selected by Master Tenant and accepted by the Town (subject to Section 7.2 and Section 14.2 below). The Master Tenant cannot also be a Subtenant.

1.12 Permitted Uses. The operation of businesses providing office, retail, restaurant, and other services approved by Master Tenant and Town, and any other lawful use, except as otherwise prohibited under this Lease pursuant to Section 5.2.

1.13 Town Manager. The Town Manager of the Town ("Town Manager") or his or her designated representative, shall serve as the Town's principal contact and liaison for coordinating all Town requests of Master Tenant and responses to Master Tenant's requests, and shall assist in the implementation of the Town's obligations hereunder, during the term of this Lease. The Town Manager may change his or her authorized representative at any time by giving written notice of the change to Master Tenant.

1.14 Master Tenant's Work and Tenant Improvement Loan Amortization. "Master Tenant's Work" is defined in Section 6.2. "Tenant Improvement Loan Amortization" is defined in Section 6.3.

SECTION 2. LEASED AREA.

2.1 Premises. Landlord hereby leases to Master Tenant, and Master Tenant hereby leases from Landlord the Premises referred to in Section 1.2 above, located at 75 Church Street, Los Gatos, California 90530, as depicted on Exhibit B.

SECTION 3. TERM.

3.1 Term. The "Term" of this Lease shall commence as of the Effective Date ("Commencement Date") and shall end, unless earlier terminated or extended pursuant to the terms and conditions of this Lease, on the date 34 years and 11 months after the Commencement Date ("Termination Date").

SECTION 4. RENT.

4.1 General. From and after the Rent Commencement Date, Master Tenant agrees to pay Landlord as rent for the Premises, in the manner and at the times set forth in this Lease, the Minimum Monthly Rent and the Percentage Rent, as further described in this Section 4.

4.1.1 All rent payments shall be sent to the Landlord's address in Section 21.1 and shall be addressed to the attention of the Town Finance Department, and shall be free from all credits, claims, demands, off-sets or counterclaims of any kind against the Town.

4.1.2 Minimum Monthly Rent shall be paid by Master Tenant to Landlord on a monthly basis in advance on or before the first day of each month during the Term.

4.1.3 Percentage Rent shall be paid in arrears on or before April 15 each calendar year for the amount due and owing for the preceding calendar year (or 90 days after any Termination Date).

4.2 Minimum Monthly Rent. The Minimum Monthly Rent shall be the amount indicated in Section 1.6. Minimum Monthly Rent shall be paid in advance on or before the first day of each calendar month during the Lease Term.

4.3 Percentage Rent.

4.3.1 Manner and Time of Payment. Percentage Rent shall equal 60% of the Sublease Income received by Master Tenant during each calendar year, remaining after Distribution of Sublease Income in accordance with Section 4.3.4(a) through Section 4.3.4(d) below.

4.3.2 Definition of Sublease Income. "Sublease Income" shall mean the sum of (a) all base rents actually received by Master Tenant from its Subtenants of the Premises (excluding reimbursements from Subtenants for any operating costs such as, but not limited to, taxes, insurance, utilities, and maintenance and repair costs, to the extent such reimbursements do not exceed Master Tenant's actual costs of such operating costs), (b) any interest earned on security deposits of Subtenants, (c) security deposits forfeited by Subtenants (to the extent applied to delinquent rentals owing by such applicable Subtenant) and any fees paid by Subtenants to Master Tenant for cancellation of their subleases; and (d) proceeds of business interruption or rental loss insurance actually collected by Master Tenant as a result of loss of sublease income. Sublease Income shall not include (i) the proceeds of any casualty insurance or condemnation awards, (ii) any management fee reimbursements received by Master Tenant from a Subtenant of the Premises, or (iii) the proceeds from any financing of any interest in the Premises or any Improvements. Sublease Income shall be determined on a cash basis for each calendar year.

4.3.3 Definition of Sublease Expenses. "Sublease Expenses" shall be determined on a cash basis for each calendar year and shall mean the sum of:

(a) all tenant improvement and remodeling costs paid by Master Tenant (other than costs of Master Tenant's Work or other Improvements, which will be repaid to Master Tenant through Tenant Improvement Loan Amortization Amounts);

(b) all leasing commissions paid by Master Tenant (excluding leasing commissions paid to Master Tenant or to persons or entities affiliated with Master Tenant);

(c) all legal and accounting expenses incurred and paid by Master Tenant in connection with the Premises and/or any Subleases;

(d) all possessory interest taxes and other property taxes paid by Master Tenant (to the extent not reimbursed to Master Tenant by Subtenants);

(e) all insurance costs paid by Master Tenant in connection with the Premises (to the extent not reimbursed to Master Tenant by Subtenants);

(f) all other costs incurred and paid by Master Tenant in connection with operating, maintaining, repairing, replacing, and subleasing the Premises, or applicable portion thereof, including, without limitation, costs incurred and paid by Master Tenant pursuant to Section 20.1 and/or Section 20.2(b) of this Lease (to the extent not reimbursed to Master Tenant by Subtenants).

Sublease Expenses shall not include any management fee of Master Tenant; however, Master Tenant may, through its agent or otherwise, collect a management fee on any sublease.

4.3.4 Distribution of Sublease Income. All Sublease Income shall be used by Master Tenant for the following uses and shall be distributed by Master Tenant in the following priority:

(a) First, to pay to Landlord the Minimum Monthly Rent as set forth in Section 4.2 above, which sum is payable by Master Tenant to Landlord whether or not Master Tenant collects and receives Sublease Income;

(b) Second, to pay Master Tenant its Sublease Expenses as defined in Section 4.3.3 above;

(c) Third, to pay Master Tenant funded Master Tenant Work Improvement Loans as provided by Section 6.3 below.

(d) Forth, to pay to Master Tenant the amount of Minimum Monthly Rent paid in that calendar year.

(e) Fifth, as provided by Section 4.3.1 above, to pay Percentage Rent to Landlord and the balance to Master Tenant.

4.3.5 Annual Statements. On or before April 15 of each calendar year, with the payment of Percentage Rent, Master Tenant shall furnish to the Town a statement (the "Annual Statement") duly certified by the Chief Financial Officer or the Managing Member or the equivalent of the Master Tenant, setting forth in reasonable detail the Sublease Income from the Premises and the amount of the Percentage Rent which was required to be paid to the Town during the preceding calendar year in accordance with the provisions of this Lease. The Annual Statement shall also contain a detailed breakdown showing how Master Tenant calculated Sublease Income and Sublease Expenses. In addition, Master Tenant shall provide to Landlord a copy of Master Tenant's federal income tax return promptly following filing same with the Internal Revenue Service. The amounts reported to Landlord by Master Tenant for Sublease Income and Sublease Expenses shall conform to the amounts reported on Master Tenant's federal income tax return filed with the Internal Revenue Service. Master Tenant's federal income tax return shall cover only income and expenses from the Premises and shall not include income and expenses from any other property.

4.3.6 Books and Records. Master Tenant shall keep and maintain at its headquarters full, complete and appropriate books, records and accounts relating to the Premises, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Master Tenant's calculation of the Percentage Rent. Books, records and accounts relating to Master Tenant's compliance with the terms, provisions, covenants and conditions of this Lease shall be kept and maintained on a cash basis (except as otherwise expressly provided herein), in accordance with generally accepted accounting principles consistently applied, and shall be consistent with the requirements of this Lease which provide for the calculation of Percentage Rent. All such books, records

and accounts shall be open to and available for inspection by the Town, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Master Tenant may be required to furnish any governmental agency which would evidence or substantiate Master Tenant's calculation of the Percentage Rent shall at all reasonable times be open for inspection by the Town at the place that the books, records and accounts of Master Tenant are kept. Master Tenant shall preserve records on which any statement of Percentage Rent is based for a period of not less than four years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to Subsection 4.3.6 hereof then pending.

4.3.7 Town Audits. The receipt by the Town of any statement pursuant to Subsection 4.3.5 above, or any payment by Master Tenant or acceptance by the Town of any Percentage Rent for any period shall not bind the Town as to the correctness of such statement or such payment; provided, however, the Town shall accept the correctness of such statement if it conforms to the amounts shown on Master Tenant's federal income tax return for the period covered by such statement. Within four years after the receipt of any such statement, the Town or any designated agent or employee of the Town at any time and at the Town's cost (except as provided below) shall be entitled to audit the books, records and accounts pertaining to the Premises and the operation thereof. Such audit shall be conducted during normal business hours at the principal place of business of Master Tenant and other places where records are kept. Provided that Master Tenant has fully cooperated, any audit undertaken pursuant to this Subsection shall be completed within 180 days of the commencement thereof, subject to extensions of time for any periods of delay by any third party due to no fault of the Town or its auditors, and in no event later than four years after the Town's receipt of the statement or statements being audited. Immediately after the completion of an audit, the Town shall deliver a copy of the results of such audit to Master Tenant. The Town shall not be entitled to more than one audit for any particular year, unless it shall appear from a subsequent audit that fraud or concealment may have occurred with respect to the Sublease Income of a previously audited year. If it shall be determined as a result of such audit that there has been a deficiency in any Percentage Rent, then such deficiency shall become immediately due and payable with interest at the legal rate of 10% per annum, such payment to be determined as of and accruing from the date that said payment should have been made. In addition, if Master Tenant's statement for any calendar year shall be found to have intentionally understated Sublease Income by more than five percent and the Town is entitled to a supplementary payment as a result of said understatement, then Master Tenant shall pay, in addition to the interest charges referenced hereinabove, all of the Town's reasonable costs and expenses connected with any audit or review of Master Tenant's accounts and records.

4.4 Late Payment Fees. Any rentals, fees or charges required to be paid by Master Tenant pursuant to the terms of this Lease shall be paid on or before the dates specified in Subsection 4.1 above ("due date") without any requirement of notice from the Town and without deduction or offset. Master Tenant hereby acknowledges that late payment to the Town of any fee, charge or other sum due hereunder will cause the Town to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any such fee, charge or other sum due from Master Tenant is not received by the Town within 30 days after its due date (10 days for Minimum Monthly Rent), then Master Tenant shall pay to the Town a late payment fee equal to one percent per month of the amount not paid, calculated, for each day or portion thereof, from the due date until the date that payment is received by Town. The parties hereby agree that such late fee represents a fair and reasonable estimate of the cost that the Town will incur by reason of Master Tenant's late payment. The Town's acceptance of such late fees shall not constitute a waiver of Master Tenant's default with respect to such overdue amount or stop the Town from exercising any of the other rights and remedies granted hereunder or at law or in equity. A failure to pay any fee on the due date shall constitute an event of default under this Lease. Notwithstanding any right or remedy of the Town on account of any nonpayment by Master Tenant, the obligation to pay the outstanding amounts due shall survive termination of this Lease.

SECTION 5. USE OF PREMISES.

5.1 Restricted Use. The Premises shall be used and occupied by Master Tenant, and any Subtenants approved by Town in accordance with Section 14 below only for Permitted Uses, and for no other purpose.

5.2 Prohibited Uses. Master Tenant shall not:

5.2.1 use or knowingly allow the use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees for any unlawful purpose; or

5.2.2 cause, maintain, or knowingly permit any nuisance in, on, or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; commit or suffer to be committed any physical waste in or upon the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.3 display or sell merchandise outside the defined exterior walls and doorways of the Forbes Mill Building; however, said restriction shall not apply to outside seating for a restaurant or other permitted use; or

5.2.4 cause or knowingly permit the undue accumulation of garbage, trash, rubbish or any other refuse in or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.5 use or knowingly permit the use of any advertising such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees in such a manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the Tati Building, and will keep all mechanical apparatus free of objectionable vibration and noise which may be transmitted beyond the interior of the Premises; or

5.2.6 Cause or knowingly permit obnoxious odors to emanate or be dispelled from the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.7 Cause or knowingly permit any use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees which violates any Town zoning code applicable to the Premises; or

The preceding to the contrary notwithstanding, Landlord agrees that if any Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee acts or fails to act in any manner that causes Master Tenant to be in violation of any of the provisions of Section 5.2.1 through Section 5.2.7 above, then Master Tenant shall not be in breach or default under this Lease due to such act(s) or failure(s) to act by such applicable Subtenant or any of its agents, employees, contractors, other representatives or invitees so long as Master Tenant exercises commercially reasonable efforts to prevent such violation(s) from occurring and shall have taken steps in good faith within thirty (30) days after receipt of written notice from Landlord to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful

detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant.

As used in the provisions of Section 5.2.1 through Section 5.2.7, the term “knowingly” includes what Master Tenant reasonably should have known with the exercise of reasonable inquiry and investigation.

5.3 Compliance with Laws. Master Tenant shall carry out, or cause to be carried out, all obligations under this Lease, including without limitation Master Tenant’s Work, in conformity with all applicable state, federal, and local laws and regulations, including all applicable state labor laws and standards; Town zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the Town of Los Gatos Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* (“Applicable Laws”). Master Tenant’s obligations under this Section 5.3 shall include the obligation to undertake all appropriate inquiries with state and federal governmental enforcement and regulatory agencies as necessary to fully comply with all Applicable Laws, including any applicable prevailing wage requirements in connection with the construction of the Master Tenant’s Work. Master Tenant also shall require that its Subtenants (to the extent expressly made applicable to such Subtenants) and their respective agents, employees, contractors and subcontractors, comply with all Applicable Laws in connection with the construction of the Subtenant’s Work and Improvements.

SECTION 6. LEASEHOLD IMPROVEMENTS.

6.1 Condition of the Premises. Landlord shall deliver the Premises to Master Tenant on the Effective Date clean and free of debris, and in the condition of the Premises upon delivery as described in Exhibit D.

6.2 Leasehold Improvements. Master Tenant agrees to install, or cause to be installed, in the Premises all improvements, fixtures, furniture and equipment within the Premises, as reasonably necessary for Master Tenant to attract and retain high quality Subtenants. Within one hundred eighty (180) calendar days after the Effective Date, Master Tenant shall provide Landlord a detailed description of work it proposes to undertake to ready the Premises for initial lease up to Subtenants (“Initial Master Tenant’s Work”). In addition to providing Landlord all relevant information regarding a proposed Subtenant necessary for Landlord to evaluate and provide its consent to a proposed Subtenant pursuant to Section 14.2, Master Tenant shall provide Landlord a detailed description of the additional work, if any, to be undertaken by Master Tenant (“Additional Master Tenant’s Work”) as well as the work to be undertaken by a Subtenant (“Subtenant’s Work”) in connection with said applicable sublease.

The Initial Master Tenant’s Work and all Additional Master Tenant’s Work undertaken in connection with a sublease consented to by Landlord in accordance with 14.2 below, shall collectively be referred to herein as the “Master Tenant’s Work”. The term “Master Tenant’s Work” does not include “Subtenant’s Work” to be performed by Subtenants. It is acknowledged and agreed that the Subtenants of Master Tenant will install additional improvements, fixtures, furniture, and equipment as necessary for conduct of their operations, and shall all be responsible for complying with all applicable federal, state, and local statutes, laws, ordinances, rules, and regulations, and obtaining all necessary permits, to perform such work.

6.3 Master Tenant Work Improvement Loans.

6.3.1 As provided in Section 4.3.4 above, Master Tenant may utilize Sublease Income to repay itself for funds it advances or borrows from a third party lender for Master Tenant’s Work, and any subsequent Improvements within the Premises that are neither Subtenant’s Work nor funded by the Town’s Capital Reserve Fund (“Master Tenant Work Improvement Loans”), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 3% per annum if funded by Master Tenant, or at the actual rate of interest charged by Master Tenant's lender if funded by an independent, arm-lengths third-party lender, as of the date of each advance.

(b) Repayment Term. Whether funded by Master Tenant or a third-party lender, the repayment term shall be no greater than the Lease Term.

(c) Amortization. For each Master Tenant Work Improvement Loan funded by Master Tenant, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term. If funded by a third-party lender, the loan shall be fully amortized in accordance with the terms of the loan.

6.4 Liens. All Master Tenant's Work and Subtenant's Work shall be completed free of mechanic's liens, with first-class materials and workmanship, and in compliance with all applicable rules, regulations, and laws applicable to the Premises.

6.5 Letter of Credit (LOC). All Master Tenant's Work or Subtenant's Work shall be approved by Landlord (which consent shall not be unreasonably withheld, conditioned or delayed). Such consent shall be deemed given if not denied in writing to Master Tenant within ten (10) business days following Landlord's receipt of such information required for Landlord to evaluate such applicable Master Tenant's Work or Subtenants Work. Master Tenant shall furnish to Town, at no cost or expense to the Town, a letter of credit ("LOC") in the amount not less than the sum of One Hundred Percent of the cost estimate of the Master Tenant's Work, in a form subject to the review and approval by the Town Manager or his or her designee (which approval shall not be unreasonably withheld, conditioned or delayed), which LOC shall secure Master Tenant's obligation to complete, and pay for the cost of completion of, the construction of the Master Tenant's Work within the time reasonably fixed by the Landlord, or such extension thereof as may be allowed. Master Tenant shall refrain from performing, or causing the performance of, any work related to the construction of Master Tenant's Work until Master Tenant furnishes a LOC satisfying this Section 6.5.

In the event Master Tenant fails to complete the Master Tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant fails to promptly commence action to complete the Master Tenant's Work within ten (10) calendar days of receipt of such notice, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete the Master Tenant's Work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant). In the event that Master Tenant fails to complete the Master tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant commences action to complete Master Tenant's Work within ten (10) calendar days of receipt of such notice but thereafter fails to diligently process such cure to completion, then, Landlord shall give a second, written notice to Master Tenant and if Master Tenant does not commence action to complete the Master tenant's Work within fifteen (15) days following Master Tenant's receipt of such second, written notice or thereafter diligently process such cure to completion, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete Master Tenant's work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant).

6.6 Ownership and Removal. All personal property not affixed in any way to the Premises including inventory, kitchen equipment, those nonstructural alterations as the Town approves for removal as were installed under this Lease and do not affect the structure of the Forbes Mill Building or the

Premises, together with Master Tenant's Trade Fixtures, (collectively, "Master Tenant's Property") shall remain the property of Master Tenant. Upon the termination or expiration of the Lease Term, if Master Tenant is not then in default under the Lease, Master Tenant may remove Master Tenant's Property from the Premises no later than the termination or expiration date. In addition, Master Tenant may remove from the Premises all items and Alterations installed by Master Tenant that are indicative of Master Tenant's business and may otherwise "de-identify" the Premises, as Master Tenant reasonably believes necessary or appropriate for the protection of Master Tenant's interest in Master Tenant's trademarks, trade names or copyrights. Master Tenant shall repair any damage to the Premises caused by such removal, including patching and filling holes. In no event shall Master Tenant remove or be required to remove any restrooms, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements.

6.6.1 Subtenant's Personal Property. Landlord waives any statutory liens and rights of distress with respect to the personal property (non-affixed trade fixtures, equipment, inventory and merchandise) of each Subtenant from time to time located with the Premises, or applicable part thereof ("Subtenant's Personal Property"). This Lease (and each sublease entered into between Master Tenant and a Subtenant) does not grant a contractual lien or any other security interest to Landlord or in favor of Landlord with respect to Subtenant's Personal Property. In the event Landlord becomes the direct lessor or landlord of a Subtenant, then, respecting any lender of any Subtenant having a security interest in any Subtenant's Personal Property ("Subtenant's Lender"), Landlord agrees: (i) to provide such Subtenant's Lender, upon written request of a Subtenant (accompanied by the name and address of Subtenant's Lender), with a copy of any default notice given to Subtenant under its sublease, concurrently with delivery of such default notice to Subtenant, and (ii) to allow Subtenant's Lender, prior to any termination of the sublease or repossession by Landlord of the applicable premises subleased by such Subtenant, the same period of time, after its receipt of such copy of default notice, to cure such default as is allowed the Subtenant under its sublease, and (iii) to permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property anytime within thirty (30) days after the effective date of any termination of the applicable sublease or any repossession of the subleased premises by Landlord (with Landlord having given Subtenant's Lender prior written notice of such date of termination or possession). Landlord will not be required to allow Subtenant's Lender to enter the subleased premises after entry of judgment in a forcible entry and detainer action, but agree to delay the filing of any such forcible entry and detainer action for thirty (30) days after delivery of written notice of such action to Subtenant's Lender, and will permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property any time within such thirty (30) days. Landlord further agrees to execute and deliver such instruments reasonably requested by Subtenant's Lender from time to time to evidence and effect this waiver and agreement of Landlord.

6.7 Abandonment. Any of Master Tenant's Property not removed from the Premises within sixty (60) business days of the date the Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of Landlord. Landlord may possess and dispose of such property provided that Landlord shall not use or permit anyone holding under Landlord to use on the Premises (a) any trademark, trade name, millwork, copyrighted floor plan, copyrighted color palette, or sign used by Master Tenant in the Premises; or (b) any item similar to any other item protected by Master Tenant's intellectual property rights. This provision shall apply under all circumstances, including default by Master Tenant under this Lease.

SECTION 7. MASTER TENANT OBLIGATIONS – OPERATION OF PREMISES.

7.1 Responsibility of Master Tenant. Master Tenant shall serve as the master developer and sublandlord for the Subtenants and shall be obligated to ensure that the Premises are properly and fully operated, in good condition, for the approved commercial uses. Master Tenant shall be the primary point of contact for the Town with regard to all operational, administrative, and compliance issues under this Lease.

7.2 Leasing Standards. Subject to the provisions of Section 14.1 and 14.2 below, Master Tenant shall use its commercially reasonable efforts, consistent with good property management practices, to obtain first class commercial Subtenants for the Premises. However, if after reasonable effort, Master Tenant is unable to attract Subtenants of similar type and quality on terms and conditions satisfactory to Master Tenant, Master Tenant may, subject to Section 14.2 below, sublease to Subtenants who may be considered less desirable in terms commercial type and quality. Landlord shall not unreasonably withhold its approval of any potential Subtenant who Master Tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant.

7.3 Continuous Operations. Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason during the first three (3) years after the Commencement Date the Premises in their entirety are left unleased for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If for any reason after the first three (3) years following the Rent Commencement Date the Premises are more than fifty percent (50%) unleased for six (6) consecutive months, then Landlord may require Master Tenant to prepare and provide to Landlord, for its review and approval, a marketing plan to lease said unleased space. Master Tenant shall prepare and provide said marketing plan to Landlord within thirty (30) calendar days following written notice from Landlord to prepare said marketing plan. Landlord shall complete its review and approval of the marketing plan within thirty (30) calendar days following its submission by Master Tenant to Landlord. If for any reason the Premises remain more than fifty percent (50%) unleased for six (6) consecutive months following Landlord's approval of the marketing plan, and Master Tenant can document to Landlord's reasonable satisfaction that Master Tenant has diligently, and in good faith, pursued the lease of said unleased space in accordance with the approved marketing plan, then Landlord shall provide Master Tenant no less than an additional six (6) month period of time to lease the unleased space. If following said additional period of time granted by Landlord, the Premises are more than fifty percent (50%) unleased, then either the Landlord or Master tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If Landlord terminates the Lease pursuant to this Section 7.3, then Landlord shall assume the repayment of all outstanding Master Tenant Work Improvement Loans with the right to prepay such loans at Landlord's election without penalty. However, the Town's general fund shall assume no obligation for repayment of the Master Tenant Work Improvement Loans, which shall be repaid solely from future Sublease Income generated from the future operation of the Premises. Landlord's obligations under the immediately preceding sentence shall survive the termination of this Lease pursuant to this Section 7.3. If Master Tenant terminates the Lease pursuant to this Section 7.3, then Master Tenant shall assume the repayment of all outstanding Master Tenant Work Improvement Loans and no portion of Sublease Income or any other revenue generated by the Premises shall be obligated or utilized for repayment of said outstanding.

7.4 Signage and Displays. With respect to signage on the Premises, Landlord and Master Tenant agree as follows:

7.4.1 Landlord may allow Master Tenant may place a sign(s) on the exterior of the Forbes Mill Building to the extent such signage is allowed by law, provided that (i) the design and location of any such sign is approved in advance in writing by Landlord, and (ii) Master Tenant secures all

necessary permits and approvals from the Town and/or any other applicable governmental authority. Any such signage shall be designed and installed in a manner that maintains the existing building system warranties, if any, applicable to the Forbes Mill Building. Upon expiration or earlier termination of this Lease, Master Tenant shall remove Master Tenant's sign(s) from the exterior of the Forbes Mill Building, if applicable, and restore the exterior of the Forbes Mill Building to condition existing prior to the placement of such sign(s) on the exterior of the Forbes Mill Building, unless otherwise approved by Landlord.

7.5 Utilities. Master Tenant shall pay, or cause to be paid, for any and all costs, fees and expenses of water, gas, electricity, telephone, trash collection and recycling used by Master Tenant or any Subtenant in connection with the Premises during the Term of this Lease.

7.6 Deliveries. All deliveries shall be made at the hours not in violation of municipal ordinances.

7.7 Wireless Communications Equipment or Devices. The location of any equipment or device for the purpose of telecommunication or wireless access to services over the internet, by any party or for Master Tenant's or any Subtenants business operations, shall be coordinated with the Town and shall be subject to Town's reasonable approval.

7.8 PBID. Master Tenant will exercise commercially reasonable efforts to encourage its Subtenants to pay, if applicable, all Los Gatos Downtown Property Based Improvement District ("PBID") assessments for the Premises, which accrue during the term of this lease.

SECTION 8. MAINTENANCE, REPAIRS, AND ALTERATIONS.

8.1 Master Tenant's Obligations. Subject to the provisions of Section 8.2 below, and except for damage caused by fire or other casualty, whether or not insured or insurable, Master Tenant, at Master Tenant's sole cost and expense, shall keep, or cause to be kept, the Premises, in good condition and repair, including maintaining and repairing, or causing to be maintained or repaired, as necessary, all Master Tenant's Work, and all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises, and any Master Tenant signage, and all doors and plate glass windows (both interior and exterior), interior walls, and flooring in the Premises. Master Tenant shall provide a contract for regular maintenance of the HVAC with an HVAC company reasonably approved by Landlord. Master Tenant shall be required to implement a program, reasonably acceptable to Landlord, for control and elimination of rodents and vermin on or around the Premises. Master Tenant shall be required to maintain any Outdoor Use Areas located on the Premises. Master Tenant shall remove graffiti from the exterior of the Premises within a reasonable time and shall always otherwise keep the exterior of the Premises in a clean and well-maintained condition. Notwithstanding any provision to the contrary, Master Tenant's obligations under this Section 8.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants; (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Master Tenant or (c) any capital repairs or capital improvements not funded by the Capital Reserve Fund.

8.2 Landlord's Obligations.

8.2.1 Except for repairs and maintenance to the Premises that Master Tenant must make under Section 8.1 above, Landlord shall be responsible, at its sole cost and expense, for the remediation of any Hazardous Materials discovered in, on, or about the Premises during the work performed under Section 6 above or discovered thereafter, provided, said discovery and presence of Hazardous Materials are not directly arising out of or attributable to Master Tenant or any subtenants use and/or occupancy of the Premises, Further, Landlord shall be responsible for, at its sole cost and expenses, the roof structure, roof membrane and supports, HVAC (excluding Master Tenant's maintenance contract), sprinkler system, foundation, exterior walls, and all structural components of the Forbes Mill Building. In the event of an emergency, Master Tenant may give Landlord such notice as is practicable under the circumstances (if any), and if Landlord fails to make such repairs immediately,

Master Tenant may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to Landlord for reimbursement. Notwithstanding any provision to the contrary, Landlord's obligations under this Section 8.2.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Master Tenant, Subtenants, or their agents, employees or servants; or (b) any repair or improvement caused by Master Tenant's failure to perform its obligations (including obligations which a Sublease obligates a Sublessee) hereunder or under any other agreement between Landlord and Master Tenant.

8.3 Surrender. Upon the expiration or termination of this Lease, Master Tenant shall surrender the Premises to Landlord in good order and condition, except for ordinary wear and tear, condemnation, and damage caused by fire or other casualty, whether or not insured or insurable, alterations and leasehold improvements made by Master Tenant and Subtenants, and in a broom clean condition.

8.4 Landlord's Rights. If Master Tenant fails to perform Master Tenant's obligations under Section 8.1 above, Landlord may, but shall not be required to, enter upon the Premises, after twenty (20) calendar days prior written notice to Master Tenant, and put the same in good order, condition and repair, and the actual costs thereof and an administrative fee of not more than 10% of the actual costs thereof, shall become due and payable as additional rent to Landlord together with Master Tenant's next Minimum Monthly Rent installment payment falling due after Master Tenant's receipt of an invoice for such costs; provided, however, Landlord shall not be able to exercise such remedies so long as Master Tenant commences to cure its failure within said twenty (20) day period and diligently pursues the cure to completion.

8.5 Improvements. The installation of the leasehold improvements necessary for Master Tenant's operation of its business in the Premises shall be performed in accordance with Section 6. Once such improvements are completed, Master Tenant shall not thereafter make any alterations, improvements, additions, upgrades or utility installations in, on or about the Premises, or install any further fixtures, furniture, or equipment therein (together, "Improvements") without Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that minor interior Improvements that do not exceed the amount of \$50,000, and do not otherwise require permits under Applicable Laws ("Minor Improvements"), shall not require Landlord's consent under this Lease. All other Improvements exceeding \$50,000 for construction, or which require permits under Applicable Laws, or involve alterations to the exterior of the Premises ("Major Improvements") shall be subject to Landlord's review and approval under this Lease. Landlord may review all proposed Improvements for their consistency with the final as-built plans for the Forbes Mill Building and may approve variations from such drawings in its reasonable discretion. Town Manager is authorized to make such determination to approve Major Improvements which otherwise comply with Applicable Laws under this Lease. Notwithstanding Landlord's approval of Major Improvements under this Lease, Master Tenant shall be required to obtain all required permits for such Major Improvements under Applicable Law.

8.6 Capital Reserve Fund. On or before the fifteenth day following Landlord's receipt of the Minimum Monthly Rent, Landlord shall deposit the Minimum Monthly Rent to the account described in this Section 8.6 ("Capital Reserve Fund").

8.6.1 Maintenance of Capital Reserve Fund. The Capital Reserve Fund shall be maintained in a state or nationally chartered bank, the Local Agency Investment Fund Pooled Money Investment Account, or other such institution acceptable to Landlord.

8.6.2 Use of Capital Reserve Fund. Landlord may use monies in the Capital Reserve Fund to fund capital improvements to maintain the quality of the Premises or other purposes reasonably related to this Lease, subject to the reasonable consent of Master Tenant. The use of monies in the Capital Reserve Fund shall be controlled and directed by Landlord in its sole discretion, with input by Master Tenant, but will be used primarily for capital improvements to the Premises. Unused amounts in the Capital Reserve Fund on the Termination Date will be retained by the Town.

8.6.3 Master Tenant shall utilize Sublease Income to repay Landlord for funds it advances from the Capital Reserve Fund for uses identified in Section 8.6.2 above ("Capital Reserve Fund Improvement Loans"), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 4% per annum, as of the date of each advance.

(b) Repayment Term. The repayment term shall be the lesser of ten years or the initial term of the applicable Sublease if the Capital Reserve Fund Improvement Loan is related to Subtenant Work.

(c) Amortization. For each Capital Reserve Fund Improvement Loan, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due if the Capital Reserve Fund Improvement Loan is related to Subtenant Work, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term.

SECTION 9. INSURANCE.

9.1 General. Prior to commencing any work or operations under this Lease, and for the full term of this Lease and any extensions thereof, Master Tenant and any Subtenants, at each parties' sole cost and expense, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Master Tenant and its Subtenants, agents, employees and contractors, meeting at least the minimum insurance requirements set forth in Exhibit E on terms and conditions and in amounts as reasonably required by Town from time to time and with insurers reasonably acceptable to the Town and within commonly applicable industry standards for the type of operation. The Town shall not be obligated to take out insurance on Master Tenant's or Subtenant's property, including the Master Tenant's Work. Master Tenant shall be responsible for obtaining property insurance to cover the cost of repair or replacement of the Master Tenant's Work. Master Tenant and its Subtenants shall provide the Town with certificates of insurance or copies of all policies and such endorsements as may be reasonably required by the Town. These requirements are subject to reasonable amendment or waiver if so approved in writing by the Town Manager. From time to time at the request of the Finance Department of the Town of Los Gatos, Master Tenant shall provide a written statement of the replacement cost of the Master Tenant's Work.

During the term of the Lease, Landlord shall maintain general liability insurance in an amount of no less than \$2,000,000 per occurrence for bodily injury, property damage and personal injury, as well as property insurance covering the cost of repair or replacement of the Premises (excluding therefrom the Master Tenant's Work).

SECTION 10. INDEMNIFICATION BY MASTER TENANT.

10.1 General. Master Tenant shall defend, indemnify, and hold Landlord and Landlord's agent, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) in connection with any and all third party claims to the extent arising out of Master Tenant's use of the Premises ("Claims"), including, but not limited to: (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Master Tenant or Master Tenant's officers, agents, employees, subtenants, or contractors; (c) any breach or default in the performance of any obligation on Master Tenant's part to be performed under this Lease; (d) any violation by Master Tenant or any of its officers, agents, employees, subtenants or contractors of any law, ordinance or regulation governing the use of the Premises, (e) any injuries (including death of any person), claims, or causes of action relating to or involving the sale of alcoholic beverages on the Premises; or (f) the failure of any representation or warranty made by Master Tenant herein to be true when made. This indemnity does not include any Claims caused by or arising out of the intentional or

negligent acts or omissions of Landlord or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of the Lease.

SECTION 11. ENVIRONMENTAL LIABILITY.

11.1 Environmental Law. The term "Environmental Law" means collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S. Code § 1251, *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.*, (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.*, (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.*, (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.*, (xvi) Health & Safety Code § 25501, *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.*, (xix) California Fish and Game Code §§ 5650-5656, (xx) the Polanco Redevelopment Act, as amended, Health & Safety Code § 33459, *et seq.*, (xxi) Health & Safety Code § 25403, *et seq.* (Hazardous Materials Release Cleanup), and (xxii) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety, or industrial hygiene.

11.2 Hazardous Materials. "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as "hazardous," "extremely hazardous," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance" or "hazardous material" under any Environmental Laws, including, without limitation, chlorinated solvents, petroleum, or any fraction thereof, friable asbestos, and polychlorinated biphenyls.

11.3 Release of Hazardous Materials. Except as provided below in Section 11.4, Master Tenant shall not store, dispose of, transport, generate or otherwise introduce any Hazardous Material in, on or around the Premises. If any Hazardous Material is deposited, released, stored, disposed, transported, generated or otherwise introduced by Master Tenant in, on, or around the Premises, Master Tenant, at Master Tenant's sole cost and expense, shall comply with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, to remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Materials.

11.4 Master Tenant's Use of Hazardous Materials. Notwithstanding the above and provided that Master Tenant complies with all Applicable Laws and Environmental Laws, Master Tenant shall have the right to use Hazardous Materials on the Premises to the extent such Hazardous Materials (i) are contained in restaurant and/or household products, office supply products or janitorial products customarily used in the maintenance, rehabilitation, operation or management of facilities similar to the Premises; or (ii) are commonly used by a significant portion of the population living within the region of the Premises, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as Master Tenant provides the appropriate warning, if required to do so under any Applicable Law or Environmental Law.

11.5 Environmental Indemnity. Master Tenant shall protect, indemnify, and hold harmless Landlord and Landlord's officer's employees, agents, representatives, contractors, and subcontractors from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees), and the costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to Master Tenant's undertaking any activity related to any Hazardous Substance, directly arising out of or attributable to Master Tenant's or Master Tenant's agents', contractors', employees' or Subtenants' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. Landlord shall protect, indemnify, and hold harmless Master Tenant and Master Tenant's employees, agents, parents, representatives, subtenants, contractors, subcontractors and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises, or applicable portion thereof, to the physical condition existing prior to undertaking any activity related to any Hazardous Substance directly arising out of or attributable to Landlord's or Landlord's agents', contractors', or employees' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. The provisions of this Section 11.5 shall survive the termination of this Lease.

SECTION 12. TAXES AND ASSESSMENTS/ POSSESSORY INTEREST TAX.

12.1 General. Master Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Master Tenant agrees to pay and discharge, as additional rent for the Premises during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes") which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises or any improvements which are now or hereafter located thereon, or against any of Master Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Master Tenant acquired pursuant to this Lease on account of any taxable possessory right which Master Tenant may have acquired pursuant to this Lease. Master Tenant shall pay or reimburse Landlord, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Master Tenant hereunder.

SECTION 13. PROHIBITION AGAINST CHANGE IN MASTER TENANT AND CONTROL OF MASTER TENANT AND THE PREMISES, AND TRANSFER OF MASTER TENANT'S RIGHTS UNDER THIS LEASE.

13.1 Qualifications of Master Tenant. Master Tenant acknowledges that the qualifications and identity of Master Tenant, including in particular Master Tenant's Managing Members, are of particular concern to the community and the town, in view of the following:

13.1.1 The importance of the proper subleasing of the Premises to the general welfare of the community;

13.1.2 The reliance by the Town upon Master Tenant to assure the quality of the Premises and its use, operation and maintenance;

13.1.3 The fact that a change in Master Tenant or control of all or a portion of Master Tenant, or any act or transaction involving or resulting in a change in Master Tenant is for practical purposes a Transfer or disposition of the Premises; and

13.1.4 The importance to the Town and the community of the standards for the use, operation and maintenance of the Premises and associated areas.

13.2 Acknowledgment of Importance of Qualifications. Master Tenant further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease with Master Tenant. No voluntary or involuntary successor-in-interest of Master Tenant shall acquire any rights or powers under this Lease except as expressly set forth in this Lease.

13.3 Completion of Master Tenants Work. Prior to the completion of Master Tenant's Work, Master Tenant shall not (i) assign all or any part of its rights or obligations under this Lease, (ii) lease or sublease any portion of the Premises (other than subleases of portions of the Premises to permitted Subtenants as otherwise provided in the Lease), (iii) make or permit to be made any changes in the composition of Master Tenant's ownership, limited liability company status, or members, or (iv) effect any transaction which would in any way change the Master Tenant's ownership, management, control or obligations relating to the Premises.

13.4 Permitted Transfers. Following the period described in Section 13.3 above (i.e. completion of Master Tenant's Work), Master Tenant may, with the prior review and approval of the Town Manager (which shall not be unreasonably withheld, conditioned or delayed), make changes in the composition of Master tenant's ownership, corporate or other entity status, shareholders, members or partners (if applicable), provided that Master Tenant's managing Member, retains the power to control Master Tenant's active, day-to-day management responsibilities ("Day-to-Day management"). For purposes of the immediately preceding sentence, "control" shall mean the power to direct or cause the direction of the Day-to-Day Management of the Master tenant. Five years from the Commencement Date, provided Master Tenant has performed all of its obligations under this Lease, Master Tenant may appoint, with the consent of Landlord which shall not be unreasonably withheld, a new Master Tenant Managing Member.

13.5 Notification of Changes in Ownership or Control. During the term of this Lease, the Master Tenant shall promptly notify the Town of any and all changes whatsoever in the Master tenant's ownership, corporate or other status, management or control of the Master tenant and the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

13.6 Termination for Transfer. This Lease shall terminate pursuant to Section 18 if there is any voluntary or involuntary assignment or Transfer other than provided in in Section 13.4 or as otherwise expressly provided in this Lease.

SECTION 14. ASSIGNMENT AND SUBLETTING.

14.1 General. Except for those Subtenants approved by Town as provided herein, Master Tenant shall not assign, let or sublet the whole or any portion of the Premises.

14.2 Conditions for Landlord's Consent to Subtenants. Landlord's decision to grant or withhold its consent to a Subtenant may be based upon standards relevant to the type of subtenant and its proposed operation, including but not limited to: (i) experience or lack of experience in operating a retail establishment; (ii) the operating standards of such subtenant and whether it will provide the premium caliber of facilities and services acceptable to Landlord; (iii) the financial capacity to perform the provisions of this Lease and produce a fair return to Landlord; (iv) the experience of the proposed subtenant; (v) the ability of the Master Tenant and subtenants to perform the provisions of this Lease. However, Landlord shall not unreasonably withhold, condition or delay its approval of any potential Subtenant who Master tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant, so long as Master tenant has made reasonable efforts to attract the highest quality potential Subtenants available on terms and conditions satisfactory to Master tenant.

14.3 Conditions for Landlord's Consent to Assignment. Landlord's decision to grant or withhold its consent to any assignment of this Lease by Master tenant shall be at the Landlord's sole and exclusive discretion, but otherwise may be based upon standards of commercial reasonableness, including but not limited to the financial capacity, experience and ability of assignee to perform the provisions of the Lease.

14.4 Approval by Town Manager. Any such consent, if given by Landlord, shall be in writing and may be approved by the Town Manager on behalf of Landlord.

14.5 Recognition Agreement. In connection with each Sublease consented to by Landlord, Landlord shall agree in writing in favor of the applicable Subtenant that if this Lease terminates, then Landlord shall attorn to such applicable Subtenant on the terms and conditions of such Subtenant's sublease. In the event of such attornment, Landlord shall assume all of the Master Tenant's obligations under the applicable sublease accruing from and after the date the Master Lease terminates. Landlord shall indemnify, defend and hold Master Tenant harmless from and against any and all claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) arising from any breach or default by Landlord of any of its assumed obligations under the applicable sublease; however, such indemnification, defense and hold harmless obligation shall not be applicable to any claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) to the extent arising from any breach by Master Tenant of any obligations of the sublessor under the applicable sublease occurring prior to the date Landlord attorns to the applicable Subtenant under the terms of the applicable Subtenant's sublease. Landlord's obligations under this Section 14.5 shall survive the termination of this Lease.

SECTION 15. MORTGAGE OF LEASEHOLD.

15.1 Prohibited Encumbrances. Except as permitted in Section 0 below, Master Tenant shall not:

15.1.1 Engage in any financing or other transaction placing any mortgage or deed of trust upon the Property, or upon Master Tenant's leasehold estate therein or the improvements constructed thereon; or

15.1.2 Place or suffer to be placed upon Master Tenant's leasehold estate or the improvements thereon any lien, levy, attachment or other encumbrance (other than a lien upon said leasehold estate for taxes and assessments levied but not delinquent or payable with penalty); provided, however, the foregoing notwithstanding, Master Tenant shall have the right to contest or appeal the validity of any such lien, levy, encumbrance or attachment, provided that Master Tenant shall first furnish adequate security to the reasonable satisfaction of Landlord to protect the Premises during the pendency of such contest or appeal.

Any such mortgage, deed of trust, levy, attachment, encumbrance or lien (collectively, "encumbrance") not permitted pursuant to the terms of this Lease and caused or created by Master Tenant shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless Master Tenant shall, within twenty (20) days of such date of execution or filing of record, remove such encumbrance or provide adequate security to the reasonable satisfaction of Landlord to protect the Premises and the improvements thereon from such encumbrance.

15.2 Permissible Encumbrances.

15.2.1 Anything in this Lease to the contrary notwithstanding, with Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant's

Work may be funded by debt, and accordingly Master Tenant may assign or encumber the estate created by this Lease, by way of leasehold mortgages, leasehold deeds of trust, or otherwise.

15.2.2 With Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant may assign or encumber the estate created by this Lease by way of not more than two leasehold mortgages and/or leasehold deeds of trusts at any one time encumbering Master Tenant's leasehold interests, provided that such leasehold mortgages and/or leasehold deeds of trusts comply with the requirements of this Section 15. Landlord shall have no obligation to make any changes to this Lease to accommodate any Permitted Mortgagee but agrees to work with Master Tenant in good faith in Master Tenant's efforts to obtain a Permitted Mortgage.

15.2.3 The fee title to the Premises cannot be encumbered pursuant to this Section 15; only the leasehold interest of the Master Tenant under this Lease (including, without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property and any personal property of any Subtenant) may be so encumbered.

15.2.4 An encumbrance permitted by this Section 15 shall be referred to as a "Permitted Mortgage." The holder of a Permitted Mortgage is herein referred to as a "Permitted Mortgagee."

15.3 Notice to Landlord. Except when Landlord's prior approval or consent shall be required, Master Tenant shall notify Landlord within twenty (20) days of the time of creation of any lien or encumbrance which has been created on or attached to Master Tenant's leasehold estate therein or the Master Tenant improvements thereon, whether by act of Master Tenant or otherwise. If such lien or encumbrance is not created by an act of Master Tenant, Master Tenant shall notify Landlord of such creation as of the time Master Tenant first knows of such creation or attachment.

15.4 Mortgages Subordinate to Lease. Any mortgage permitted under Section 15 hereof shall be subject and subordinate to this Lease and, except as otherwise expressly provided herein or in any separate written agreement between Landlord and a Permitted Mortgagee, the rights of Landlord hereunder.

15.5 Extent of Encumbrance. A Permitted Mortgage shall encumber no interest in property other than Master Tenant's interest in the leasehold and improvements to the Premises, including without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property, and any personal property of any Subtenant.

15.6 Disposition of Insurance Proceeds and Condemnation Awards. A Permitted Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Lease. In the event that the Premises, or any portion thereof, are damaged or destroyed or condemned by power of eminent domain, in whole or in part, to the extent required by the provisions of the Permitted Mortgage, the proceeds therefrom shall be held by the Permitted Mortgagee, to be applied in the case of damage or destruction pursuant to the terms of the Permitted Mortgage with any excess to be paid to Landlord and Tenant as their interests may appear and to be applied in accordance with Section 17.3 hereof in the case of condemnation.

15.7 Permitted Mortgagee. Except as otherwise approved in writing by Landlord, a Permitted Mortgage may be given only to a responsible bona fide institutional lender. For the purposes hereof, the term "institutional lender" shall mean any one of the following lending institutions: a commercial or savings bank; a state bank or national bank, a trust company; an insurance company; a savings and loan association; a building and loan association; a credit union; an investment banking firm; an educational institution; a pension, retirement or welfare fund; a charity; a real estate investment trust ("REIT") but only if the REIT is publicly traded and registered with the U.S. Securities & Exchange Commission, and the amount of the Permitted Mortgage does not exceed two percent of the value of the REIT's assets; an endowment fund or foundation authorized to make loans in the State of California; or any other responsible financial institution.

15.8 Continuing Terms and Covenants. Except as otherwise expressly provided in this Lease or in a separate document executed by Landlord, all rights acquired by said Permitted Mortgagee under said Permitted Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Permitted Mortgage, except as expressly provided in this Lease or in a separate document executed by Landlord. Notwithstanding any foreclosure of any Permitted Mortgage and so long as this Lease has not been terminated, unless and until a Permitted Mortgagee takes possession of the Premises (subject to any Subleases then in existence, if applicable) and to the extent Master Tenant is receiving the revenues from the Premises, Master Tenant shall remain liable for the payment of Minimum Monthly Rent, Percentage Rent and all other payments payable pursuant to this Lease, and for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Master Tenant.

15.9 Affirmation of Lease in Bankruptcy. In the event of the filing of a petition in bankruptcy by the Master Tenant, and the Master Tenant rejects this Lease under Section 365 of the Bankruptcy Code, the Landlord shall, upon the request of a Permitted Mortgagee, affirm this Lease, and the Landlord will enter into a new Lease on the same terms and conditions with the Permitted Mortgagee immediately upon Master Tenant's rejection of this Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Lease and the Master Tenant does not affirm it, a Permitted Mortgagee will have the authority to affirm the Lease on behalf of the Master Tenant and to keep the Lease in full force and effect.

15.10 Notice Required. Master Tenant shall submit to Landlord within the times set forth in this Section 15 a written notice of its intention to enter into a Permitted Mortgage, and shall submit to Landlord such information and detail as will enable Landlord to determine the compliance of such intended Permitted Mortgage with the provisions of this Section 15 and this Lease. If Landlord has not objected to the intended Permitted Mortgage on the grounds of noncompliance with provisions of this Lease within 45 days of receipt by Landlord of such notice and information, the intended Permitted Mortgage shall be deemed to comply with the provisions of this Section 15 and this Lease and be deemed approved by Landlord, provided that in no event shall any such deemed approval act or operate to subordinate Landlord's fee title to the Property to the Permitted Mortgage. Master Tenant shall thereafter promptly submit to Landlord final documents in connection with such Permitted Mortgage upon their execution or receipt by Master Tenant, or upon the funding of the loan secured by the Permitted Mortgage, for review by Landlord for compliance with the provisions of this Section 15 and this Lease.

15.11 Landlord's Right to Cure Master Tenant's Defaults on Leasehold Mortgages. Master Tenant agrees that any Permitted Mortgage shall provide:

15.11.1 That the Permitted Mortgagee shall in writing by certified or registered mail (or recognized overnight courier service) give notice to Landlord of the occurrence of any event of default under said Permitted Mortgage; and

15.11.2 That Landlord shall be given at least 30 days' notice of default in debt service payments or any other obligation of Master Tenant under a Permitted Mortgage before such Permitted Mortgagee will initiate any mortgage foreclosure action or accelerate the indebtedness or exercise its power of sale. If any payments required to be made under the provisions of the Permitted Mortgage shall not be paid, or any other act or omission shall occur which constitutes a default under the terms of such Permitted Mortgage, Landlord may cure such default during any period that Master Tenant is in default thereunder, provided that Landlord shall comply with the provisions of Section 18 hereof calling for prior notice to Master Tenant except in cases of emergency where earlier action is required, notifying Master Tenant of Landlord's intention to cure such default on Master Tenant's behalf. Landlord shall not commence to cure such default if (a) Master Tenant shall have cured such default within said 30-day period, or (b) except for defaults in the payment of money, Master Tenant shall have commenced to cure such default and is diligently pursuing such cure in full compliance with the terms of the Permitted Mortgage, or (c) Master Tenant shall have obtained from the Permitted Mortgagee a written extension of

time in which to cure such default, together with a separate written extension of time granting Landlord reasonable additional time to cure said default if said default is not cured within said extended time, and executed copies thereof are delivered to Landlord. Any Permitted Mortgage shall further expressly provide that, in the event Master Tenant fails to cure any default thereunder, Landlord shall have a reasonable period of time (considering the nature of the default) to cure such default following the expiration of all periods (including any extensions of time and periods during which performance is waived) allowed for Master Tenant's cure of such default.

15.11.3 If Landlord shall elect to cure any default under a Permitted Mortgage, Master Tenant shall pay the costs reasonably incurred by Landlord in curing such default to Landlord, together with interest thereon at the "Reference Rate" of the Bank of America plus three percent and not to exceed the maximum rate for which the parties may lawfully contract, as Additional Rent. Master Tenant hereby authorizes Landlord, in Landlord's name, without any obligation or duty to do so, to do any act or thing required of or permitted to Master Tenant to prevent any default under said Permitted Mortgage or any acceleration thereof, or the taking of any portion of the security for the Permitted Mortgage by foreclosure or other action to enforce the collection of the indebtedness, and Master Tenant agrees to indemnify and hold Landlord harmless from any costs, damages, expenses or liabilities (including reasonable attorneys' fees) resulting from Landlord exercising its rights pursuant to this Section 15. Notwithstanding any provisions of this Lease to the contrary, if Landlord shall elect to cure any default under a Permitted Mortgage and such Permitted Mortgage is non-recourse to Master Tenant, Master Tenant shall not be obligated to reimburse Landlord for any costs incurred by Landlord, provided; however, any payments made by Landlord shall be payable to the extent Master Tenant is receiving rental payments under this Lease and such payments to Landlord shall be payable prior to any other payments.

15.12 Notice to Landlord. No Permitted Mortgagee shall have the rights or benefits mentioned in this Section 15 nor shall the provisions of this Section 15 be binding upon Landlord, unless and until the name and address of the Permitted Mortgagee shall have been delivered to Landlord, notwithstanding any other form of notice, actual or constructive.

15.13 Rights and Obligations of Permitted Mortgagees. If Master Tenant, or Master Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section 15, then, so long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

15.13.1 Landlord, upon serving upon Master Tenant any notice of default pursuant to the provisions of Section 18 hereof, or any other notice under the provisions of or with respect to this Lease, shall also serve a copy of such notice upon any Permitted Mortgagee at the address of such Permitted Mortgagee provided pursuant to Section 15.12 above, and no notice by Landlord to Master Tenant hereunder shall affect any rights of a Permitted Mortgagee unless and until thirty (30) days after a copy thereof has been so served to such Permitted Mortgagee. Notwithstanding any event of default by Master Tenant under this Lease, Landlord shall have no right to terminate this Lease unless Landlord shall have given the Permitted Mortgagee written notice of such default and Permitted Mortgagee shall have failed to remedy such default as provided below or acquire Master Tenant's estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof, as all set forth in, and within the time specified by this Section 15.13.

15.13.2 In case Master Tenant shall have failed to cure any default hereunder within the period provided for Master Tenant to cure such default, Landlord shall so notify any Permitted Mortgagee of such failure and any Permitted Mortgagee shall, within thirty (30) days of receipt of such notice have the right, but not the obligation, to remedy such default or cause the same to be remedied, and Landlord shall accept such performance by or at the instance of the Permitted Mortgagee as if the same had been made by Master Tenant; provided, however, that if the breach or default is with respect to the Master Tenant's Work, nothing contained in this Section or any other Section or provision of this Lease shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the improvements beyond the extent necessary to conserve or protect the improvements or construction

already made without first having expressly assumed the obligation to Landlord to complete, in the manner provided in this Lease, the improvements on the Premises or the part thereof to which the lien or title of such Permitted Mortgagee relates.

15.13.3 For the purposes of this Section 15 no event of default, other than an event of default due to a default in the payment of money, shall be deemed to exist under Section 18 hereof with respect to the performance of work required to be performed, or of acts to be done or of conditions to be remedied, if steps shall, in good faith, have been commenced by Master Tenant or a Permitted Mortgagee within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity as Section 18 hereof provides.

15.13.4 Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money (for which the Permitted Mortgagee shall have no more than thirty (30) days following receipt of written notice from Landlord to cure such monetary default), Landlord shall take no action to effect a termination of this Lease without first giving to any Permitted Mortgagee written notice thereof and a reasonable time thereafter which shall not be less than ninety (90) days within which to either (a) obtain possession of the mortgaged property (including possession by a receiver), or (b) institute, prosecute and complete foreclosure proceedings or otherwise diligently acquire Master Tenant's interest under this Lease. A Permitted Mortgagee, upon acquiring Master Tenant's interest under this Lease, shall be required promptly to cure all defaults then reasonably susceptible to being cured by such Permitted Mortgagee; provided, however, that: (1) such Permitted Mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured; (2) nothing herein contained shall preclude Landlord, subject to the provisions of this Section 15, from exercising any rights or remedies under this Lease with respect to any other default by Master Tenant (subject to Permitted Mortgagee's cure rights set forth in this Section 15), during the pendency of such foreclosure proceedings; and (3) such Permitted Mortgagee shall agree with Landlord, in writing, to comply during the period of such forbearance with such of the terms, conditions and covenants of this Lease as are reasonably susceptible to being complied with by such Permitted Mortgagee (however, consistent with the provisions of Section 15.13.10 below, the provisions of this clause (3) shall not obligate such Permitted Mortgagee to cure any defaults of the Master Tenant, or to expend any monies or to take any actions to comply with the terms, conditions or covenants of this Master Lease, prior to such Permitted Mortgagee acquiring Master Tenant's interest under this Lease). Any default by Master Tenant not reasonably susceptible to being cured by such Permitted Mortgagee, or the occurrence of any of the events specified in Section 18, shall be deemed waived by Landlord upon completion of such foreclosure proceedings or upon such acquisition of Master Tenant's interest in this Lease, except that any such events of default which are reasonably susceptible to being cured after such completion and acquisition shall then be cured with reasonable diligence. Such Permitted Mortgagee, or its designee or other purchaser in foreclosure proceedings, may become the legal owner of the leasehold estate of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. A Permitted Mortgagee or its designee or other party which becomes the legal owner of the leasehold estate of this Lease through foreclosure proceedings or by an assignment of this Lease in lieu of foreclosure shall be deemed by such acquisition to have assumed all of Master Tenant's rights and obligations under this Lease accruing during the period of such Permitted Mortgagee's or its designee's ownership of the leasehold estate of this Lease. If a Permitted Mortgagee is prohibited by any process or injunction, or any bankruptcy, insolvency or other judicial proceeding involving Master Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Permitted Mortgagee shall have fully cured any default in the monetary obligations of Master Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due, and provided that the Permitted Mortgagee shall diligently attempt to remove any such prohibition.

15.13.5 In the event of the termination of this Lease prior to the natural expiration of the then current Term due to default of Master Tenant or operation of law (except by eminent domain) as

provided in Section 18, including, without limitation, due to any rejection of this Lease in any bankruptcy, insolvency or other debtor relief proceeding, Landlord shall immediately serve upon the holder of the senior Permitted Mortgage written notice that the Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The senior Permitted Mortgagee or its nominee, purchaser or assignee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

(a) Upon the written request of said Permitted Mortgagee, within sixty (60) days after service of such notice that the Lease has been terminated, or within sixty (60) days after the expiration of this Lease if Master Tenant was unable to renew the Term hereof, Landlord shall enter into a new lease of the Property and improvements thereon with such holder, or its designee or assignee, as follows:

(i) Such new lease shall be the same priority as this Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and the use provisions for restaurant and food service purposes specified above. Such new lease shall require that the tenant perform any unfulfilled obligation of Master Tenant under this Lease which is reasonably susceptible to being performed by such tenant. Upon the execution of such new lease, the tenant named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Property, and the preparation, execution and delivery of such new lease. Upon the execution and delivery of the new lease, title to all leasehold improvements (including, without limitation, all of the Master Tenant's Work) as well as all Master Tenant's Property, shall automatically vest in the Permitted Mortgagee or its nominee as the new Master Tenant under this Lease until the expiration of the term or sooner termination of the new lease.

(ii) Effective upon the commencement of the term of any new lease executed pursuant to this Subsection 15.13.5, all subleases then in effect shall be assigned and transferred without recourse by Landlord to the tenant under such new lease, and all monies on deposit with Landlord which Master Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease, unless credited against expenses in accordance with Subsection 15.13.5(a)(i) above.

15.13.6 Any notice or other communication which Landlord shall desire or is required to give to or serve upon the holder of a Permitted Mortgage under this Lease shall be in writing and shall be served by certified mail, return receipt requested, addressed to such holder at the address provided for pursuant to Section 15.12 hereof, or at such other address as shall be designated by such holder in writing given to Landlord by certified mail, return receipt requested. Any notice or other communication which the holder of a Permitted Mortgage under this Lease shall desire or is required to give to or serve upon Landlord shall be deemed to have been duly given or served if (a) sent by certified mail, return receipt requested, addressed to Landlord at Landlord's address as set forth in Subsection 21.1 of this Lease or at such other addresses as shall be designated by Landlord by notice in writing given to such holder by certified mail, return receipt requested, and (b) sent by certified mail, return receipt requested, to the Landlord's other mortgages, if any.

15.13.7 Anything herein contained to the contrary notwithstanding, the provisions of this Section 15 shall inure only to the benefit of the holders of Permitted Mortgages. Neither a Permitted Mortgagee nor any other holder or owner of the indebtedness secured by a leasehold mortgage or otherwise shall be liable upon the covenants, agreements or obligations of Master Tenant contained in this Lease, unless and until such Permitted Mortgagee or that holder or owner acquires the interest of Master Tenant.

15.13.8 During such period of time that any Permitted Mortgage is in existence, Landlord shall not agree to any mutual termination or accept any surrender of this Lease (except upon the expiration of the term of this Lease, or upon the earlier termination of this Lease (x) in connection with a casualty or condemnation in accordance with the provisions of this Lease, or (y) by reason of a default by Master Tenant that is not cured or remedied within the applicable notice and cure period set forth in this Lease in accordance with the provisions of this Lease, in either case subject to the Permitted Mortgagee's rights under this Lease, including, without limitation, the provisions of this Section 15.13), nor shall Landlord consent to any amendment or modification of this Lease, without the prior consent of a Permitted Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed and shall be given within ten (10) business days of written request therefor.

15.13.9 Landlord shall mail or deliver to Permitted Mortgagee at the address of Permitted Mortgagee provided to Landlord a duplicate copy of all notices which Landlord may from time to time give to Master Tenant pursuant to this Lease.

15.13.10 Foreclosure of a Permitted Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power of sale contained in the Permitted Mortgage, or any conveyance of the leasehold estate created hereby from Master Tenant to Permitted Mortgagee by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, sale or conveyance, Landlord shall recognize the Permitted Mortgagee, or any other foreclosure sale purchaser, as Master Tenant hereunder and such party shall attorn to Landlord, be subject to the provisions regarding assignment set forth in Section 15.14 below and shall fully perform Master Tenant's obligations hereunder. The preceding notwithstanding, a Permitted Mortgagee shall have no liability for Master Tenant's obligations under this Lease unless and until it becomes the Master Tenant under this Lease by means of foreclosure or deed in lieu thereof or pursuant to any new lease obtained pursuant to the terms above, and thereafter the Permitted Mortgagee or its successor or assign or designee shall be liable under this Lease or such new lease only for the period of time that such Permitted Mortgagee or its successor, assign or designee remains tenant hereunder or thereunder. Nothing herein shall be construed to obligate any Permitted Mortgagee to remedy any default of Master Tenant, and any failure of a Permitted Mortgagee to complete any such cure after commencing the same shall not give rise to any liability of the Permitted Mortgagee to Landlord or Master Tenant.

15.14 Assignment by Mortgagee. If any Permitted Mortgagee shall acquire title to Master Tenant's interest in this Lease by foreclosure of a mortgage thereon, or by assignment in lieu of foreclosure or by an assignment from a designee or wholly-owned subsidiary corporation of such mortgagee, or under a new lease pursuant to this Section 15, such Permitted Mortgagee or its successor, assign or designee may assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Master Tenant's part to be performed and observed from and after the date of such assignment, provided that Landlord shall receive an executed counterpart copy of such assignment, together with the name and address of the assignee.

SECTION 16. DAMAGE TO PREMISES.

16.1 Landlord's Obligation to Repair. If subsequent to completion of Master Tenant's Work, a material part of the Premises provided by Landlord in Exhibits B and D, shall, by reason of fire, earthquake, the elements, acts of God or other unavoidable casualty, be destroyed or so damaged as to become unusable in whole or in part and the damage can, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, Landlord shall promptly and diligently repair the damage (subject to the limitations set forth in Section 20.2) and this Lease shall remain in full force and effect. If a material part of the Premises provided by Landlord in Exhibits B and D, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, this Lease may be terminated by Landlord by written

notice given to Master Tenant within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.

16.2 Election to Terminate. If subsequent to completion of Master Tenant's Improvements a material part of the Premises provided by Landlord in Exhibits B and D, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, and Landlord has not terminated this Lease pursuant to Subsection 16.1 above, then this Lease may be terminated by Master Tenant by written notice given to Landlord within sixty (60) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty. If Master Tenant does not make the foregoing election within the required period and Landlord has not terminated the Lease, then Landlord shall promptly and diligently repair the damage and this Lease shall remain in full force and effect (subject to the provisions of Subsection 16.3 below regarding completion of Landlord's repairs). If Landlord is required or elects to repair the Premises under the provisions of Subsection 16.1 and fails to complete such repair within 365 days after the casualty described in Subsection 16.1 above (or at least to complete such repair, within such 365 day period, to the extent that permits substantial resumption of Master Tenant's business (and the businesses of the Subtenants in existence as of the date of the damage or destruction) in the Premises, provided that Landlord thereafter continuously and diligently pursues any remaining required repairs to completion), then thereafter Master Tenant, at Master Tenant's option, may terminate this Lease by giving Landlord written notice of Master Tenant's election to do so at any time prior to the substantial completion of such repair. In such event this Lease shall terminate as of the date of Master Tenant's notice.

16.3 Abatement of Rent. If a material part of the Premises provided by Landlord in Exhibits B and D, is damaged, and Landlord is required or elects to repair them pursuant to the provisions of Subsection 16.1, the Minimum Monthly Rent and Percentage Rent payable pursuant to Section 4 shall be abated from the date of the casualty until such Premises is sufficiently restored to allow Master Tenant to occupy the Premises and operate within the same manner as existed immediately prior to such damage or destruction. If, however, Master Tenant is able to occupy and operate its business within a portion of the Premises, Minimum Monthly Rent or Percentage Rent shall be abated only for the portion of the Premises that Master Tenant cannot occupy and operate within in the same manner as existed immediately prior to such damage or destruction. Such partial abatement shall be calculated on a square foot basis. The abatement of Minimum Monthly Rent and Percentage Rent (and Master Tenant's right to terminate this Lease as provided in Subsection 16.2 above, shall be Master Tenant's sole remedies due to the occurrence of the casualty. Landlord shall not be liable to Master Tenant or any other person or entity for any direct, indirect or consequential damage due to or arising from the casualty.

16.4 Application of Insurance Proceeds. If any part of the Master Tenant's Work or any other leasehold improvements constructed by or on behalf of Master Tenant is damaged or destroyed, and at the time of such damage or destruction, the leasehold interest of the Master Tenant hereunder, or applicable portion thereof, was encumbered by a Permitted Mortgage, then the proceeds of insurance allocable to such Master Tenant's Work or other leasehold improvements constructed by or on behalf of Master Tenant first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage unless the applicable Permitted Mortgagee allows such insurance proceeds to be used to restore such Master Tenant's Work or other leasehold improvements.

SECTION 17. CONDEMNATION.

17.1 Total Condemnation. If, during the term of this Lease, the whole of the Premises shall be taken pursuant to any condemnation proceeding or a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable for the purposes for which Master Tenant was using the Premises prior to the taking, then this Lease shall terminate as of the date that actual physical possession of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations arising under this Lease.

17.2 Partial Condemnation. If, during the term of this Lease, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for

which Master Tenant was using the Premises prior to the taking in the sole discretion of Master Tenant, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations under this Lease with respect to such portion of the Premises taken.

17.3 Condemnation Award. If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to the value of Master Tenant's leasehold interest of the unexpired term of this Lease, any Master Tenant's Property, Subtenant's Personal Property and/or any unsalvageable trade fixtures or furnishings owned by Master Tenant, any amounts specifically awarded or agreed upon by the Master Tenant and the condemning authority for the unamortized portion of Master Tenant's leasehold improvements and each Subtenant's leasehold improvements shall be the property of Master Tenant (except that the portion of the condemnation award allocable to each Subtenant's Personal Property and each Subtenant's leasehold improvements shall be awarded to Master Tenant or the applicable Subtenant(s), as their interests may appear, or as provided in the applicable Sublease) ("Master Tenant's Award"). The foregoing notwithstanding, if the whole or a portion of the Premises shall be taken pursuant to any condemnation proceeding and at that time the leasehold interest of the Master Tenant, or applicable portion thereof, was encumbered by a Permitted Mortgage, then Master Tenant's Award first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage. Master Tenant shall require in any sublease of the Premises, that any Subtenant waive any and all rights against any public entity and/or the Landlord for any portion of the condemnation award relating to the Subtenant(s) value of the leasehold interest of any unexpired term.

17.4 Effect of Termination. In the event this Lease is canceled or terminated pursuant to any of the provisions of this Section 17 all rentals and other charges payable on the part of Master Tenant to Landlord hereunder shall be paid either as of the date upon which actual physical possession shall be taken by the condemner, or as of the date upon which Master Tenant ceases doing business in, upon or from the Premises, whichever first occurs; and the parties shall thereupon be released from all further liability hereunder, except for any liability arising prior to the date upon which actual physical possession shall be taken by the condemner.

SECTION 18. DEFAULT, REMEDIES, AND TERMINATION.

18.1 Master Tenant's Default. If: (i) Master Tenant shall fail to comply with any of the provisions herein providing for the construction of the Master Tenant's Work, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity; or (ii) Master Tenant shall fail to pay any rent or other monies due under this Lease after the same are due, and such failure shall continue for ten (10) days after receipt of written notice thereof to Master Tenant, or (iii) Master Tenant shall fail to perform any other term, covenant, or condition herein contained, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant, or (iv) the Master Tenant's interest herein or any part thereof be assigned or transferred, either voluntarily or by operation of law, except pursuant to a Permitted Transfer or Section 14.2 or Section 15, whether by judgment, execution, death or any other means, or (v) the Master Tenant shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against the Master Tenant and such petition remains undischarged for a period of 90 days; or if any receiver of the business or of the property or assets of Master Tenant shall be appointed by any court (except a receiver appointed at the instance or request of the Landlord) and Master Tenant fails to obtain dissolution of the receiver within 90 days after appointment of the receiver; or (vi) Master Tenant shall

make a general or any assignment for the benefit of its creditors; or (vii) Master Tenant shall abandon (other than a temporary cessation of operations in connection with renovations of the Premises to which Master Tenant has obtained Landlord's approval, if applicable, as required by the terms hereof) the Premises; or (viii) Master Tenant has made any written or oral representation to the Landlord in connection with this Lease that Master Tenant knows was false in any material respect as of the date made or submitted, Master Tenant knew or should have known that the Landlord would rely on such false representation, and the Landlord relies on such false representation to its detriment in any material respect, then in any of such events Landlord shall have the following options, subject to the provisions of Section 15:

18.1.1 To collect, by suit or otherwise, each installment of rent or other sum as it becomes due hereunder, or to enforce by suit or otherwise, any other term or provision hereof on the part of Master Tenant required to be kept or performed; and/or

18.1.2 To reenter the Premises, remove all persons therefrom, take possession of the Premises and of all equipment, fixtures and personal property thereon or therein, and either with or without terminating this Lease to make commercially reasonable efforts to relet the Premises or any portion thereof (but nothing contained herein shall be construed as obligating Landlord to relet the whole or any portion of the Premises) for such term or terms (which may be for a term extending beyond the term of the Lease) and at such reasonable rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. In addition to the foregoing, Landlord shall have the right, but not the obligation to, make such alterations and repairs to the Premises, or to divide or subdivide the Premises, as may be required or occasioned by any such reletting. Provided, however, Landlord's right to make alterations, repairs or improvements to the Premises after Master Tenant's default shall be limited to those alterations, repairs, and/or improvements necessary for the purpose of reletting the Premises. In the event Landlord relets the Premises, or any portion thereof, it shall execute any such lease in its own name, but the Master Tenant in such lease of reletting shall be under no obligation whatsoever to see to the application by Landlord of any rent collected by Landlord for the account of Master Tenant, nor shall Master Tenant hereunder have any right or authority whatsoever to collect any rent as the Master Tenant in the lease of reletting. Upon any such reletting, the rents received on any such reletting shall be applied first to the expenses of reletting and collecting, including necessary renovations and alterations of the Premises and reasonable attorneys' fees and any real estate commissions actually paid, and thereafter toward payment of all sums due or to become due to Landlord hereunder; if a sufficient sum shall not be thus realized to pay such rent and other charges, Master Tenant shall pay to Landlord monthly any deficiency, and Landlord may sue therefor as each such deficiency shall arise, but if the Premises are relet for an amount in excess of that necessary to pay such rent and other charges, Master Tenant shall not be entitled to any such excess; and/or

18.1.3 To terminate this Lease, in which event Master Tenant agrees immediately to surrender possession of the Premises and to pay to the Landlord as the amount of damage sustained by Landlord by reason of Master Tenant's breach of this Lease, the following:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Master Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Master Tenant proves could be reasonably avoided.

As used in Sections 18.1.3(a) and 18.1.3(a) above, the term "worth at the time of award" is computed by allowing interest from the date such amount becomes due and payable at one percent (1%) per annum above the rate which the Bank of America announces publicly at its San

Francisco or Los Angeles executive offices as its "Reference Rate" for unsecured commercial loans.

As used in Section 18.1.3(b) above, the term "worth at the time of the award" is computed by discounting the amount determined pursuant to Section 18.1.3(b) at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

18.1.4 Pursuant to its rights of re-entry, Landlord may remove all persons from the Premises (but not any Subtenants to which Landlord is obligated to attorn) using such force as may be reasonably necessary therefor and may, but shall not be obligated to, remove all property therefrom, including, but not limited to, Master Tenant's property (but not any Subtenant's Personal Property), and may, but shall not be obligated to, enforce any rights Landlord may have against said property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of Master Tenant or the owners or owner thereof, or to treat all or portions of said property as having no value and to dispose of said property accordingly. Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Master Tenant to pay any rent or other sum of money thereafter to accrue hereunder, or Master Tenant's liability for damages under any of the provisions hereof, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall have notified Master Tenant in writing that Landlord has so elected to terminate this Lease. Master Tenant covenants and agrees that the service by Landlord of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the service of such notice, and Landlord's election be evidenced by written notice thereof to Master Tenant) be deemed to be a termination of this Lease, or the termination of any liability of Master Tenant hereunder to Landlord.

18.2 Landlord's Default. If Landlord fails to comply with or defaults in the performance of any provision of the Lease, Master Tenant shall have the right (but not the obligation) in addition to any and all other rights and remedies available to Master Tenant at law or in equity, to cure such nonconformance or default on behalf of Landlord, upon 30 days prior written notice to Landlord and to any mortgagee of Landlord, if the name and address of such mortgagee has been previously provided to Master Tenant by Landlord, except in an emergency, Master Tenant may cure such nonconformance or default without such written notice so long as Master Tenant makes reasonable efforts to notify Landlord of such emergency. Upon receipt from Master Tenant of notice of such cure and demand for payment, Landlord shall repay any expenditure made by Master Tenant within 30 days of written request therefor. If Landlord fails to make such repayment within such 30 day period, then, anything herein to the contrary notwithstanding, Master Tenant may offset the amount owed it by Landlord pursuant to this Section 18.2 against the Minimum Monthly Rent and/or Percentage Rent payable by Master Tenant to Landlord hereunder until fully offset.

SECTION 19. TOWN REQUIREMENTS.

19.1 Non-discrimination. Master Tenant shall not restrict the rental, use, occupancy, tenure, or enjoyment of the Premises or any portion thereof, on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin of any person. During the term hereof, any contracts or subleases relating to the construction, use or occupancy of the Premises or any portion thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

"There shall be no discrimination against or segregation of, any person, or group of persons, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, or vendees of the land."

19.2 Enforcement of Town Requirements. In enforcing Section 19.1, Landlord may require Master Tenant to terminate the sublease of any Subtenant that fails to comply with that Section. Failure of Master Tenant to commence actions to terminate the subleases of noncomplying Subtenants within 90 days of notice from Landlord shall constitute an event of default by the Master Tenant.

SECTION 20. COMPLIANCE WITH LAW.

20.1 General. During the Lease term, Master Tenant, at its sole cost and expense, shall comply promptly with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances ("Laws") pertaining to Master Tenant's use of the Premises or the improvements thereon, including those which require the making of any structural, unforeseen or extraordinary changes to the Premises, whether or not any such Laws which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the governmental body enacting the same. In connection with the foregoing, Master Tenant acknowledges that Landlord, acting not as Landlord but in its governmental capacity, has certain governmental regulatory authority over the Premises and agrees that "Law" as defined herein includes any legal requirement imposed by Landlord acting not as Landlord but in its capacity as a governmental regulatory body.

20.2 Regulations Requiring Modifications to Premises. If, under its regulatory authority, Town adopts new laws, rules or ordinances that are generally applicable to commercial buildings and which require upgrades, changes, or modifications to the Premises in order to comply with such Town-adopted laws, rules, or regulations, then the cost or expense of compliance shall be as follows:

(a) Town shall bear the cost or expense of compliance to the extent that such laws, rules or regulations require modifications to the structure or shell of the Premises in the condition delivered to Master Tenant in Exhibit D.

(b) During the first ten years following the Rent Commencement Date, Master Tenant shall bear the cost or expense of compliance to the extent that such new laws, rules, or regulations require modifications to Master Tenant's Work and any subsequent alterations thereto. After the tenth year following the Rent Commencement Date, Landlord and Master Tenant shall split equally all such costs.

SECTION 21. GENERAL PROVISIONS.

21.1 Notices, Demands, and Communications Between the Parties. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, by email, by overnight courier service, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

Town: Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attention: Town Manager
Email: manager@losgatosca.gov

With copy to: Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attention: City Attorney
Email: attorney@losgatosca.gov

To Tenant:

Forbes Mill, LLC

223 West Main Street Suite B
Los Gatos CA 95030
Attn: Donald Imwalle, Jr.
Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against Town, its officers or employees shall also be served in the manner specified above to the following address:

Town of Los Gatos
City Attorney's Office
110 E. Main Street
Los Gatos, CA 95030

Notice shall be deemed effective on the date of personal delivery by hand or the date of receipt of facsimile transmission (with verification of receipt) or email, or if sent by overnight courier service, then one business day after delivery of such notice to such courier service or, if mailed, three days after deposit in the mail.

21.2 Warranty Against Payment of Consideration for Agreement. Master Tenant warrants that it has not paid or given, and will not pay or give, any third party (other than Colliers International who introduced Landlord and Master Tenant to one another) any money or other consideration for obtaining this Agreement.

21.3 Non-liability of Town Officials and Employees. No member, official, or employee of the Town shall be personally liable to Master Tenant or any successor in interest of Master Tenant, in the event of any default or breach by the Town or for any amount which may become due to Master Tenant or to its successor, or on any obligations under the terms of this Agreement.

21.4 Enforced Delay; Extension of Time of Performance. The specific provisions of this Agreement to the contrary notwithstanding, except for payment of any monetary payments required under this Agreement, neither party shall be in default under this Agreement if an obligation to perform is delayed due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; inability to obtain or delay in obtaining materials due to lack of supply; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or enjoining to the performance of the terms of this Agreement. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten days of the commencement of the cause. The foregoing notwithstanding, the total time period excused under this Section shall not exceed two years.

21.5 Approvals and Town Manager's Authority. Approvals required of the Town (except for approvals expressly identified herein as being in the sole discretion of the Town) or Master Tenant shall not be unreasonably withheld, and approval or disapproval shall be given within a reasonable time. The Town Manager or his/her designee shall have the authority to act on behalf of the Town with regard to any and all actions required of the Town under this Lease. Such actions include but are not limited to the issuance of approvals and disapprovals and execution of all documents, including minor amendments to this Lease.

21.6 Holding Over. If Master Tenant shall hold over the term of this Lease, without Landlord's prior written consent, such holding over shall be construed as a tenancy from month to month, on the same terms and conditions as this Lease, and at 150% of the Minimum Monthly Rent or the monthly Percentage Rent, whichever is higher, in effect during the final full calendar of the term of this Lease.

21.7 Time of the Essence. Time is of the essence hereof, and waiver by the Landlord or Master Tenant of a breach of any term, covenant or condition herein contained, whether express or implied, shall not constitute a waiver of any subsequent breach thereof, or a breach of any other term, covenant, or condition herein contained, and acceptance of rent hereunder shall not be a waiver of any breach, except a breach of covenant to pay the rent so accepted. No acceptance by Landlord of any partial payment of any sum due hereunder shall be deemed an accord and satisfaction or otherwise bar Landlord from recovering the *full* amount due, even if such payment is designated "payment in full," bears any restrictive endorsement, or is otherwise conditionally tendered. The times for Master Tenant's performance of any obligations set forth in this Lease and the Exhibits may be extended by the Landlord's Town Manager, if he finds, at his sole discretion, that Master Tenant has been delayed for reasons not in Master Tenant's control. Any such extension shall be in writing.

21.8 Successors and Assigns. Subject to the provisions of Section 14 hereof, this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

21.9 Landlord's Access. Landlord and its agents shall have the right, subject to the rights of the Subtenants then in effect, to enter the Premises upon 72 hours prior written notice for the purpose of inspecting the same, and making such alterations, repairs, improvements or additions to the Premises as are deemed necessary or desirable consistent with this Lease. Notwithstanding the foregoing, in the event of an emergency requiring Landlord's entry into the Premises, Landlord may give Master Tenant shorter notice in any manner that is practicable under the circumstances. When entering or performing any repair or other work in the Premises, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Master Tenant's personnel immediately upon entering the Premises, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with Master Tenant's (or any of its Subtenants') use, business or operations on the Premises or obstruct the visibility of or access to the Premises.

21.10 Legal Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Master Tenant. Landlord and Master Tenant expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Master Tenant other than the relationship of Landlord and Master Tenant.

21.11 Consents. Whenever the right of approval or consent is given to a party pursuant to this Lease, the party shall not unreasonably withhold, condition or delay its consent unless this Lease expressly provides otherwise. All approvals and reviews required of Landlord under this Lease may be undertaken and/or given by Landlord's Town Manager.

21.12 General. The terms "Landlord" and "Master Tenant" herein or any pronouns used in place thereof shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof. The headings of Sections herein are inserted only for convenience and reference and shall in no way define or limit the scope or intent of any provisions of this Lease. This Lease shall be construed under the laws of the State of California, and venue shall be in in the applicable courts located in Santa Clara County, California.

21.13 Quiet Enjoyment. Upon payment of the rent as aforesaid and upon the observance and performance by Master Tenant of all of the terms and provisions to be observed by Master Tenant under

this Lease, Master Tenant shall peaceably hold and enjoy the Premises for the term hereof without hindrance or interruption by Landlord or any other person, except as herein expressly provided.

21.14 Regulatory Authority. Master Tenant acknowledges that, at any time when the Town is the Landlord hereunder, Landlord shall have certain governmental regulatory authority over the Premises. Master Tenant agrees and expressly acknowledges that any approval or consent required or permitted hereunder by the Town, acting in its capacity as Landlord under this Lease, (1) is distinct from any approval or consent of such entity acting in the capacity of governmental regulatory authority, whether or not related to the same matter, and (2) shall not compromise, diminish or in any way limit the authority of such entity to give, deny or condition its approval or consent when acting as a governmental regulatory authority.

21.15 Costs and Expenses. Whenever this Lease provides that either party shall be entitled to recover fees, costs or expenses from the other, such fees, costs or expenses shall be reasonable in nature.

21.16 Entire Agreement. This Lease and the exhibits attached hereto (which are incorporated herein by this reference) represent the entire agreement between the parties concerning the subject matter hereof and supersede any prior written or verbal agreements or understandings with respect thereto.

21.17 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

21.18 Joint and Several. If Master Tenant is more than one party, then the parties and entities who comprise Master Tenant under this Agreement from time to time, are jointly and severally liable to the Town for the performance of all of the promises and obligations of Master Tenant under this Agreement. In the event of any default by Master Tenant hereunder, the Town may proceed against any one or more of the aforementioned parties who comprise Master Tenant without waiving its rights to proceed against any of the others.

21.19 Memorandum of Agreement. The parties hereto shall execute, acknowledge and record the Memorandum of Agreement, in the form attached hereto as Exhibit F, within ten days after the Rent Commencement Date.

21.20 CASp Inspection. Pursuant to California Civil Code Section 1938, Landlord hereby discloses, and Tenant hereby acknowledges, that the Premises has not been inspected by a Certified Access Specialist ("CASp"). California Civil Code Section 1938 also requires that this Lease contain the following statement:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs to correct violations of the construction related accessibility standards within the premises."

In accordance with the foregoing, Master Tenant, upon at least thirty (30) days' prior written notice to Landlord, shall have the right to require a CASp inspection of the Premises. If Master Tenant requires a CASp inspection of the Premises, then: (i) Landlord and Tenant shall mutually agree on the

arrangements for the time and manner of the CASp inspection during such thirty (30) day period; (ii) Master Tenant shall be solely responsible to pay the cost of the CASp inspection as and when required by the CASp. It is understood by the parties that Landlord shall not be required to perform, or cause to be performed, any and all repairs needed to correct violations of the construction related accessibility standards within or relating to the Premises and Master Tenant can terminate this lease if it is determined, by Master Tenant that any repairs to correct violations would be too costly. .

21.21 First Right of Refusal. If Landlord receives from a third party a bona fide offer to purchase the Premises, before Landlord may accept such an offer, Landlord must first give written notice to Master Tenant of said offer. Master Tenant shall have thirty (30) days from the date of receipt of said offer, to provide Landlord with written acceptance of the offer, upon the same terms and conditions as set forth therein (but in addition thereto, such sale shall include all rights of Landlord in and to this Lease). If Master Tenant accepts said offer, closing shall take place within sixty (60) days from the date of acceptance. Master Tenant may elect to assign Master Tenant's rights to purchase the Premises to the parent of or a subsidiary of the Master Tenant, or other entity wholly owned by Master Tenant or its Managing Member. If Master Tenant fails to accept said offer within the thirty (30) days provided herein, Landlord may proceed to sell to said third party in accordance with the terms of the offer. If Landlord has not consummated a sale within one hundred eighty (180) days after the expiration of Master Tenant's option rights hereunder, the restrictions and options herein provided shall be restored and shall continue in full force and effect, and so long as these restrictions and options remain in effect the Landlord shall not thereafter sell or transfer the Premises without first giving Master Tenant notice as herein provided and otherwise complying with the foregoing provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD:

THE TOWN OF LOS GATOS

By: _____
Print Name: _____
Officer Title: _____

Approved as to form:

Attest:

Town Attorney

Town Clerk

MASTER TENANT:

Forbes Mill, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

Exhibit A

Legal Description of Premises

Exhibit A

Exhibit B

Site Plan of Premises

Exhibit B

Exhibit C

Form of Notice of Lease Term Dates

[On Town Letterhead]

[Date]

Forbes Mill, LLC
223 West Main Street Suite B
Los Gatos, CA 95030
Attn: Donald Imwalle, Jr.
Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com
Re: Master Lease – 75 Church Street, Los Gatos, CA 95030

Dear Mr. Imwalle:

In accordance with that certain Master Lease dated _____, 2020, by and between the Town of Los Gatos and Forbes Mill, LLC for the above referenced property, this letter is to confirm that the Rent Commencement Date as defined in Section 1.11 of the Master Lease is [insert date]. Please countersign this letter in the space below to acknowledge your agreement.

Please don't hesitate to contact me should you have any questions.

Sincerely yours,

_____, Town Manager

Acknowledged and Agreed this _____ day of _____, 202____,

on behalf of

Forbes Mill, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

Exhibit D

Condition of Premises Upon Delivery

[TO BE INSERTED]

Exhibit D-1

Exhibit E

Insurance Requirements for Master Tenant and Subtenants

Master Tenant is required to procure and provide proof of the insurance coverage required by Master Tenant as outlined in this Exhibit in the form of certificates and endorsements. Master Tenant shall obtain and maintain insurance against claims which may arise from or in connection with the activities of Master Tenant and its Subtenants, including agents, invitees, employees, and contractors of Master Tenant and its Subtenants, and must remain in full force and effect at all times during the period covered by the Lease Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Master Tenant fails to provide any of the required coverage in full compliance with the requirements set forth herein, Town may, at its sole discretion, terminate the Lease for default. Master Tenant further understands that the Town reserves the right to reasonably modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Master Tenant, at any time as deemed necessary to protect the interests of the Town.

(A) **Insurance Types and Limits.** The following insurance types and limits are required unless otherwise specified in the Lease Agreement:

- (1) **Commercial General Liability Insurance ("CGL"):** Master Tenant shall maintain CGL and shall include coverage for liability arising from Master Tenant and its Subtenants, including invitees, employees, agents, or contractors of Master Tenant and its Subtenants, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
 - i. **Liquor Liability:** Master Tenant shall maintain Liquor Liability, either under its CGL policy or as a separate policy, providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) each claim.
- (2) **Workers' Compensation Insurance and Employer's Liability:** Master Tenant shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of One Million Dollars (\$1,000,000.00) for any one accident or occurrence. If Master Tenant is self-insured, Master Tenant must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (3) **Automobile Liability:** Master Tenant shall maintain Automobile Liability covering all owned, non-owned and hired automobiles, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
- (4) **Property:** Master Tenant shall maintain All Risk Property coverage for the appropriate limit to cover all personal property of Master Tenant, in, on, or about the Premises, covering the full replacement cost of such personal property to include furniture, installed fixtures, improvements, equipment, inventory and any other personal property of the Master Tenant. Master Tenant, and not any of the Subtenants, also shall maintain All Risk Property coverage for the full replacement cost of the Master Tenant's Work.

- i. **Business Interruption:** Master Tenant shall maintain adequate protection against business interruption and loss of income, either as part of a comprehensive Business Owner's Policy or under its Property Insurance.

(B) **Required Endorsements.** Master Tenant shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the Town of Los Gatos and the Town's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

- a. "Additionally Insured" - The Town of Los Gatos, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;
- c. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subtenants.** Master Tenant must ensure that each Subtenant is required to maintain the equal or greater insurance coverages required in this Exhibit, including those requirements related to the additional insureds and waiver of subrogation. However, Subtenants which do not engage in the sale and/or serving of alcohol in, on, or about the Premises, are not required to maintain Liquor Liability. Also, Subtenants shall not be obligated to insure the Master Tenant's Work.

(D) **Qualification of Insurers.** All insurance required pursuant to this Lease Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A-" or better and a financial size rating of "VII" or better.

(E) **Certificates.** Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Master Tenant as outlined herein, whether new or modified, promptly upon receipt. Further, upon request by the Town, Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Subtenants as outlined herein, whether new or modified. No policy subject to the Master Tenant's Lease with the Town shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to Town, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to Town. Certificates, including renewal certificates, may be mailed electronically to _____ or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

Town of Los Gatos
Attn: Risk Management
110 E. Main Street
Los Gatos, CA 95030

Exhibit F

Memorandum of Lease Agreement

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95037
Attn: Town Manager

THIS DOCUMENT IS EXEMPT FROM
RECORDING FEES PURSUANT TO CALIFORNIA
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement (this "**Memorandum**") is dated as of _____, 202__, and is between the Town of Los Gatos, a California municipal corporation ("**Landlord**"), and Forbes Mill, LLC, a California limited liability company ("**Master Tenant**").

Recitals

A. Landlord and Master Tenant entered into that certain Lease Agreement, effective _____, 2020 ("**Lease**"), pursuant to which Landlord leased to Master Tenant and Master Tenant leased from Landlord the space located on the real property described in the attached Exhibit A (the "**Premises**").

B. Landlord and Master Tenant desire to execute this Memorandum to provide constructive notice of Master Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Agreement

1. Term. Landlord leases the Premises to Master Tenant for an initial term of thirty-four years and eleven months (34 years 11 months) commencing on the Commencement Date of _____, 202__, and expiring on _____, 205__.

2. Lease Terms. The lease of the Premises to Master Tenant is pursuant to the Lease, which is incorporated in this Memorandum by reference.

3. Assignment. Except as otherwise expressly provided in the Lease, Master Tenant's rights and obligations under the Lease may not be assigned without Landlord's prior written consent, which consent may be granted or withheld by Landlord in its sole and exclusive discretion, and any assignment without this consent will be void.

4. Successors and Assigns. This Memorandum and the Lease are binding and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease on assignment.

5. Governing Law. This Memorandum and the Lease are governed by California law.

Executed as of the date first above written.

LANDLORD:

Town of Los Gatos,
a California municipal corporation

By: _____
Print Name: _____
Title: _____

MASTER TENANT:

Forbes Mill, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____ ss.

On _____, before me, _____, Notary Public, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature) (Seal)

EXHIBIT A

Legal Description of the Premises

[Need legal description of Premises]

Exhibit A



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 7

DATE: July 14, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution Establishing the FY 2020/21 Gann Appropriations Limit for the Town of Los Gatos

RECOMMENDATION:

Adopt a resolution establishing the FY 2020/21 Gann appropriations limit for the Town of Los Gatos.

BACKGROUND:

On November 6, 1979, California voters approved Proposition 4, commonly known as the Gann Spending Limitation Initiative, establishing Article XIII B of the California State Constitution. This Proposition, which became effective in fiscal year (FY) 1980/81, mandated an appropriations (spending) limit on the amount of tax proceeds that the State and most local government jurisdictions may appropriate within a fiscal year. Charges for services, fees, grants, loans, donations, and other non-tax proceeds are excluded from the spending limitation. Exemptions are also made for voter-approved debt prior to January 1, 1979 and the cost of court-related or Federal government mandates.

The Initiative was later modified by two propositions: Proposition 98 in 1988 and Proposition 111 in 1990. Proposition 98 established the return of tax revenues exceeding appropriation limit levels to the State or citizens through a process of refunds, rebates, or other means. Proposition 111 allowed more flexibility in the appropriation calculation factors.

PREPARED BY: Stephen Conway
Finance Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

SUBJECT: Adopt a Resolution Establishing the FY 2020/21 Gann Appropriations Limit for the Town of Los Gatos

DATE: July 14, 2020

DISCUSSION:

Attached for Council consideration is a resolution establishing an appropriations limit for FY 2020/21. The appropriations limit is based on population and per capita income data provided by the State of California Finance Department. In alignment with State guidelines, the appropriation limit for FY 2020/21 was calculated using inflation and population factors comprised of the change in County or Town population (whichever is higher) and the change in California per capita personal income.

In addition to the annual inflation and population adjustments, the Appropriations Limit must be adjusted in the event that the financial responsibility for providing services is transferred in whole or in part from one entity of government to another. Whenever financial responsibility for all or some part of a service is transferred between government agencies, the agencies must increase or decrease their limits "by such reasonable amount as the said entities shall mutually agree...." The amounts adjusted should be the same for the two agencies.

The Town recently signed an annexation agreement with the County of Santa Clara reflecting the annexation of multiple county pockets in 2019 and both parties are in a process of determining the mutually agreed amount for Gann Limit calculation purposes. Please note that the Town of Los Gatos FY 2020/21 Appropriation Limit will increase with the adjustment. Staff will present the updated calculation to Town Council as soon as the adjustment amount is available.

Current calculation of the FY 2020/21 Gann Appropriations Limit is as follows:

FY 2020/21 Calculation						
Town Population Factor		Per Capita Income Factor		2019/20 Appropriation Limit		2020/21 Appropriation Limit
1.0234	X	1.0373	=	1.061573	X	\$ 43,050,108 = \$ 45,700,824

The appropriations limit is the total amount of tax money that can be appropriated by the Town in FY 2020/21. The proposed FY 2020/21 budget anticipates \$31,407,235 in taxes, which is \$14,293,589 less than the appropriation limit of \$45,700,824.

COORDINATION:

The Gann Appropriation Limit report was prepared by the Finance Department.

PAGE 3 OF 3

SUBJECT: Adopt a Resolution Establishing the FY 2020/21 Gann Appropriations Limit for
the Town of Los Gatos

DATE: July 14, 2020

FISCAL IMPACT:

There is not direct identifiable fiscal impact from this action.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Resolution establishing the Gann Appropriation Limit for FY 2020/21

RESOLUTION 2020-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
ESTABLISHING THE FY 2020/21 APPROPRIATIONS LIMIT
FOR THE TOWN OF LOS GATOS**

WHEREAS, Article XIII B of the California Constitution (Limitation of Government Appropriations) was passed by the California electorate on November 6, 1979, and became effective on July 1, 1980; and

WHEREAS, Chapter 1205, Statute of 1980, Section 7900 of the California Government Code formally implements methods for governmental entities to establish and define annual appropriations limits; and

WHEREAS, the growth factors used to calculate the Annual Appropriations Limit are County or Town population change and the increase in the California per capita income;

WHEREAS, in addition to the annual inflation and population adjustments, state law requires the Appropriations Limit to be adjusted in the event that the financial responsibility for providing services is transferred in whole or in part from one entity of government to another; and

WHEREAS, the Town is in the process to determine such a mutually agreed amount with the County of Santa Clara regarding the Town's annexation of unincorporated islands in 2019;

WHEREAS, the Town is calculating its Annual Appropriations Limit for FY 2020/21 based on the best available data as of this date and will present to the Town Council an updated FY 20/21 calculation and resolution after concluding the process with the County of Santa Clara; and

THEREFORE, BE IT RESOLVED: that the Annual Appropriations Limit for the Town of Los Gatos for FY 2020/21 is \$45,700,824 as reflected in Exhibit A.

ATTACHMENT 1

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 4th day of August 2020 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

APPROPRIATION LIMIT FACTORS

For YE June 30	Beginning Appropriation Limit	County Population Factor	Town Population Factor	Per Capita Income Factor	Ending Appropriation Limit	% Limit Increase
2010	28,426,367	1.0156	1.0108	1.0062	29,048,811	2.19%
2011	29,048,811	1.0126	1.0101	0.9746	28,667,689	-1.31%
2012	28,667,689	1.0089	1.0096	1.0251	29,669,366	3.49%
2013	29,669,366	1.0124	1.0081	1.0377	31,169,671	5.06%
2014	31,169,671	1.0157	1.0147	1.0512	33,279,977	6.77%
2015	33,279,977	1.0150	1.0102	0.9977	33,701,485	1.27%
2016	33,701,485	1.0113	1.0020	1.0382	35,384,256	4.99%
2017	35,384,256	1.0126	1.0070	1.0537	37,754,174	6.70%
2018	37,754,174	1.0081	1.0040	1.0369	39,464,396	4.53%
2019	39,464,396	1.0099	1.0050	1.0367	41,317,775	4.70%
2020	41,317,775	1.0033	0.9998	1.0385	43,050,108	4.19%
2021	43,050,108	1.0037	1.0234	1.0373	45,700,824	6.16%

FY 2020/21 Calculation

Town Population Factor	Per Capita Income Factor	2019/20 Appropriation Limit	2020/21 Appropriation Limit					
1.0234	X	1.0373	=	1.061573	X	\$ 43,050,108	=	\$ 45,700,824

Percentage of Appropriation

2020/21 Tax Revenues	2020/21 Appropriation Limit	Percentage of Limit
30,447,571	/ \$ 45,700,824	= 67%

EXHIBIT A



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 8

DATE: July 29, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Vehicle Sales, Town Wide. Town Code Amendment Application A-20-003. Applicant: Town of Los Gatos.

RECOMMENDATION:

Adopt amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding vehicle sales (Attachment 1).

BACKGROUND:

On June 6, 2020, the Town Council considered and voted to introduce an Ordinance amending Chapter 29 of the Town Code regarding vehicle sales. Adoption of the attached Ordinance (Attachment 1) would finalize that decision.

Attachment:

1. Draft Ordinance

PREPARED BY: SEAN MULLIN, AICP
Associate Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

DRAFT ORDINANCE 2020-___

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING CHAPTER 29 (ZONING REGULATIONS) OF THE TOWN CODE
REGARDING VEHICLE SALES**

WHEREAS, Chapter 29 (Zoning Ordinance) of the Town Code of the Town of Los Gatos regulates vehicle sales in the C-2, LM, and CH zones by requiring the approval of a Conditional Use Permit; and

WHEREAS, Section 29.20.185 of the Town Code allows used vehicle sales only when incidental to new vehicle sales in the C-2, LM, and CH zones with an approved Conditional Use Permit; and

WHEREAS, the Town was approached by a used vehicle sales business seeking to locate in the C-2 zone; and

WHEREAS, given the unique characteristics of the request, the issue was forwarded to the Town Council Policy Committee to seek input and direction on the appropriateness of standalone used vehicle sales; and

WHEREAS, on January 28, 2020, the Town Council Policy Committee considered the matter and recommended that standalone used vehicle sales be allowed with an approved Conditional Use Permit in the C-2, LM, and CH zones; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on May 27, 2020; and

WHEREAS, on May 27, 2020, the Planning Commission reviewed and commented on the proposed amendments regarding vehicle sales in the C-2, LM, and CH zones and forwarded a recommendation to the Town Council for approval of the proposed amendments; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on June 16, 2020; and

WHEREAS, on June 16, 2020, the Town Council reviewed and commented on the amendments to Chapter 29 of the Town Code and the Town Council voted to introduce the Ordinance.

ATTACHMENT 1

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I

Chapter 29 of the Los Gatos Town Code is hereby amended as follows:

ARTICLE II. DIVISION 3. APPROVALS

.....

Sec. 29.20.185. Table of Conditional Uses.

.....

<i>TABLE OF CONDITIONAL USES</i>	<i>RC</i>	<i>HR</i>	<i>R1</i>	<i>RD</i>	<i>R-M</i>	<i>RMH</i>	<i>R-1D</i>	<i>O</i>	<i>C-1</i>	<i>C-2</i>	<i>CH</i>	<i>LM</i>	<i>CM</i>
(7) Automotive (Vehicle sales, services, and related activities)													
a. New Vehicle sales and rental										X	X	X	
b. Used vehicle sales only incidental to new vehicle sales and rental. Reserved.										X	X	X	

.....

SECTION II

With respect to compliance with the California Environmental Quality Act (CEQA), the Town Council finds as follows:

A. These Town Code amendments are exempt from review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the amendments to the Town Code would have a significant effect on the environment; and

B. The amendments to the Town Code are consistent with the General Plan.

SECTION III

If any provision of this Ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

SECTION IV

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

SECTION V

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 16th day of June 2020 , and adopted by the following vote as an Ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 4th day of August 2020. This Ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the Ordinance within fifteen (15) days after its passage a summary of the Ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 9

DATE: July 29, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Amend an Agreement for Employee Safety Compliance and Training Consultant Services with BSI EHS Services and Solutions (West) Inc., in an Amount not to Exceed \$175,350

RECOMMENDATION:

Authorize the Town Manager to amend an agreement (Attachment 3) for employee safety compliance and training consultant services with BSI EHS Services and Solutions (West) Inc., in an amount not to exceed \$175,350.

BACKGROUND:

The Town contracts with BSI to provide safety consultant services to ensure compliance with California's Occupational Health and Safety Administration (Cal-OSHA) regulations, provide on-site safety training classes, and partner with the Town's Health and Safety Committee to promote a safe work environment. The term of the current agreement between the Town and BSI is January 2018 through December 2020.

DISCUSSION:

During the evaluation the Town's safety program, BSI identified that the development of Control of Hazardous Energy Lockout/Tagout (LOTO) procedures are needed to ensure the safety of Town employees and consultants and to satisfy Cal-OSHA regulations. The original agreement for services did not include LOTO procedures in the total cost or scope of services. Staff requested a mid-year budget amendment to add the cost of the LOTO procedures through the end of FY 2019/20, however, the consultant has not been able to complete the procedures due to social distancing and shelter-in-place requirements related to COVID-19. This request extends the additional time and funds to complete the program through the end of the term of the current agreement.

PREPARED BY: Lisa Velasco
Human Resources Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

PAGE 2 OF 2

SUBJECT: Amendment to BSI Agreement

DATE: July 29, 2020

CONCLUSION:

Staff recommends that the Town Council authorize the Town Manager to execute a second amendment to the agreement with BSI in an amount not to exceed \$175,350.

FISCAL IMPACT:

The not to exceed cost in the amount of \$115,600 over the three-year term of the agreement as amended (Attachment 2) is already included in the adopted budget for FY 2020/21 in the Workers' Compensation Program. The additional cost of \$59,750 to complete the LOTO procedures was adopted at mid-year and requested for carryover for a total not to exceed amount of \$175,350 through December 2020.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Second Amendment to Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.
2. First Amendment to Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.
3. Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.

SECOND AMENDMENT TO AGREEMENT

This AMENDMENT TO AGREEMENT is dated for identification this 4th day of August, 2020 and amends that certain agreement for environmental health & safety services dated January 1st, 2018, made by and between the Town of Los Gatos, ("Town,") and the BSI EHS Services and Solutions (West) Inc., ("Consultant.")

RECITALS

- A. Town and Consultant entered into a Consultant Services Agreement on January 1st, 2018, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Consultant entered into a First Amendment to Agreement on April 1, 2018, a copy of which is attached hereto and incorporated by reference as Attachment 2.

AMENDMENT

- 1. Section 2.6 Compensation is hereby amended to incorporate subsection 2.6a Control of Hazardous Energy Lockout/Tagout (LOTO). Consultant will create LOTO procedures for select equipment and machinery identified during the April 10 and August 20, 2019 assessments in an amount not-to-exceed \$59,750, including time and materials.
- 2. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos

Approved as to Consent:

By: _____
Laurel Prevetti, Town Manager

By: _____
Geneve Vaccaro
Senior Consultant

Department Approval:

Lisa Velasco
Human Resources Director

Approved as to Form:

Attest:

Robert Schultz, Town Attorney

Shelley Neis, CMC, Clerk Administrator

FIRST AMENDMENT TO AGREEMENT

This AMENDMENT TO AGREEMENT is dated for identification this 15th day of March, 2018 and amends that certain agreement for environmental health & safety services dated January 1st, 2018, made by and between the Town of Los Gatos, ("Town,") and the BSI EHS Services and Solutions (West) Inc., ("Consultant.")

RECITALS

- A. Town and Consultant entered into a Consultant Services Agreement on January 1st, 2018, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.

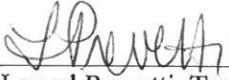
AMENDMENT

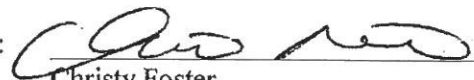
1. Section 2.6 Compensation. Compensation for Consultant's professional services shall not exceed \$115,600 over the term of the agreement (\$33,200 annually for Safety Training Services, Safety Committee Support, and Annual Program Review, plus \$16,000 over the course of the agreement for Job Hazard Analysis), inclusive of all costs. Payment shall be based upon Town approval of each task. Rates will remain unchanged for the initial 3-year term. To maintain parity with economic circumstances, BSI may elect to increase rates for the 4th and/or 5th year contract options. Annual rate table increases shall not exceed 3% of the preceding year's rate table fees in the years after 2020. However, if in any of the years after 2019 the Bureau of Labor Statistics Employment Cost Index in Northern California is greater than 4.5%, the parties agree to renegotiate rates for the final two years of this contract.
2. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos

Approved as to Consent:

By: 
Laurel Prevetti, Town Manager

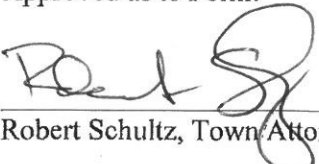
By: 
Christy Foster
Director of Healthcare

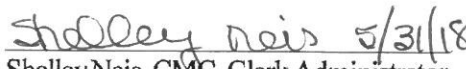
Department Approval:


Lisa Velasco
Human Resources Director

Approved as to Form:

Attest:


Robert Schultz, Town Attorney

 5/31/18
Shelley Neis, CMC, Clerk Administrator



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/01/2018

ITEM NO: 04

DATE: APRIL 24, 2018
TO: MAYOR AND TOWN COUNCIL
FROM: LAUREL PREVETTI, TOWN MANAGER
SUBJECT: AUTHORIZE THE TOWN MANAGER TO AMEND AN AGREEMENT FOR EMPLOYEE SAFETY COMPLIANCE AND TRAINING CONSULTANT SERVICES WITH BSI EHS SERVICES AND SOLUTIONS (WEST) INC., IN AN AMOUNT NOT TO EXCEED \$115,600

RECOMMENDATION:

Authorize the Town Manager to amend an agreement for employee safety compliance and training consultant services with BSI EHS Services and Solutions (West) Inc. (Attachment 1), in an amount not to exceed \$115,600.

BACKGROUND:

On December 19, 2017, the Town Council authorized the Town Manager to execute a new agreement for employee safety compliance and training consultant services with BSI EHS Services and Solutions (West) Inc. (Attachment 2) in an amount not to exceed \$147,600 over a three-year term. After the authorization and before the consultant began providing services, the Town identified that the cost over the three-year term for one element of the contract had been overstated. The not to exceed cost for Safety Training Services, Safety Committee Support, and Annual Program Review is \$33,200 annually for three-years totaling \$99,600 plus an additional flat amount of \$16,000 allocated to the special project of Job Hazard Analysis for a total of \$115,600. The amount allocated to the Job Hazard Analysis project was overstated in the original amount resulting in a total of \$147,600.

PREPARED BY: LISA VELASCO
Human Resources Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

PAGE 2 OF 2

SUBJECT: AUTHORIZE THE TOWN MANAGER TO AMEND AN AGREEMENT FOR
EMPLOYEE SAFETY COMPLIANCE AND TRAINING CONSULTANT SERVICES
WITH BSI EHS SERVICES AND SOLUTIONS (WEST) INC., IN AN AMOUNT NOT TO
EXCEED \$115,600

APRIL 24, 2018

DISCUSSION:

The purpose of this report is to request authority for the Town Manager to amend the existing agreement with BSI to accurately reflect the not to exceed amount of \$115,600 versus the amount of \$147,600 contained in the original agreement executed in December 2017.

CONCLUSION:

Staff recommends that the Town Council authorize the Town Manager to execute an amendment to the agreement with BSI to accurately reflect the total three-year cost.

COORDINATION:

This report was coordinated with the Parks and Public Works Department.

FISCAL IMPACT:

The annual fiscal impact for this amendment will reduce the not to exceed amount from \$49,200 annually to \$38,533 annually or \$115,600 over the course of three years. Funding to support this agreement is included in the adopted budget for FY 2017/18 in the Workers' Compensation Program.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. First Amendment to Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.
2. Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on the 1st day of January, 2018 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and BSI EHS Services and Solutions (West) Inc., ("Consultant"), whose address is 4 North Second Street, San Jose, CA 95113. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desire to engage Consultant to provide Environmental Health & Safety services and support.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in that certain Proposal in Response to the Town of Los Gatos' Environmental Health & Safety Program RFP, sent to the Town on August 31, 2017, and an additional email summary sent to the Town on October 26, 2017, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from January 1, 2018 to December 31, 2020. This Agreement shall remain in effect for a period of three (3) years ("Initial Term") unless terminated earlier in accordance with the relevant provisions hereof. Thereafter, this Agreement has the option to renew for an additional two (1) year periods ("Extension Term") and shall remain in effect unless terminated earlier in accordance with the relevant provisions hereof. Consultant shall perform the services described in this agreement as detailed in Appendix A, with specific task scheduling to be determined jointly by The Town and the BSI support team.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.
- 2.5a Instruments of Service. BSI's Instruments of Service consist of any document or material provided as part of the agreed-upon deliverables under this Agreement. They are prepared for the exclusive use of The Town for the sole purpose described in the scope and terms of the Instruments of Service. The Town waives any claim against BSI and agrees to provide Indemnification for any claim or liability for injury, loss, or costs allegedly arising from any use other than Authorized Use of BSI's Instruments of Service.
- 2.5b The Town Information. The Town warrants the accuracy and completeness of information, (including, but not limited to, representations, specifications, drawings, maps, surveys, reports, historical land usage and operations, results of previous site investigations and surface or subsurface conditions affecting the site), supplied by it or its agents to BSI and acknowledges that BSI is relying upon such information or data in the preparation of this Proposal and rendering of services.
- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$49,200.00 annually**, inclusive of all costs. Payment shall be based upon Town approval of each task. Rates will remain unchanged for the initial 3-year term. To maintain parity with economic circumstances, BSI may elect to increase rates for the 4th and/or 5th year contract options. Annual rate table increases shall not exceed 3% of the preceding year's rate table fees in the years after 2020. However, if in any of the years after 2019 the Bureau of Labor Statistics Employment Cost Index in Northern California is greater than 4.5%, the parties agree to renegotiate rates for the final two years of this contract.
- 2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655
Los Gatos, CA 95031-0655

- 2.8 Availability of Records. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.
- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

- 2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.
- v. Limits of Liability. BSI's maximum aggregate liability under this agreement shall not exceed the greater of \$1,000,000 or the total amounts paid by The Town to BSI during the twelve (12) months immediately preceding the claim.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.

- ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
 - iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
 - iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 Workers' Compensation. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Consultant shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos
 Attn: Human Resources
 110 E. Main Street
 Los Gatos, CA 95030

BSI EHS Services and Solutions (West) Inc.
 Attn: Christy Foster
 4 North Second Street
 San Jose, CA 95113

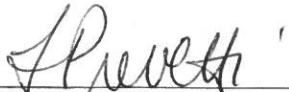
or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

- 4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.8 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

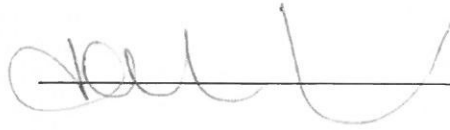
IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:

Consultant, by:



Laurel Prevetti, Town Manager



Recommended by:

Janice McKim,
Chief Financial Officer



Lisa Velasco, Human Resources Director

Title

Approved as to Form:



Robert Schultz, Town Attorney

EXHIBIT A – Scope/Cost Estimate Basis

Safety Training Services:

Time-and Materials Basis, Not-to-Exceed
\$18,000

7 In-Person Training sessions, including presentation development time, quality review, formatting, and onsite delivery time (1-2 hours/class) = \$2,200/class
Tailgate topic development = \$170/topic

Safety Committee Support:

Time-and-Materials Basis, Not-to-Exceed
\$3,200

\$800/meeting, including preparation, agenda review, and follow up actions from the meeting.

Job Hazard Analysis:

Fixed Fee of \$16,000 (\$400/JHA)

We assume 40 JHAs, and each will cost \$400. Prices would decrease accordingly if the total number of JHAs to be completed in one year was decreased.

Annual Program Review:

Time-and-Materials Basis, Not-to-Exceed
\$12,000

15 written programs would be reviewed, at a cost of \$800/program. Programs will be reviewed and returned with any edits/updates in track changes mode. This assumes an average of 4 hours of review time, plus one set of additional comments from the Town and subsequent BSI changes to the document.

N:/MASTER/AGREEMENTS/AgreementTemplates/AgreementforConsultantServices.rtf

Agreement for Consulting Services – Town of Los Gatos and BSI EHS Services and Solutions, Environmental Health & Safety Program 2018-2020.

12/2017

Page 8 of 8

EXHIBIT A



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/19/2017

ITEM NO: 6

DATE: DECEMBER 11, 2017
TO: MAYOR AND TOWN COUNCIL
FROM: LAUREL PREVETTI, TOWN MANAGER
SUBJECT: AUTHORIZE THE TOWN MANAGER TO EXECUTE AN AGREEMENT FOR EMPLOYEE SAFETY COMPLIANCE AND TRAINING CONSULTANT SERVICES WITH BSI EHS SERVICES AND SOLUTIONS (WEST) INC., IN AN AMOUNT NOT TO EXCEED \$147,600

RECOMMENDATION:

Authorize the Town Manager to execute an agreement for employee safety compliance and training consultant services with BSI EHS Services and Solutions (West) Inc. (Attachment 1), in an amount not to exceed \$147,600.

BACKGROUND:

California's Occupational Health and Safety Administration (Cal-OSHA) sets the standards and requirements related to an employer sponsored Health and Safety Program. Components of a Health and Safety Program include employee training and Cal-OSHA compliance. Cal-OSHA requires annual or recurring periodic training for safety sensitive job classifications that have potential for exposure to illnesses or injuries resulting from bloodborne pathogens and communicable diseases, working at heights or within confined spaces, routine use of specialized equipment and machines, or lifting heavy objects. The Town's Health and Safety Program includes periodic recommended employee trainings to proactively prevent work injuries or illnesses, such as: safe driving techniques, earthquake safety, and prevention of slips/trips/falls. The Town has historically engaged the services of a safety consultant to ensure compliance with Cal-OSHA regulations, provide on-site safety training classes, and partner with the Town's Health and Safety Committee to promote a safe work environment.

PREPARED BY: LISA VELASCO
Human Resources Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

PAGE 2 OF 2

SUBJECT: AUTHORIZE THE TOWN MANAGER TO EXECUTE AN AGREEMENT FOR
EMPLOYEE SAFETY COMPLIANCE AND TRAINING CONSULTANT SERVICES
WITH BSI EHS SERVICES AND SOLUTIONS (WEST) INC., IN AN AMOUNT NOT TO
EXCEED \$147,600

DECEMBER 11, 2017

DISCUSSION:

The Town has contracted with BSI since February 2013 and extended the contract in May 2016 to provide additional time to conduct a formal Request for Proposals (RFP). An RFP was initiated in August, 2017. Six firms responded to the RFP and three were invited to interview with Town staff. Based on their formal Proposal (Attachment 2) and interviews, BSI was selected based on their overall cost, breadth and depth of knowledge related to safety compliance, as well as resources to offer employee trainings, tailgate trainings, and participation at Health and Safety Committee meetings.

In addition, during the term of the prior agreement between BSI and the Town, BSI was highly effective in assisting the Town to contain costs associated with the Employee Health and Safety Program by addressing potential safety issues to ensure safe work environments for employees. BSI has also been instrumental in ensuring the Town's compliance with legally mandated Cal-OSHA training and requirements.

CONCLUSION:

Staff recommends that the Town Council authorize the Town Manager to execute a new agreement with BSI for three years effective January 1, 2018, with an option to renew for two additional one-year periods.

COORDINATION:

This report was coordinated with the Parks and Public Works Department.

FISCAL IMPACT:

The annual fiscal impact for this agreement will not exceed \$49,200 annually, or \$147,600 over the course of three years. Funding to support this agreement is included in the adopted budget for FY 2017/18 in the Workers' Compensation Program.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.
2. Response to Town of Los Gatos RFP Environmental Health & Safety Program (BSI Proposal #17-0943)



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 10

DATE: July 30, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Work of Chrisp Company and Authorize Recording by the Town Clerk for PPW Job No. 18-813-0234 One-Way Downtown Street Pilot

RECOMMENDATION:

Authorize the Town Manager to execute a Certificate of Acceptance and Notice of Completion for the work of Chrisp Company and authorize recording by the Town Clerk for PPW Job No. 18-813-0234 One-Way Downtown Street Pilot.

BACKGROUND:

The Town's adopted FY 2018/19-2022/23 Capital Improvement Program (CIP) Budget designated funding of \$130,000 for a one-way street pilot program in the downtown. At the January 15, 2019 Town Council meeting, Council reviewed several options for the one-way pilot and approved the option for conversion of North Santa Cruz Avenue to one-way southbound from Bachman Avenue to Elm Street with a striped southbound Class II bicycle lane. Staff was directed to proceed with the design and the project was implemented and left in place through October 2019.

The project included a provision to slurry and restripe North Santa Cruz Avenue at the conclusion of the pilot project to bring the road back to a good condition. Due to the completion of the project late in the year and concerns for cool weather, it was not feasible to slurry and restripe the road in 2019. Staff had intended on completing this part of the project in the summer of 2020; however, roadway changes due to COVID-19 and the placement of k-rail to create outdoor business areas have precluded most of that work from occurring.

PREPARED BY: Michelle Quinney
Interim Town Engineer

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

PAGE 2 OF 3

SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Work of Chrisp Company and Authorize Recording by the Town Clerk

DATE: July 30, 2020

DISCUSSION:

The contract for this project was based on the quantities of work performed. This allowed for flexibility in assigning and paying for the work needed. Chrisp Company has satisfactorily completed all of the work reasonable for the project and staff recommends accepting the project. Staff will program the slurry and restripe of North Santa Cruz within a future paving project, targeting the spring or summer of 2021.

Five percent of the faithful performance bond will remain in effect for a period of two years as a guarantee for any needed repair or replacement caused by defective materials and workmanship for the project. The execution and recordation of the Certificate of Acceptance is now required to finalize the Town's acceptance of the project.

CONCLUSION:

Authorize the Town Manager to execute a Certificate of Acceptance and Notice of Completion for the work of Chrisp Company and authorize recording by the Town Clerk for PPW Job No. 18-813-0234 One-Way Downtown Street Pilot.

FISCAL IMPACT:

The final construction costs for Chrisp Company totaled \$132,829 for the work, and \$47,828 for other construction costs, including the rental of K-rail and parklet amenities. Project delivery costs, including advertising, printing, materials testing, staff, and design, have totaled \$52,338.

Staff costs are tracked for all projects. Tracking of staff costs allows for accountability in the costs of projects, recovery of costs from grant funded projects, and identification of future staffing needs. This project utilized full-time budgeted staff. The costs for full-time staff are accounted for in the Department's operating budget and will not be charged to this project.

SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Work of Chrisp Company and Authorize Recording by the Town Clerk

DATE: July 30, 2020

FISCAL IMPACT (continued):

Bicycle & Pedestrian Improvements Project 813-0231		
	Budget	Costs
GFAR	\$ 238,686	
Total Project Budget	\$ 238,686	
Chrisp Company		\$ 132,829
Other Construction		\$ 47,828
Consultant Services		\$ 13,400
Advertising		\$ 1,014
Blueprint/Copy/Postage		\$ 200
Staff Costs		\$ 37,724
Total Project Costs		\$ 232,995
Project Savings Not Including Staff Costs		\$ 43,415
Estimated Staff Costs		\$ 37,724
Project Savings Including Estimated Staff Costs		\$ 5,691

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is Categorically Exempt (Section 15301c). A Notice of Exemption will not be filed.

Attachment:

1. Certificate of Acceptance and Notice of Completion

Recording Requested by:

TOWN OF LOS GATOS

WHEN RECORDED MAIL TO:

CLERK ADMINISTRATOR
TOWN OF LOS GATOS
110 E MAIN ST
LOS GATOS, CA 95030

(SPACE ABOVE BAR FOR RECORDER'S USE)

(RECORD WITHOUT FEE UNDER GOVERNMENT CODE SECTIONS 27383 AND 6103)

TYPE OF RECORDING

CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION
PPW JOB NO. 18-813-0234 One-Way Downtown Street Pilot

TO WHOM IT MAY CONCERN:

I do hereby certify that **Chrisp Company** completed the work called for in the agreement with the Town of Los Gatos dated June 10, 2019. The work is outlined in the Town's bid process prepared by the Town of Los Gatos and generally consisted of furnishing all labor, materials, tools, equipment, and services required for completion of the PPW Job No. 18-813-0234 located in the TOWN OF LOS GATOS, County of Santa Clara, State of California and was completed, approved and accepted **December 6, 2019**.

Bond No.: 57BCSID4344

Date: June 13, 2019

TOWN OF LOS GATOS

By: _____
Laurel Prevetti, Town Manager

Acknowledgement Required

AFFIDAVIT
To Accompany Certificate of Acceptance and Notice of Completion
PPW JOB NO. 18-813-0234 One-Way Downtown Street Pilot

I, **LAUREL PREVETTI**, the Town Manager of the Town of Los Gatos, have read the foregoing CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION and know the contents thereof. The same is true of my own knowledge, except as to the matters which are therein alleged on information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on _____, 2020 at Los Gatos, California.

LAUREL PREVETTI, TOWN MANAGER
Town of Los Gatos

RECOMMENDED BY:

Matt Morley
Director of Parks and Public Works

Date: _____

APPROVED AS TO FORM:

Robert Schultz, Town Attorney

Date: _____

Notary Jurat Required



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 8/4/2020

ITEM NO: 11

DATE: July 30, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Work of Rosas Brothers Construction and Authorize Recording by the Town Clerk for PPW Job No. 19-813-9921 Annual Curb, Gutter, and Sidewalk Maintenance Project

RECOMMENDATION:

Authorize the Town Manager to execute a Certificate of Acceptance and Notice of Completion for the work of Rosas Brothers Construction and authorize recording by the Town Clerk for PPW Job No. 19-813-9921 Annual Curb, Gutter, and Sidewalk Maintenance Project.

BACKGROUND:

The Town's adopted FY 2019/20-2023/24 Capital Improvement Program (CIP) Budget designated funding for this project.

At the October 15, 2019 Town Council meeting, Council approved the plans and specifications for the Annual Curb, Gutter, and Sidewalk Maintenance Project and authorized the Town Manager to advertise the projects for bid and to award the project in an amount not to exceed the available construction budget of \$1,237,841 including contingencies, and any change orders, to the lowest responsible bidder.

The Town entered an agreement with Rosas Brother Construction for the work for the low bid of \$835,532.

PREPARED BY: Michelle Quinney
Interim Town Engineer

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

PAGE 2 OF 3

SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Work of Rosas Brothers Construction and Authorize Recording by the Town Clerk

DATE: July 30, 2020

DISCUSSION:

Rosas Brothers Construction has satisfactorily completed all of the work for the project and staff recommends accepting the project.

Five percent of the faithful performance bonds will remain in effect for a period of two years as a guarantee for any needed repair or replacement caused by defective materials and workmanship for each project. The execution and recordation of the Certificate of Acceptance is now required to finalize the Town's acceptance of the project.

CONCLUSION:

Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Work of Rosas Brothers Construction and Authorize Recording by the Town Clerk for PPW Job No. 19-813-9921 Annual Curb, Gutter, and Sidewalk Maintenance Project.

FISCAL IMPACT:

The final construction costs totaled \$918,107 for the work. Project delivery costs, including staff, and design, have totaled \$170,787.

Staff costs are tracked for all projects. Tracking of staff costs allows for accountability in the costs of projects, recovery of costs from grant funded projects, and identification of future staffing needs. This project utilized full-time budgeted staff. The costs for full-time staff are accounted for in the Department's operating budget and will not be charged to this project.

SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Work of Rosas Brothers Construction and Authorize Recording by the Town Clerk

DATE: July 30, 2020

FISCAL IMPACT (continued):

Curb, Gutter, and Sidewalk Maintenance Project 813-9921		
	Budget	Costs
GFAR	\$ 1,373,934	
Total Budget	\$ 1,373,934	
Construction - Rosas Brothers		\$ 918,107.00
Consultation Services		\$ 1,996.98
Advertising		\$ 998.00
Blueprint/Copy/Postage		\$ 76.00
Staff Costs		\$ 167,716.00
Total Expenditures		\$ 1,088,894
Project Savings Not Including Staff Costs		\$ 285,040
Estimated Staff Costs		\$ 167,716
Project Savings Including Estimated Staff Costs		\$ 117,324

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is Categorically Exempt (Section 15301c). A Notice of Exemption was previously filed.

Attachment:

1. Certificate of Acceptance and Notice of Completion

Recording Requested by:

TOWN OF LOS GATOS

WHEN RECORDED MAIL TO:

CLERK ADMINISTRATOR
TOWN OF LOS GATOS
110 E MAIN ST
LOS GATOS, CA 95030

(SPACE ABOVE BAR FOR RECORDER'S USE)

(RECORD WITHOUT FEE UNDER GOVERNMENT CODE SECTIONS 27383 AND 6103)

TYPE OF RECORDING

CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION

PPW JOB NO. 19-813-9921 Annual, Curb, Gutter, and Sidewalk Maintenance Project

TO WHOM IT MAY CONCERN:

I do hereby certify that **Rosas Brothers Construction** completed the work called for in the agreement with the Town of Los Gatos dated October 15, 2019. The work is outlined in the Town's bid process prepared by the Town of Los Gatos and generally consisted of furnishing all labor, materials, tools, equipment, and services required for completion of the PPW Job No. 19-813-9921 located in the TOWN OF LOS GATOS, County of Santa Clara, State of California and was completed, approved and accepted **August 4, 2020**.

Bond No.: 30083718

Date: December 5, 2019

TOWN OF LOS GATOS

By: _____
Laurel Prevetti, Town Manager

Acknowledgement Required

ATTACHMENT 1

AFFIDAVIT
To Accompany Certificate of Acceptance and Notice of Completion
PPW JOB NO. 19-813-9921 Annual, Curb, Gutter, and Sidewalk Maintenance Project

I, **LAUREL PREVETTI**, the Town Manager of the Town of Los Gatos, have read the foregoing CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION and know the contents thereof. The same is true of my own knowledge, except as to the matters which are therein alleged on information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on _____, 2020 at Los Gatos, California.

LAUREL PREVETTI, TOWN MANAGER
Town of Los Gatos

RECOMMENDED BY:

Matt Morley
Director of Parks and Public Works

Date: _____

APPROVED AS TO FORM:

Robert Schultz, Town Attorney

Date: _____

Notary Jurat Required



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 12

DATE: July 30, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Fourth Amendment to the Agreement for Services with St. Francis Electric to Increase Compensation for Unforeseen Services in FY 2019/20 in an Amount of \$12,818 and Extend Services for Four Months in FY 2020/21 in an Amount Not to Exceed \$50,000

RECOMMENDATION:

Authorize the Town Manager to execute a Fourth Amendment to the Agreement for Services (Attachment 1) with St. Francis Electric to increase compensation for unforeseen services in FY 2019/20 in an amount of \$12,818, and extend services for four months in FY 2020/21 in an amount not to exceed \$50,000.

BACKGROUND:

The Town of Los Gatos utilizes contractual traffic signal and streetlight maintenance services for Town-owned properties and rights of way. Staff has determined that contractual services are the most cost-effective service delivery method for traffic signal and streetlight maintenance due to the technical nature, specialized and costly equipment, and right of way safety concerns.

On May 5, 2015, Council authorized the Town Manager to execute an Agreement for Services with St. Francis Electric for maintenance and repair of traffic signals and streetlights and for Underground Service Alert (USA) locating (Attachment 2) with an effective date of July 1, 2015 with options to extend through June 30, 2020 in an amount not to exceed \$120,000 annually. A first amendment to the agreement was approved in 2016 to increase compensation for traffic signal and streetlight repair services to \$135,000 annually and added \$10,000 due to unexpected repairs and increasing USA markings. In 2017, a second amendment was made to add prevailing wage language and in 2018, a third amendment added \$15,000 for unforeseen services in FY 2017/18.

PREPARED BY: Jim Harbin
Superintendent

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

PAGE 2 OF 2

SUBJECT: Authorize the Town Manager to Execute a Fourth Amendment to the Agreement for Services with St. Francis Electric to Increase Compensation for Unforeseen Services in FY 2019/20 in an Amount of \$12,818, and Extend Services for Four Months in Fiscal Year 2020/21 in an Amount Not to Exceed \$50,000

DATE: July 30, 2020

DISCUSSION:

The current not to exceed contract amount is \$135,000 annually for routine maintenance and repair of traffic signals and streetlights, and for USA locating services. In FY 2019/20, there were an increased number of unexpected traffic signal repairs and USA locating requests resulting in the contract amount being exceeded.

In addition, the proposed contract extension with St. Francis Electric will allow staff the time necessary to issue a new request for proposal (RFP) for the traffic signal, streetlights, and USA locating services and bring a new contract recommendation to Town Council.

St. Francis Electric has been maintaining Town traffic signals, streetlights, and USA locating requests for several years and have done a satisfactory job.

CONCLUSION:

The recommended action will allow for cleanup of the required work in the previous fiscal year and continued service in the current fiscal year pending the RFP outcome.

FISCAL IMPACT:

Funds for these services have been appropriated in the Parks and Public Works annual operating budget for the respective fiscal years.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Draft Fourth Amendment to Agreement for Services
2. Agreement for Services Including Amendments

FOURTH AMENDMENT TO AGREEMENT FOR SERVICES

This FOURTH AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 4th day of August 2020 and amends that certain third AMENDMENT TO AGREEMENT FOR SERVICES dated June 5, 2018, made by and between the **TOWN OF LOS GATOS**, ("Town,") and **ST. FRANCIS ELECTRIC**, ("Service Provider").

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on July 1, 2015 ("Agreement"), a First Amendment on June 21, 2016, a Second on July 1, 2017, and a Third Amendment on June 5, 2018, copies of which are attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town desires to amend the Agreement to extend the term of the agreement and increase the compensation of the agreement.

AMENDMENT

1. Section 2.3 Time of Performance is amended to read as follows:
 - This agreement will remain in effect through October 31, 2020.
2. 2.6 Compensation is amended to read as follows:
 - Compensation for additional supplies and materials for Service Provider's services for Fiscal Year 2019/20 shall be increased in an amount of \$12,818.
 - Compensation for supplies and materials for Service Provider's services from July 1, 2020 through October 31, 2020 shall not exceed \$50,000.
3. All other terms and conditions of the Agreement remain in full force and effect.

ATTACHMENT 1

IN WITNESS WHEREOF, the Town and Service Provider have executed this Amendment.

Town of Los Gatos by:

St. Francis Electric, by:

Laurel Prevetti
Town Manager

Recommended by:

Matt Morley
Director of Parks and Public Works

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk

THIRD AMENDMENT TO AGREEMENT FOR SERVICES

This THIRD AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 5th day of June 2018 and amends that certain SECOND AMENDMENT TO AGREEMENT FOR SERVICES dated July 1, 2017, made by and between the TOWN OF LOS GATOS, ("Town,") and ST. FRANCIS ELECTRIC, ("Service Provider").

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on July 1, 2015 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Service Provider entered into a First Amendment to Agreement for Services on June 21, 2016 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 2 to this Amendment.
- C. Town and Service Provider entered into a Second Amendment to Agreement for Services on July 1, 2017 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 3 to this Amendment.
- D. Town desires to amend the Agreement to increase the compensation of the agreement for FY 2017/18.


AMENDMENT

- 1. Section 2.6 Compensation is amended to read as follows:
 - Additional compensation for unforeseen services in Fiscal Year 2017/18 shall not exceed \$15,000, for a total annual contract amount not to exceed \$150,000 for this year only.
- 2. All other terms and conditions of the Agreement remain in full force and effect.


IN WITNESS WHEREOF, the Town and Supplier have executed this Amendment.

Town of Los Gatos by:

St. Francis Electric, by:




 Laurel Prevetti
 Town Manager




Recommended by:

Approved as to Form:



 Matt Morley
 Director of Parks and Public Works



 Robert Schultz
 Deputy Town Attorney

PURCHASE AND SERVICE AGREEMENT

CLERK DEPARTMENT

AGR 15.123

III

THIS AGREEMENT is dated for identification this 1st of July, 2015 and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and ST. FRANCIS ELECTRIC, ("Supplier"), whose address is 975 Carden Street, San Leandro, CA 94577. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Supplier to provide annual traffic signal and street light maintenance and repair services.
- 1.2 Supplier represents that it is a qualified and competent supplier of the items to be purchased under this Agreement.
- 1.3 The Supplier represents and affirms that it is qualified and willing to perform the desired work pursuant to this Agreement.

II. AGREEMENTS

- 2.1 Time of the Essence. Prompt installation of items and materials is essential to this Agreement.
- 2.2 Scope of Services. Supplier shall provide supplies and services as described in that certain Request for Proposals dated March 10, 2015 which is hereby incorporated by reference and attached as "Exhibit A" and that certain Proposal dated April 7, 2015, which is hereby incorporated by reference and attached as "Exhibit B".
- 2.3 Time of Performance. This Agreement will remain in effect from July 1, 2015 to June 30, 2016. The Town may extend the term of this Agreement up to four (4) additional one-year periods, through June 30, 2020, on the same terms and conditions as in effect and subject to Town Council budget appropriations for the scope of services.
- 2.4 Compliance with Laws. The Supplier shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Supplier represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Supplier to practice its profession. Supplier shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.5 Sole Responsibility. Supplier shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.6 Information/Report Handling. All documents furnished to Supplier by the Town and all reports and supportive data prepared by the Supplier under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Supplier's services or at the Town's written request. All reports, information, data, and exhibits prepared or

assembled by Supplier in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Supplier shall not make any of these documents or information available to any individual or organization not employed by the Supplier or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Supplier pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Supplier in connection with other projects shall be solely at Town's risk, unless Supplier expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Supplier which is and has been confirmed in writing by Supplier to be a trade secret of Supplier.

- 2.7 Compensation. Compensation for the supplies and materials delivered and for supplier's professional services shall not exceed \$120,000 annually, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.8 Billing. Billing shall be by invoice within thirty (30) days of the rendering of the services and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.
- Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:
- Invoices:
Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655
Los Gatos, CA 95031-0655
- 2.9 Availability of Records. Supplier shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Supplier shall make these records available to authorized personnel of the Town at the Supplier's offices during business hours upon written request of the Town.
- 2.10 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Supplier. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.11 Independent Contractor. It is understood that the Supplier, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Supplier may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Supplier agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Supplier shall be

compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Supplier or is based on allegations of Supplier's negligent performance or wrongdoing.

- 2.12 Conflict of Interest. Supplier understands that its professional responsibilities are solely to the Town. The Supplier has and shall not obtain any holding or interest within the Town of Los Gatos. Supplier has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Supplier warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Supplier shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Supplier discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Supplier shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.13 Equal Employment Opportunity. Supplier warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Supplier nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

- 3.1 Minimum Scope of Insurance:
- i. Supplier agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
 - ii. Supplier agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
 - iii. Supplier shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Supplier agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

- iv. Supplier agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Supplier for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Supplier; products and completed operations of Supplier, premises owned or used by the Supplier. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
 - ii. The Supplier's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Supplier's insurance and shall not contribute with it.
 - iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
 - iv. The Supplier's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk Administrator.
- 3.3 Workers' Compensation. In addition to these policies, Supplier shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Supplier shall ensure that all subcontractors employed by Supplier provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Supplier shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Supplier, or any of the Supplier's officers, employees, or agents or any sub-contractor.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Severability. If any term of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in effect.
- 4.3 Warranty. Supplier shall remedy any defects due to faulty materials and/or workmanship and pay for any damages to other work and/or existing facilities resulting therefrom which shall appear within a period of one year from the date of recording of final acceptance.
- 4.4 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.5 Termination of Agreement. The Town and the Supplier shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Supplier shall deliver to the Town all supplies and services scheduled to be delivered to Town within that fifteen (15) day period.
- 4.6 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Supplier.
- 4.7 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.8 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

St. Francis Electric
Attn: Monica Kint
975 Carden Street
San Leandro, CA 94577


OR personally delivered to Supplier to such address or such other address as Supplier designates in writing to Town.

- 4.9 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.

4.10 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Supplier. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Supplier have executed this Agreement.

Town of Los Gatos by:

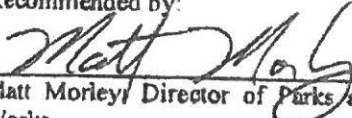


Les White, Interim Town Manager

St. Francis Electric, by:



Recommended by:




Matt Morley, Director of Parks and Public Works

Vice President

Title

Approved as to Form:



Robert Schultz, Town Attorney

4.10 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Supplier. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Supplier have executed this Agreement.

Town of Los Gatos by:



Les White, Interim Town Manager

St. Francis Electric, by:



Recommended by:

Matt Morley, Director of Parks and Public Works

Vice President
_____ Title

Approved as to Form:

Robert Schultz, Town Attorney



TOWN OF LOS GATOS, CALIFORNIA

REQUEST FOR PROPOSALS

FOR

PROJECT 14-5401-63364

LIGHTING AND TRAFFIC SIGNAL MAINTENANCE AND REPAIR SERVICE

March 10, 2015

PROPOSAL DUE BY:

April 7, 2015, 3:00 p.m.

In the

**Town of Los Gatos
Parks & Public Works Department
41 Miles Avenue
Los Gatos, CA 95030**

EXHIBIT A

TABLE OF CONTENTS

Section Title

Notice Inviting Proposers

Distribution List

Proposal Form

Contract Specifications

Attachment A List of Street Lights

Attachment B List of Parking Lot Lights

Attachment C List of Signalized Intersections

Attachment D Service Form – Street Light

Attachment E Service Form - Traffic Signal Monthly Maintenance

Attachment F Service Form – Traffic Signal UPS

Attachment G Service Form - Traffic Signal Call-Out Repair

Attachment H Town Standard Specifications

Insurance Requirements

NOTICE INVITING PROPOSERS

March 9, 2015

Dear Contractors:

The Town of Los Gatos is issuing this Request for Proposals (RFP) for Street Lighting and Traffic Signal Preventive Maintenance and Repair Services. If you are interested in contracting with the Town to provide the services, please respond to this RFP no later than April 7, 2015 by 3:00 p.m. at the Parks and Public Works Department at 41 Miles Avenue, Los Gatos, CA 95030.

Overview

The Town of Los Gatos is seeking proposals from qualified contractors to provide a comprehensive Street Lighting and Traffic Signal Preventive Maintenance and Repair Program for a one-year period with an option to extend the contract up to four (4) additional years. Siemens has been providing the maintenance service for the Town for the past 12+ years.

Proposal Format

Proposals shall be made on the Proposal Form included in this Request for Proposals. Proposers shall enter all requested information in the appropriate spaces on the Proposal Form. No oral, telephone, facsimile or electronic proposals will be accepted. All costs of proposal preparation shall be borne by the proposer.

Five (5) copies of the proposal shall be submitted to the Town no later than April 7, 2015 by 3:00 p.m. addressed as follows:

Jessy Pu, Traffic Engineer
Town of Los Gatos
Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95030

Evaluation Criteria

The following criteria will be used by the Town in evaluating proposals.

1. Qualification and experience of the identified key technician(s).
2. Contractor's equipment, facilities, and previous experience for the specified services for municipalities.
3. Ability to perform the service in the required manner and time frame.
4. Reference recommendations.
5. Contractor's understanding and approach towards providing services to the Town of Los Gatos and other agencies.

6. Costs.

Business License

The successful proposer must either possess a current, valid Town of Los Gatos business license or must have submitted a Town of Los Gatos business license application and fee at the time of award.

Insurance Coverage

Contractor shall procure and maintain insurance against claims for the duration of the Contract. A copy of the insurance requirements is attached.

Scope of Work

The street lighting, trail/parks/parking lot lights, and traffic signal preventive maintenance and repair services involve ongoing and regular field preventive maintenance and repair of street lights, parking lot lights, and traffic signals and other related equipment by licensed contractor(s) with properly trained, experienced and qualified personnel. This includes approximately 1603 street lights, 119 parking lot lights, and 30 traffic signals (including a new traffic signal to be constructed within a few months) which are listed in Attachment A and B, and C. The contract scope of work also includes a USA (Underground Service Alert) locating and marking service.

The contract(s) which may result from this Request for Proposals may include all or portion of, and may not be limited to, the following provisions:

Street Lights

The Town seeks a contractor for the on-going maintenance and repair service of approximately 1,603 Town owned street lights.

- Provide 24-hour on-call services for repair of street light outages and 24-hour phone service taking light outage calls.
- Perform night check for light outage.
- Response to and repair of trouble calls within the specified time.
- Installation of lights, as requested.
- Regular submission to the Town of accurately maintained and detailed work records.

Traffic Signal

The Town seeks a contractor for the routine preventive maintenance and repair service for 30 traffic signals.

- Monthly preventive maintenance of all traffic signals.

- Repair and replacement of any traffic signal control devices, as requested.
- Regular submission to the Town of accurate activity records and reports of any and all work and service calls related to the Town's traffic signals.
- Response to all service requests in a timely manner.

Parking Lot Lights

The Town seeks a contractor for ongoing maintenance and repair service of 119 lights in the Town parking lots.

- Perform night check.
- Response to and repair light.
- Regular submission to the Town of accurately maintained work records.

USA (Underground Service Alert) Locating and Marking

The Town seeks a contractor for the locating and marking of Town's underground lighting and signal circuits.

Detailed Project Specifications

See attached "Contract Specifications" for detailed project specifications.

Contract Price

A. First Year

As full compensation for furnishing all materials and equipment and for doing all the work contemplated and embraced, the Town shall pay the amount specified by the contractor pursuant to the signed agreement.

B. Successive Years

One year from the date of the signed agreement, and each anniversary thereafter, the monthly price paid for such services shall be adjusted according to the percent change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, *All Items, All Urban Consumers, San Francisco-Oakland-San Jose, 1982-84-100 Index*. The contractor shall be responsible for submitting a written notice no later than sixty (60) days prior to anniversary requesting an adjustment to the current index. This index shall be used to calculate and determine annual costs.

C. Town Council Budget Discretion

The authority to determine annual budgets for the Town is vested by law with the Town of Los Gatos Town Council. Nothing in the agreement shall bind the Town Council to budget funds in successive fiscal years for payment of services under

the signed agreement. The Town/Department reserves the right to terminate the signed agreement without consequences, in the event the Town Council determines in the future not to budget funds for the agreement.

TERM OF THIS AGREEMENT:

If awarded, the contract will remain in effect July 1, 2015 through June 30, 2016, with an option of extending the agreement up to four (4) additional one (1) year periods provided that the Town provides an annual written notice of the intent to extend the agreement

Proposer Qualifications

Proposers shall possess a valid California State Contractor's License, either Class "A" or Class "C-10" throughout with contract terms, including extensions, if any, and shall be experienced performing similar services of similar scope for other public agencies.

Compensation

The Town reserves the right to reject any or all proposals, wholly or in part, received by reason of this RFP. All costs incurred by the consultant due to developing their proposal shall be borne by the consultant.

The contract for these services shall be subject to payment of prevailing wages pursuant to California Labor Code section 1770, et seq.

For any questions regarding this RFP, please contact Jessy Pu, Town Traffic Engineer at (408) 395-2859. Requests for information of clarification must be received at least ten (10) calendar days before proposals are due in order to prepare and distribute a response.

The Town will interview with the top ranked contractor(s) and negotiate contract(s) to provide the services.

Sincerely,

Jessy Pu, T.E., P.E.
Traffic Engineer

Distribution List

Cal West
Craig Geis
PO Box 612035
San Jose, CA 95161-2035

Siemens
Adam Sanchez
79 Mitchell Blvd
San Rafael, CA 94901

Team Econolite
3390 De La Cruz, Unit R
Santa Clara, CA 95054

Bear Electrical Solutions
Robert Asuncion
1341 Archer Street
P.O. Box 924
Alviso, CA 95002

St. Francis Electric
Joshua Bailey
P.O. Box 2057
San Leandro, CA 94577

CONTRACT SPECIFICATIONS (03/10/2015)

A. SERVICES

The Contractor shall provide ongoing and field maintenance and repair of street lights, parking lot lights, USA (Underground Service Alert) marking, and traffic signal equipment by duly trained and qualified personnel.

The Contractor shall provide and maintain emergency service response on a 24-hour a day, 7 days per week basis, including all holidays, utilizing trucks equipped with radio dispatch and/or cellular communication capabilities, warning beacon/strobe lights; traffic cones; construction warning signs; a hydraulic bucket capable of reaching a height of 40 feet from the roadway surface; proper lighting for illuminating the work area at night; necessary computer laptop for programming, maintenance and testing of traffic signal controllers and various equipment. All of the required equipment shall be properly maintained and functional 24 hours a day, 7 days a week, including holidays.

The Contractor ensure that any vehicle used within the boundaries of the Town of Los Gatos where lane closures or work within the travel lanes is required shall be equipped with an arrow board, warning beacons/strobe lights, the proper quantity and sized cones for a lane closure, and advance warning signs. All of the Contractor's employees working within the boundaries of the Town shall be equipped with a communication device capable of instant 2-way communications for extended periods of time with the Contractor's shop or with Town staff.

The Contractor shall have available, and readily accessible in functioning order, all required tools, equipment, apparatus, facilities, and materials needed to perform all work necessary to maintain and repair the street lights, traffic signals, and park/trail/parking lot lights listed in Attachments A, B, and C in compliance with current State and Town standards and specifications and National Electric Code (NEC).

The Contractor is required to provide a 24-hour phone service for taking calls for reported inoperable signals and lighting. All calls shall be logged by Contractor. The Contractor shall respond to call outs, inspect, verify, identify problems, and perform necessary repair per the contract requirements. All calls shall be entered into computer.

The Contractor shall provide traffic control, lane closures, sidewalk closure and/or detour that conform to the State and Town requirements. During emergency conditions, the Contractor shall assure full cooperation with the Town of Los Gatos.

Street Lights

Maintain all street lights (including street lighting, and intersection safety lighting) owned by the Town in an operable and safe condition. Respond to call outs for outage, missing pole tag, missing hand hole cover, and any unsafe or inoperable condition. The PG&E owned street lights (typically mounted on wood or utility poles) are not part of the contract.

All reported inoperable lights shall be serviced and repaired within five (5) working days or less. The five working days shall be measured beginning the first full day following receipt of the outage report. When the inoperable lights are reported for pedestrian crosswalks, it shall be repaired before dark of the next day. When performing street lighting service, Contractor shall complete the Town's street light service form and report findings to Town staff. A copy of the street light service form is attached in Attachment D. All calls and services shall be entered into computer. An electronic file of repair records shall be submitted to Town staff for review monthly.

The Contractor is required to have on staff and available to perform Services under this contract, designated for the Town of Los Gatos, a lighting/electrical technician with a minimum of five years' of experience in street lighting repairs. The technician shall have experience with the operation,

maintenance, and repair of street lights. The technician shall also have knowledge and experience of operation, maintenance, and repair of electrical service.

A complete inventory of street lights (based on PG&E database) is available at Parks and Public Works Department. A summary table for the number and type of street lights is included as Attachment A. Town standard street light poles are Octafute. Other street light standards that may be found in Town are Type 15, Octagonal, and other decorative poles. It will be the Contractor's responsibility to verify to the extent necessary the accuracy of the inventory.

Town will provide a copy of street light map to the Contractor for use. It will be the Contractor's responsibility to verify the accuracy of the map. Contractor shall verify and mark street light pole and electric service locations on the street light map during maintenance/repair service and provide a copy to Town for updating the map. Contractor shall tag all light poles, if pole ID tags are missing or not apparently visible, in accordance with Town and PG&E requirements.

Traffic Signal

Provide ongoing and routine preventive maintenance and repair of traffic signal equipment, associated lighting, and other pertinent apparatus by duly trained and qualified personnel. A list of Town traffic signals is shown in Attachment C.

The Contractor is required to have on staff and available to perform Services under this contract, designated for the Town of Los Gatos, a Traffic Signal Technician with a minimum of five years' of experience in traffic signal repairs. The Traffic Signal Technician shall have experience with the operation and maintenance of Econolite, and various NEMA controllers currently in use by the Town of Los Gatos. The Traffic Signal Technician shall also have knowledge and experience of the operation and maintenance of inductive traffic loops, video detection systems, emergency vehicle preemption devices, twisted pair interconnect, and fiber optic cables. The Traffic Signal Technician shall keep up to date on the operation and maintenance of all state-of-the-art traffic signal control device and related equipment to ensure that the Town's needs will also be supported in the future. The Traffic Signal Technician shall also be familiar with and adhere to national and State standards for programming traffic signal controllers.

The Contractor shall furnish temporary replacement traffic signal controllers, preemption units, traffic signal communications and monitoring equipment, detector amplifiers, conflict monitors, video detection systems, power supplies, and various other standard traffic signal equipment. Contractor furnished temporary spares shall be identical to the component being replaced in manufacture, make and model. The Contractor shall deviate from this requirement only upon written advance approval from the Town. The Contractor shall provide the temporary equipment at no additional charge to the Town whenever the original units are removed for repair or servicing.

Parking Lot Lights

Maintain lighting in Town's parking lots in an operable and safe condition. These lights are mounted on poles, bollards, walls, or garage ceiling. Respond to call outs for outage, missing pole tag, missing hand hole cover, broken fixture, broken bollard, and any unsafe or inoperable condition.

All reported inoperable lights shall be serviced and repaired within five (5) working days or less. The five working days shall be measured beginning the first full day following receipt of the outage report. When performing lighting service, Contractor shall complete the Town's street light service form and report findings to Town staff. A copy of the street light service form is attached in Attachment D. All calls and services shall be entered into computer. An electronic file of repair records shall be submitted to Town staff for review monthly.

The Contractor is required to have on staff and available to perform Services under this contract, designated for the Town of Los Gatos, a lighting/electrical technician with a minimum of five years' of experience in lighting repairs. The technician shall have experience with the operation, maintenance,

and repair of lights. The technician shall also have knowledge and experience of operation, maintenance, and repair of electrical service.

A complete inventory of lights is available at Parks and Public Works Department as shown in Attachment B. The contractor is required to field locate the lights, prepare a map of the light and service locations, and install identification tags for each of the lights within the first two months of the contract.

Night Check

Perform a quarterly night check for outages and malfunctions of lighting and illuminated signs for the parking lots and the following streets: Los Gatos Boulevard, Main Street, Winchester Boulevard, Santa Cruz Avenue, Blossom Hill Road, Lark Avenue, Los Gatos Saratoga Road, Los Gatos Almaden Road, Pollard Road, and Knowles Drive. Also perform night check for problem locations as needed as directed by Town staff. A copy of report with the results of night check shall be submitted to Town within a week from night check.

USA (Underground Service Alert)

Provide USA locating and marking service for Town's electrical circuits such as street lights, parking lot lights, traffic signals, signal interconnect, fiber optic communication lines, and other Town owned public lighting.

B. TRAFFIC SIGNAL PREVENTIVE MAINTENANCE

The Contractor shall perform routine preventive maintenance service to eliminate or reduce any incidence of malfunctions and complaints, and to maximize the useful life of the Town's traffic signal equipment including and may not be limited to signalized intersections.

The Contractor shall provide monthly preventive maintenance for the signalized intersections listed in Attachment C. The Contractor shall complete Preventive Maintenance Checklists (Attachment E & F) for each maintenance inspection and shall indicate the work performed or required for each item. The Contractor shall maintain one copy of the completed form for each intersection and for each inspection in the controller cabinet and in the Contractor's business office throughout the term of this contract.

The monthly maintenance service shall be performed within the same week of every month for each intersection. Between any two monthly maintenance services shall not be closer than three weeks for each intersection. The Contractor shall notify Town staff the scheduled date for preventive maintenance service at least one week prior to performing the service.

When the conflict monitor test is performed, the Contractor shall maintain three copies of the full field test results. One copy shall be left in the traffic signal controller cabinet, one copy shall be maintained at the Contractor's business office, and one copy shall be sent to the Town.

It is understood and agreed that failure on the part of the Contractor to perform monthly preventive maintenance as required by this contract will cause the Town to suffer an unascertainable amount of damage. Therefore, the Contractor agrees to pay to the Town, not as a penalty but as liquidated damages, the amount of \$500 per calendar day that the intersection is overdue for monthly preventative maintenance. The total amount of liquidated damages will be totaled and deducted from the monthly invoice payment.

C. TRAFFIC SIGNAL EQUIPMENT

The Contractor shall repair, replace or otherwise render in good working order any and all defective parts of all traffic signal control equipment. Whenever the Contractor replaces any defective parts on either a temporary and/or permanent basis, the Contractor shall identify the parts being replaced by manufacturer's make, model, and serial number, and the locations of installation. Further, the

Contractor shall only use new parts for permanent replacement. Exceptions to this requirement shall only occur on an individual basis upon advance written approval from the Town.

No permanent changes of traffic signal control devices shall be done without prior written approval from the Town. Whenever any traffic signal equipment is removed/replaced/modified, the Contractor shall notify the Town by telephone within two hours of the change, followed by written notification to the Town within one week. Furthermore, any changes shall also be indicated on the maintenance or repair log within the traffic signal controller cabinet. The Contractor agrees to notify the Town in advance of any planned or scheduled traffic signal turn-offs/turn-ons necessitated by the Contractor's operations. The Contractor shall make turn-offs/turn-ons of traffic signals only upon prior written approval by the Town.

All traffic signal control equipment shall be maintained in accordance with the manufacturer's recommendations. When the traffic signal equipment becomes obsolete or deteriorated to the point of being beyond reasonable or cost effective repair, the Contractor shall report such conditions to the Town and provide satisfactory evidence that replacements are necessary. The Contractor shall prepare estimates showing the cost breakdown of materials and labor for replacement of such traffic signal equipment and submit this information to the Town.

When Incandescent (or any non-LED) signal lamps are burned out, they shall be replaced with LED modules unless otherwise approved by Town staff. Signal LED modules shall be replaced when the light output and degradation fails specifications or when more than five percent of LED's are not working properly, such as burned out or flickering.

D. NEW INSTALLATIONS OR DELETIONS

The Contractor shall maintain any new street lighting, and traffic signal equipment, which are installed for the Town throughout the term of the contract. These devices will be deemed to be added to the contract when the Town notifies the Contractor of the installation thereof. These added equipment or devices, regardless of the complexity of the technology shall be maintained in the same manner and for the same flat rate as those devices already covered by the contract.

Should responsibility for the maintenance of any current or future lighting or traffic signal device cease to be the Town's, the Town will notify the Contractor in writing of the last date to perform maintenance. The flat rate maintenance for any such affected device shall be prorated on the basis of the number of days that device was maintained by the Contractor.

E. WARRANTY

Contractor shall manage all lighting and traffic signal related materials and devices under warranty. During the manufacturer's warranty period, the Contractor shall be responsible for making contact with the equipment manufacturer regarding any service determined to be under warranty. The Contractor shall replace the warranted materials (or replace with temporary equipment pending replacement material from manufacturer) without any charges to Town.

A minimum of twelve- (12) month warranty shall apply to all work and materials installed by Contractor. During the Contractor's warranty period, the Contractor shall be responsible for repairing and/or replacing the equipment without any charges to Town. The warranty on the repaired or replaced equipment shall again commence with the date of repair or replacement of equipment.

A minimum of three- (3) month warranty shall apply to all temporary replacement installed by Contractor. During the warranty period, the Contractor shall be responsible for repairing and/or replacing the equipment without any charges to Town. The warranty on the repaired or replaced equipment shall again commence with the date of repair or replacement of equipment.

F. CONTRACTOR SHOP

The Contractor shall have adequate shop and storage facilities. This facility shall house the necessary staff, traffic signal poles, signals, traffic signal controllers, traffic signal communications devices, LEDs, controller cabinets, service cabinets, wiring, pullboxes, pullbox lids, and other necessary materials and vehicular equipment to perform all maintenance required and to perform temporary and permanent repair of accident damage to traffic signal equipment/devices. This facility shall also be equipped to perform twenty-one day bench test of traffic signal controller cabinets in accordance to Caltrans and Town specifications.

The Contractor shall maintain a single local telephone number during the entire term of the contract where he/she or a designated representative can be reached 24 hours a day, 365 days a year.

The Contractor shall also maintain and provide direct phone numbers, cellular phone numbers, fax numbers, and email addresses of various pertinent staff/employees with which the Town can maintain regular and direct contact with regarding billing, estimating, service calls, status reports, scheduling, testing of equipment, and various other issues.

G. EMERGENCY SERVICE

When notified of any traffic signal device malfunction, failure, loss of indication, accident damage, construction damage, or any emergency traffic signal service call, the Contractor shall respond and be at the location within one hour following notification from the Town.

In the event of a knockdown, the Contractor shall provide temporary emergency replacement of a type acceptable to the Town until permanent repairs can be accomplished. The Contractor shall install a temporary device appropriate for the situation and consult with the Town to identify a permanent replacement. Required replacement of equipment will require prior written approval from the Town before such replacements are commenced in conjunction with an emergency call.

In the case of a 1A/1B, pedestrian push button pole, or street light pole knock-down where the foundation and anchor bolts are still intact, the Contractor shall make all necessary repairs with necessary new equipment to return the pole to its original, undamaged condition upon the initial response. No additional compensation shall be provided for subsequent work to the original damage.

At any time the Contractor is notified of an emergency situation by the Town, CHP, County Sheriff or other duly recognized authority, the Contractor shall immediately notify the designated contact staff at the Parks and Public Works Department the emergency call.

Upon completion of the response to the emergency call, the Contractor shall notify the appropriate Town staff by telephone and/or email the status of the emergency work. In addition, the Contractor shall notify the Town in writing within one week of the completion of the repair work. In the event a follow-up permanent repair is required, the Contractor shall submit a cost proposal to Town staff within a week from the emergency response.

It is understood and agreed that failure on the part of the Contractor to respond within one hour to any emergency service call as provided will cause the Town to suffer an unascertainable amount of damage. Therefore, the Contractor agrees to pay to the Town, not as a penalty but as liquidated damages, the amount of \$500 per hour. The time for such liquidated damages shall commence from the first hour after the required response time for emergency service calls indicated in the previous sections. The total amount of liquidated damages will be totaled and deducted from the monthly invoice payment.

The Contractor shall enter any emergency service calls onto the log at the intersection controller cabinet along with the minimum required information as stated in the previous sections. Failure to do so will be construed to be a failure to respond to the emergency service calls.

H. EXTRA WORK

The Contractor shall install, modify, repair and/or upgrade lighting, traffic signals and all associated hardware or traffic safety devices as requested by the Town. All such work, if not covered in the flat rates, shall be considered extra work and shall be performed to the satisfaction of the Town. Please refer to the signal monthly maintenance service forms and the "Compensation" Section for details.

No additional or extra work shall be commenced or undertaken by the Contractor unless authorized in advance in writing by the Town. Said written authorization is a condition precedent to the Contractor's entitlement to reimbursement or remuneration for such services. This work shall be performed within a specified time limit established by the Town and for a mutually agreed upon price.

The Town shall retain discretionary right to perform any extra work through the use of Town forces, by negotiated agreement, or to advertise such work by others.

I. RECORDS

Monthly Report

The Contractor shall submit to the Town, at the same time as the submission of monthly invoices, a computerized report covering all Contractor's activities within the Town during the previous month. This monthly activity report shall be provided in Excel file format. Formatting shall be agreed by the Town. The monthly activity report shall include at a minimum:

- a. Time any service calls were received by the Contractor, time at which the service call was dispatched to the technician, the arrival time of the technician at the requested location, the departure time, the caller's name, and the results of diagnosis.
- b. A complete record of any and all work performed on the lighting and traffic signal equipment during the period covered by the monthly activity report, including the make, model, and serial number of any replacement or newly installed equipment at each intersection. The report shall also detail the make, model and serial number of any equipment replaced.
- c. Asset ID's (if applicable) and detailed location description of any repaired/replaced equipment.
- d. The date and time that any preventive maintenance work was performed and any findings.
- e. Any and all pending repair work needed at each intersection along with Repair Order number.

In addition, the Contractor shall submit to the Town, at the same time as the submission of monthly invoices, a separate summary list of outstanding items requiring follow-up repair.

The Contractor shall maintain and provide all required maintenance/service forms (Attachments D, E, F, and G). A copy of the completed maintenance and service forms, in electronic format, shall be submitted to Town staff monthly.

The Contractor shall be required to maintain a copy of the monthly activity report (either electronic or hardcopy), maintenance/service forms, conflict monitor test results, and any service records for a period of not less than five years.

Service Log in Controller and Service Cabinets

The Contractor shall maintain a log at each signalized intersection included under this contract. The log shall detail each inspection, repair, and/or emergency/service call. The Contractor shall complete at a minimum on this log, the date, arrival time, departure time, type of inspection/service, any findings or repairs, the Contractor's employee name and/or ID, the employee's job title, and in the event of signal outage/flash, display message on conflict monitor, controller, loadswitch position, etc. A similar log shall be maintained in each electric service cabinet where storage space is available.

J. MEETINGS/CONSULTATION

The Contractor shall be available to meet, when deemed necessary, with Town staff on a monthly basis or at a mutually agreed upon time and place to review maintenance activities, operational and repair activities, pending work, estimates, work quality, and any items related to Contractor's work under this contract.

Contractor shall be available at all times to the Engineer for consultation at no added expense to the Town. The consultation may consist of explanation of technical details, upgrade of signal equipment, and operational improvement. The contractor shall provide detailed work proposal and cost estimate to the Engineer upon request for repair, installation, replacement, or any improvements containing lighting or traffic signal components. Work associated with preparation of proposal shall be provided at no charge to the Town.

K. FAILURE TO PERFORM

Should the Contractor fail to properly execute the work in a timely or correct matter as provided under the terms of this contract, the Town, after providing the Contractor with three business days' notice, may perform or hire another Contractor to perform such work and deduct the cost plus 25% thereof from any payment due to the Contractor.

L. COMPENSATION**1. STREET LIGHTING SERVICE**

The Contractor shall be compensated for service required under this contract at a flat rate per street light. Included in the flat rate is compensation for all related labor, equipment, and materials for all related above ground lighting components including and not limited to fixtures and housings (and all components within), lamps, photo cells, starters, ballasts, transformers, fuses, sockets, hand hole covers, ID tags, and pull box lids. Also included in the flat rate are the conductors, fuses, terminal blocks, breakers, contactors, photo cells, and clock timers in the poles, bollards and service enclosure. Also included in the flat rate is compensation for the 24-hour phone service, response to calls, identification/verification of problems, preparation for cost proposal, quarterly and special night check, logging of calls, reporting of service, and any other related service activities as specified in the Contract.

Not included in the flat rate compensation are poles, arms, bollards, pull boxes (except lids), service enclosures (the shell), and underground and in-structure conduits and conductors. Also not included is repair/replacement for damage caused by vehicular collisions, acts of God, or malicious damage.

2. TRAFFIC SIGNAL SERVICE

The Contractor shall be compensated for services required under this contract at a flat rate per intersection.

Included in the flat rate shall be compensation for the preventive maintenance including labor, equipment, and materials, as identified in the maintenance service form. The preventive maintenance items as identified in the maintenance service form shall be the Contractor's responsibility to repair, install and/or replace without additional charges to Town whether they are maintained, repaired, or replaced at call-outs or emergency call-outs, or at the time of maintenance routine. In addition, the following items shall be the Contractor's responsibility to repair, install and/or replace without additional charges to Town whether they are maintained, repaired, or replaced at call-outs or emergency call-outs, or at the time of maintenance routine: load switches; flashers; BIU's; detector amplifiers; audible pedestrian signal indicators; push button assembly; louvers; visors; back plates; above ground conductors, and signal indication LED modules (including also replacement of bad non-LED lamps with LED modules) for all vehicle and non-vehicle signal indication.

Also Included in the flat rate compensation is compensation for the logging of calls, work related to preparation of cost proposal, investigation/verification of trouble calls, warrantee service, stocking of materials, reporting of service, record keeping, temporary equipment, and any other associated services as specified in the Contract.

Not included in the flat rate compensation are any items not specified above, e.g. poles, arms, pull boxes (except lids), conflict monitors, power supply units, video detection, signal head housing and brackets, underground conduits and conductors, etc. Also not included in the flat rate compensation is repair/replacement for damage caused by vehicular collisions, acts of God, or malicious damage.

3. PARKING LOT LIGHTING SERVICE

The Contractor shall be compensated for service required under this contract at a flat rate per light in parking lots. Included in the flat rate is compensation for all related labor, equipment, and materials for all related above ground lighting components including and not limited to fixtures and housings (and all components within), lamps, photo cells, starters, ballasts, transformers, fuses, sockets, hand hole covers, ID tags, and pull box lids. Also included in the flat rate are the conductors, fuses, terminal blocks, breakers, contactors, photo cells, and clock timers in the poles, bollards and service enclosure. Also included in the flat rate is compensation for the 24-hour phone service, response to calls, identification/verification of problems, preparation for cost proposal, quarterly and special night check, logging of calls, reporting of service, and any other related service activities as specified in the Contract.

Not included in the flat rate compensation are poles, arms, bollards, pull boxes (except lids), service enclosures (the shell), and underground and in-structure conduits and conductors. Also not included is repair/replacement for damage caused by vehicular collisions, acts of God, or malicious damage.

4. USA (Underground Service Alert)

The Contractor shall be compensated for service required under this contract at a flat rate per USA ticket. Included in the flat rate is compensation for all related labor, equipment, and materials for all related USA ticket related work.

5. EXTRA WORK

Town shall compensate the Contractor for the performed extra work and repairs in accordance with agreed upon labor rates, material markups, equipment rates, and miscellaneous costs.

Town may solicit competitive bids for extra work from the Contractor and alternative vendors or contractors.

Extra work refers to the replacement, repair, upgrade or installation of any street lighting and traffic signal components that are not included in the compensation of the flat rates. The Contractor shall obtain Town approval prior to scheduling any work to be performed under this provision. The Contractor shall provide documentation to support invoiced charges, including but not limited to time cards and material invoices, upon request by the Town.

6. RATE INCREASE

Rates may be reviewed annually by the successful proposer and the Town; and rate increases may be requested in writing with detailed justification. Nevertheless, the maximum increase in labor and/or equipment costs in any calendar year shall be no more than the percent change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, All Urban Consumers, San Francisco-Oakland-San Jose, 1982-84-100 Index..

7. PAYMENT AND INVOICES

Payments will be made within thirty days following receipt of an accurate invoice and documentation of work performed. Invoices shall be submitted no later than 60 days after the completion of work and not more frequently than once per month. It is understood and agreed invoices submitted later than 60 days after the completion of work will cause the Town to suffer an unascertainable amount of staff effort in reconciling late invoice. Therefore, the Contractor agrees to pay to the Town, not as a penalty but as liquidated damages, the amount of \$250 per invoice or 10% of the invoice, whichever is greater. The liquidated damage will be deducted from the invoice payment and shall not exceed the invoice amount.

Attachment 'A'
Street Light Summary (Fixture Count)
Town Owned Lights (Non Parking Lot Lights)

Circuit:	Lamp Size	Count
		1
	<i>HPS 70W</i>	1
	<i>LED</i>	1
Circuit: Mult 120v	Lamp Size	Count
	<i>HPS 100W</i>	105
	<i>HPS 150W</i>	21
	<i>HPS 250W</i>	13
	<i>HPS 70W</i>	686
	<i>LED</i>	13
	<i>MV 175W</i>	9
Circuit: Mult 240v	Lamp Size	Count
	<i>HPS 100W</i>	131
	<i>HPS 150W</i>	31
	<i>HPS 200W</i>	13
	<i>HPS 250W</i>	2
	<i>HPS 70W</i>	435
	<i>LED</i>	25
	<i>MV 175W</i>	33
	<i>MV 250W</i>	6
	<i>MV 400W</i>	9
Circuit: Series other	Lamp Size	Count
	<i>HPS 100W</i>	1
Circuit: Unknown	Lamp Size	Count
	<i>HPS 100W</i>	9

<i>HPS 150W</i>	8
<i>HPS 200W</i>	9
<i>HPS 250W</i>	5
<i>HPS 70W</i>	28
<i>LED</i>	1
<i>LPS 90W</i>	1
<i>MV 175W</i>	5
<i>MV 250W</i>	1

Total Number Street Lights 1603

ATTACHMENT 'B'
PARKING LOTS LIGHTING

150 w Induction Shoebox	Los Gatos / Saratoga Long Term Lot	22
70 w Induction Cobra Head	Lot 1 - Los Gatos / Saratoga / Bantham	4
70 w Induction Cobra Head	Lot 1 - Los Gatos / Saratoga / Bantham	1
40 w Induction Conversion	Lot 2 - Bantham / Royce	5
40 w Induction Shoebox	Lot 3 - Royce / Graves	6
40 w Induction Shoebox	Lot 4	21
2 x 55 w Induction box	Lot 4	2
40 w Induction Wallpack	Lot 4	9
55 w Induction Conversion	Lot 4	7
80 w Induction Cobra Head	Lot 5 - Elm / Main St	7
80 w Induction Cobra Head	Lot 5 - Elm / Main St	3
40 w Induction Shoebox	Monte Bello Lot	5
Beta 40-LED	Lot 6 - Victory Lane	10
40 w Induction Shoebox	Lot 7 - Main St	5
40 w Induction Shoebox	Lot 8 - Main St	4
40 w Induction Conversion	Southside Lot, North Santa Cruz	6
100 w Induction Cobra Head	Balzer Field Lot	2
TOTAL COUNT		119

Attachment 'C'
Town Traffic Signal List

<i>ID</i>	<i>Intersection</i>
1	Los Gatos Bl. & Los Gatos-Saratoga Rd
2	Los Gatos Bl. & Kennedy-Caldwell
3	Los Gatos Bl & Nino
4	Los Gatos Bl., Roberts Rd. & Shannon Rd.
5	Los Gatos Bl. & Blossom Hill Rd.
6	Los Gatos Bl., Los Gatos-Almaden Rd. & Chirco Dr.
7	Los Gatos Bl. & Los Gatos Village Sq.
6	Los Gatos Bl. & Garden -Gateway
9	Los Gatos Bl. & Lark Ave.
10	Blossom Hill Rd. & Cherry Blossom Ln.
11	Blossom Hill Rd. & Camellia Terrace
12	Blossom Hill Rd. & Roberts Rd. (East)
13	Blossom Hill Rd. & University Ave.
14	Blossom Hill Rd. & Union Ave.
15	N. Santa Cruz/Winchester & Blossom Hill/Mariposa
16	N. Santa Cruz Ave. & Andrews St.
17	W. Main St. & Santa Cruz Ave.
18	W. Main St. & University Ave.
19	Lark Ave. & Oka Rd.
20	Los Gatos-Saratoga Rd. & Alberto Way
21	Winchester Bl. & Lark Ave.
22	Winchester Bl. & Knowles Dr.
23	Winchester Bl. & Wimbledon Dr.
24	Los Gatos-Almaden Rd. & National Ave.
25	Knowles Dr. & Dardanelli Ln.
26	Knowles Dr. & Capri Ave.
27	Blossom Hill Rd. & Roberts West
28	Winchester Bl & Daves
42	Lark Av & University Av
43	Winchester/Albright/Bay Club (New in a few months)

ATTACHMENT D
TOWN OF LOS GATOS SERVICE FORM - STREET LIGHTS
 (All work prescribed in the list is included in the monthly flat fees for street light service)

Town WO ID: _____ Republic Work Order #: _____
 Pole ID: _____ Location/Address: _____
 Caller: _____ Reported Problem: _____
 Date: _____ Start Time: _____ End Time: _____

A. VERIFY LIGHT	
Verify Pole Tag ID: _____ (Install pole tag if it's missing.)	<input type="checkbox"/>
Verify Pole Address/Location: _____	<input type="checkbox"/>
Pole Type? <i>Dotrite or Galapp or Stemberg or Type 15 or Utility (If it's an utility pole, it's a PG&E maintained light. Notify town staff) or Others (Please describe)</i>	<input type="checkbox"/>
Lamp Type & Size? For existing lights neither HPS nor LED - Replace with LED light fixture. Notify Town staff.	<input type="checkbox"/>
Circuit Voltage? 120V or 240V	<input type="checkbox"/>
Overhead or Underground Feed? Overhead power is to be repaired by PG&E. Notify Town staff.	<input type="checkbox"/>
Is this a PG&E power issue? Yes or No If it's a PG&E power issue, notify Town staff.	<input type="checkbox"/>
Missing/broken hand hole cover? Yes or No Replace missing/broken hand hole cover.	<input type="checkbox"/>
Comments: _____	
B. PROBLEM AND REPAIR	
Cause? Accident or Vandalism or Others	<input type="checkbox"/>
Problem Description: _____	<input type="checkbox"/>
Work Description: _____	<input type="checkbox"/>
Found Service? Yes or No If the service location is found, please describe the location here: _____	<input type="checkbox"/>
C. FOLLOW-UP SERVICE	
Description of Required Follow-Up Service: _____	<input type="checkbox"/>
TECHNICIAN NAME: _____	SIGNATURE: _____

ATTACHMENT E
MONTHLY - TOWN OF LOS GATOS TRAFFIC SIGNAL PREVENTIVE MAINTENANCE CHECKLIST
 (All work prescribed in the list is included in flat fees for monthly routine maintenance)

Intersection: _____ Signal ID: _____
 Date: _____ Start Time: _____ End Time: _____

A. CONTROLLER CABINET & SERVICE ENCLOSURE	
Cabinets – Vacuum/clean inside/outside cabinets. Spray insecticide as necessary. Remove graffiti, postings and adhesive materials off cabinets. Trim vegetation off cabinets (one foot clearance). Replace cabinet filter as necessary.	<input type="checkbox"/>
Door and Lock – Check door closure, plumb, gaskets, lock operation, seal and weather tight. Adjust, repair, lube and oil hinges and locks as necessary. Re-seal as necessary.	<input type="checkbox"/>
Fan Operation (June through September) – Verify that fan turns on at 90°F and above. Replace as necessary.	<input type="checkbox"/>
Cabinet Light – Verify that light works with door and light system. Replace as necessary.	<input type="checkbox"/>
Cabinet field wires – Verify cabinet field wires are neatly organized and properly marked. Re-mark as necessary.	<input type="checkbox"/>
Cabinet Conduits – Re-seal/dip seal as necessary.	<input type="checkbox"/>
Cabinet Seal – Re-seal between cabinet and its concrete foundation as necessary. Must be watertight. Check traces of rust. Remove rust and paint over area of rust.	<input type="checkbox"/>
Police Panel Door – Check and test operation of police panel key. Observe if the signal return to normal operation in proper sequence.	<input type="checkbox"/>
<i>Comments & Follow-up:</i>	
B. CONTROLLER & OTHER EQUIPMENT	
Equipment Display – Check if equipment display properly such as controller and conflict monitor screens, telemetry error message on master controller, battery level in UPS, lights on preemption device, etc.	<input type="checkbox"/>
Equipment LEDs – Check all LEDs inside cabinet, such as on conflict monitor, flasher road switches, video detection cards, preemption cards, etc. Any LEDs not working? Watch equipment? Check if it is supported properly.	<input type="checkbox"/>
Any visible damages - Visually inspect any damages to any equipment inside cabinet. Any equipment damaged?	<input type="checkbox"/>
Terminal blocks – Visually check loose wires, burned terminals, D/C ground, etc. Adjust/replace as necessary. Do not over tighten.	<input type="checkbox"/>
Vehicle Detection - Verify and label on detector cable and amplifiers. Observe operation of each detector. Replace as necessary. Any detectors stuck on or missing calls?	<input type="checkbox"/>
Video Detection System (if applicable) – Check camera view on monitor and its proper operation. Clean camera as necessary.	<input type="checkbox"/>
Timing – Verify and update controller clock, main street on recall. Observe signal cycles properly. Report to staff any unusual condition.	<input type="checkbox"/>
Preempt (if applicable) – Check and test operation of preempt devices.	<input type="checkbox"/>
<i>Comments & Follow-up:</i>	
C. WALK INTERSECTION	

C.1. SIGNAL HEADS	
Lens, Lamps and LEDs – Visually check for damage and indication. Check and adjust for operation, proper orientation for arrows, and seating of lamps and LEDs. Replace LED's to fit as necessary. Replace broken lens and burned out lamps with LED modules. Replace bad LED module per contract specifications.	<input type="checkbox"/>
Signal Heads and Covers – Verify all in good condition and aimed properly. Re-aim as necessary.	<input type="checkbox"/>
Visors and Back Plates – Verify all in place and in good condition. Adjust/replace as necessary.	<input type="checkbox"/>
3M Program Heads (if applicable) – Check for proper operation. Re-program as necessary.	<input type="checkbox"/>
Re-painting – Paint faded signal head housing, visors, and back plates as necessary.	<input type="checkbox"/>
Comments & Follow-up:	
C.2. PEDESTRIAN SIGNALS	
Pedestrian Signal Heads – Check condition of heads and LED's. Adjust/re-aim as necessary.	<input type="checkbox"/>
Pedestrian Push Buttons & Plates – Push pedestrian buttons and check operation. Check condition of push button plates and proper arrow orientation.	<input type="checkbox"/>
Audible Pedestrian Signal (if applicable) – Verify the operation of audible pedestrian signal indication.	<input type="checkbox"/>
Comments & Follow-up:	
C.3. MISCELLANEOUS	
Traffic Signal Poles – Visually check all poles, mast arms, anchor bolts & nuts for rust, damage and tightness. Adjust the tightness of bolts and nuts as needed.	<input type="checkbox"/>
Mast Arm Signs – Visually check mast arm signs for tightness, plumb and level. Adjust signs as necessary.	<input type="checkbox"/>
Graffiti - Remove graffiti, postings and adhesive materials off signal poles and equipment.	<input type="checkbox"/>
Illuminated Signs (if applicable) – Visually check for tightness, plumb and condition. Adjust signs as necessary. Replace lamps as necessary.	<input type="checkbox"/>
Video Detection Cameras (if applicable) – Visually inspect cameras. Remove visible obstruction, e.g. nest, webs, etc. Wipe clean with damp soft cloth (clean water only) as necessary and at least once every three months.	<input type="checkbox"/>
Fire Preempt – Visually inspect antenna.	<input type="checkbox"/>
Red Light Detector Devices (a.k.a. Rat Boxes) if applicable – Visually check the condition, burned devices, clean and tightness. Adjust as needed.	<input type="checkbox"/>
Luminaire – Visually inspect condition of safety lighting. Repair/replace as needed as necessary.	<input type="checkbox"/>
Pole Hand Hole Covers – Check hand hole covers. Replace broken and missing covers.	<input type="checkbox"/>
Traffic Detector Loops – Check for coverage of all loop wires in flow and around sub-bull. Repair as necessary.	<input type="checkbox"/>
Detector Hand Hole Lids – Check cracked and missing lids. Replace broken and missing lids.	<input type="checkbox"/>
Pull Box Lids – Visually inspect pull box lids. Replace broken and missing lids.	<input type="checkbox"/>
Comments & Follow-up:	
TECHNICIAN NAME: _____	SIGNATURE: _____

**ATTACHMENT F
UPS CHECK LIST**

Intersection: Daves/Winchester (only one with UPS in Los Gatos) Signal Amps: _____

Date: _____ Start Time: _____ End Time: _____

UPS Model: Myers 1250

- Visually inspect UPS panel indicators. Clean battery terminals.
- Test and measure battery performance.

Tech Name	Date	Running Hours				Battery Voltage (Disconnected)				Comments
		Begin		End		Battery	Battery	Battery	Battery	
		Count	Hours	Count	Hours	A	B	C	D	

ATTACHMENT G
TOWN OF LOS GATOS SERVICE FORM – TRAFFIC SIGNAL CALL-OUT REPAIR

Town WO#: _____ Republic WO#: _____

Intersection: _____

Caller: _____ Reported Problem: _____

Date: _____ Start Time: _____ End Time: _____

A. ARRIVAL/DEPARTURE	
Arrival Date:	
Arrival Time:	
Departure Time:	<input type="checkbox"/>
B. PROBLEM AND REPAIR	
Cause? Accident or Vandalism or Others	<input type="checkbox"/>
Problem Description:	<input type="checkbox"/>
Work Description:	<input type="checkbox"/>
C. FOLLOW-UP SERVICE	
Description of Required Follow-Up Service:	<input type="checkbox"/>
TECHNICIAN NAME: _____	SIGNATURE: _____

Attachment H
TOWN STANDARD SPECIFICATIONS
(As of March 10, 2015)

2.37 Signals, Lighting, Electrical System

General

Signals, lighting and electrical work shall conform to the current provisions of Section 86, "Signals, Lighting and Electrical Systems," of the State of California Department of Transportation SSS (henceforth referred to as "SSS"), the State of California Department of Transportation SSP (henceforth referred to "SSP" and these Town Specifications.

Town Standard Equipment

Unless specified otherwise, the following standard equipment shall be used for the Town:

1. NEMA TS-2, Type 1, "P" controller cabinet.
2. ECONOLITE ASC3 signal controllers.
3. ITERIS Edge 2 Video Detection system.
4. Fire Preemption – As supplied by Fire Department.

Conduit

Conduits shall be installed using directional boring or open trench as determined by Contractor and approved by Engineer. The top of the installed conduit shall be a minimum of 18 inches below finished grade.

Directionally-bored conduits shall be installed at a minimum depth of eighteen inches (18") from existing pavement surface. Directionally-bored conduits within the public right-of-way shall be installed within one foot (1') of the lip of gutter or underneath the sidewalk.

All traffic conduits shall be 3" or larger in diameter. All conduits shall be Schedule 80 polyvinyl chloride conduit unless otherwise specified. End bells shall be installed on all PVC conduits ends. Ground bushings shall be installed for all metallic conduits.

Contractor shall not use 90-degree elbows. Only large radius 45-degree elbows shall be allowed.

Interconnect cable conduit terminations into pull boxes shall be gradually swept to the elevation where conduit enters through the side of a pull box. These conduit sweeps shall have a minimum 3-foot radius and 45-degree radius.

All conduits shall have a pull tape and a bare #8 AWG (minimum) copper wire for grounding and tracing of conduits.

All conduits placed in utility joint trenches shall be inspected and approved by the respective utility (PG&E, SBC, Verizon, Comcast) prior to backfill. The Contractor shall coordinate all such inspections with each Utility Company.

All conduits shall be sealed with Duct-Seal after wires are installed to prevent moisture and rodents from entering the conduits.

Conduits shall be installed either parallel to or perpendicular to the curb, unless otherwise approved by the Engineer prior to placement. Conduit at an oblique angle to the curb will not be permitted.

Communication conduit (for fiber optic cable) – The sum of horizontal and vertical conduit bends in new conduit between pull boxes and/or splice vaults shall not exceed 180 degrees. Conduit terminations into pull boxes and splice vaults shall be gradually swept to the elevation where conduit enters through the side of a pull box or splice vault. These conduit sweeps shall have a minimum 3-foot radius and 45-degree radius.

Pull Boxes

The identification "LOS GATOS" shall be engraved, welded or cast on the top face of all covers and followed by one of the following applicable markings:

1. "STREET LIGHTING" (for pull boxes containing lighting).
2. "TRAFFIC SIGNAL" (for pull boxes containing traffic signal circuits with or without street lighting circuits).
3. "TRAFFIC COMMUNICATION" (for traffic signal communication).
4. "SERVICE" (for pull boxes in service runs and where utilities company conduits terminate).
5. "TREE LIGHTING" (for tree lighting systems only).
6. "SPRINKLER CONTROL" (for sprinkler control systems only).
7. "ELECTRICAL" (for electrical systems not mentioned above).

Pull boxes shall be No. 5 or larger unless otherwise indicated on the plans. Pull boxes for signal interconnect shall be No. 6 or larger unless otherwise indicated on the plans. Pull boxes for fiber-optic cabling system shall have the following minimum inside dimensions, unless specified otherwise in the contract documents: 48-inch long by 30-inch wide by 14-inch high. In addition, it shall be provided with one pull box extension. Pull box extension shall be in 12-inch high increment. A locking lid shall be provided.

Excess conduit for all conduit ends shall be cut back to provide stub ends of 1-inch minimum to 2-inch maximum.

Bottom of pull boxes shall be grouted over clean crushed rock sump (12 inches

minimum). All pull boxes shall have a 2-inch drain hole in center bottom and grouted with smooth surface sloped toward drain hole.

Conductors

Identification stripe color shall be permanently impregnated the conductor insulating jacket.

No. 10 or smaller traffic signal conductors shall be solid copper with either:

- Type USE insulation with a minimum thickness of 1 mm (40 mils), or
- Type THW insulation with a minimum thickness of 1 mm (40 mils).

Splicing and Splicing Insulation

All connectors and terminals installed to the conductors including those for detector circuits, shall be pressure connector crimp type and shall be soldered after being applied with the applicable tool recommended by the manufacturer of the connector.

Heat shrinkable insulating tubing shall be applied after completion of the splicing procedure. Insulation over the connector shall consist of a heat shrinkable, mastic lined, 1 mm minimum polyolefin cable sleeve, or cover, to which heat shall be applied at a temperature greater than 120 degrees C. with an electric hot air gun until the sleeve or cover shrinks and covers the connector and the mastic material has flowed completely around and between the conductors to form a waterproof insulation. The conductor insulation shall not be damaged due to application of the heat shrinkable insulation sleeve.

Signal Interconnect Cable

Signal interconnect cable shall contain 12-pair 19 AWG PE89 stranded copper unless otherwise noted on the plans. Unless otherwise indicated on the plans, in the Special Provisions, or as directed by the Engineer, splicing of the SIC is not allowed. The SIC shall run continuously and unspliced from one cabinet to the next cabinet.

Identification Labeling

Identification shall be by T&B Ty-Rap Cable Ties No. TY553M, fastened to the conductors/cables in such a manner that they will not move along the conductors/cables. The flags on the Ty-Rap shall be marked with a Ty-Rap marking pen No. WT 163 M-1 (Black), or approved equal. All phase conductors shall be labeled by phase designation in the pull boxes nearest their termination, and in the controller cabinet. Detector cables shall be labeled by channel designation in the pull boxes nearest their termination, and in the controller cabinet. Detector cables shall be also labeled by phase designation in the controller cabinet nearest their termination at the detector amplifiers.

Bonding and Grounding

Bonding and grounding shall conform to the provisions of Section 86-2.10, "Bonding and Grounding," of the SSS and the following.

All metallic electrical equipment including, but not limited to, poles, metal conduit, service pedestals, controller cabinets, anchor bolts, foundation reinforcement, and metallic cable sheaths shall be tied to ground electrical potential and shall be interconnected by means of copper conductors and clamps to form a single, grounded and electrically bonded system. Grounding of the electrical system shall be accomplished by means of approved 5/8-inch x 10-foot copper-clad steel or 3/4-inch x 10-foot galvanized steel ground rods installed in all cabinet foundations and in all pull boxes that contain conduits with equipment ground conductors as shown on the project plans. Ground rods shall extend above the finished cabinet foundation or grouted pull box bottom sufficiently to attach a ground clamp and #8 AWG bare copper equipment ground conductor.

Galvanizing

New traffic signal and street light poles shall have a galvanized finish in conformance to the provisions of Section 86-2.15, "Galvanizing," of the SSS.

Controller Assembly

The controller assembly shall conform to the provisions of Section 86-3.02, "Type 90 Controller Assemblies," of the SSS and the following.

The controller assembly shall be NEMA TS-2 Type "P" traffic signal controller cabinet unless otherwise indicated on plans.

Controller Cabinet Foundation

The controller cabinet foundation shall be 6" above the finished grade, in lieu of the 3.5" dimension shown on Standard Plan ES-3C.

Traffic Signal Faces and Fittings

Traffic signal faces and fittings shall conform to the provisions of Section 86-4, "Traffic Signal Faces and Fittings," of the SSS, the SSP and the following.

Traffic signal faces shall have metal signal sections and visors conforming to Section 86-4.01 "Vehicle Signal Faces", of the SSS. Plastic signal faces and visors shall not be allowed.

Vehicle signal face reflectors shall be made of specular aluminum conforming to Section 86-4.01A "Optical Units" of the SSS.

Backplates shall be furnished and installed on all signal faces. Backplates shall be made of aluminum and installable from the front of the signal head and conform to Section 86-4.03 "Backplates" of the SSS and the SSP ES-4C. Louvers shall not be used unless otherwise specified. Plastic backplates shall not be allowed.

Signal mounting assemblies shall conform to Section 86-4.06 "Signal Mounting Assemblies" except that terminal compartments, post top adapters, and plain side pole mounts shall be cast bronze. "Clam Shell" mounts shall not be used.

Color of the traffic signal housing front and back, mounting bracket, visors, and backplates shall be black.

All new vehicle signal heads shall have 12" red, amber and green (circular and arrow) light emitting diode (LED) modules. The LED modules shall be Gelcore brand or approved equal.

Pedestrian Signals

Pedestrian signal faces shall be Type A with 3/16 inch tempered glass message plate and z-crate type screen conforming to Section 86-4.05 "Pedestrian Signal Faces" of the SSS and the SSP ES-4B.

Pedestrian signal heads shall have a combination Portland orange "upraised hand"/countdown numerals/lunar white "walking person" LED module. The LED modules shall be Gelcore brand or approved equal.

The Countdown Pedestrian Signal shall be user configurable through dipswitches allowing the user to deactivate the countdown operation or activate countdown of Walk+Don't Walk time, countdown of Walk time and then Don't Walk time and countdown of Don't Walk time only. Outline pedestrian symbol is not permitted.

Color of the pedestrian signal housing shall be black.

Audible Pedestrian Signals

Color of audible pedestrian signal housing shall be black.

Pedestrian Push Buttons

Pedestrian push button assemblies shall conform to the provisions of Section 86-5.02, "Pedestrian Push Button Assemblies", of the SSS, the SSP ES-5C and the following.

All pedestrian push button assemblies shall be Type B (5" x 7.5") per State Standard Plan ES-5C. Pedestrian push buttons shall be 2"-diameter push buttons and ADA compliant and shall be mounted on traffic signal poles at an elevation of 38 inches at center of button above the adjacent sidewalk surface.

Multiple push buttons on the same standard shall be mounted at the same height with a maximum vertical offset of plus or minus 2 inches between push buttons.

Pedestrian push buttons should be parallel to the crosswalk, within 5 feet of the crosswalk extended, and within 10 feet of the edge of curb, shoulder, or pavement. When wheelchair ramps are present, pedestrian push buttons should be within 5 feet of the edge of ramps.

Color of pedestrian push button assembly shall be black.

Detector Loops

Vehicle detectors shall conform to the provisions of Section 86-5, "Detectors", of the SSS, the SSP and the following.

1. Detector loops shall have circular configuration.
2. Loop conductor shall be Type 2 loop wires. No splice is permitted.
3. Detector lead-in cable shall be Type B.
4. Detector lead-in cables between pull boxes (immediately adjacent to the detector handhole) and controller cabinet shall run continuously and shall be unspliced throughout the length of the conductors.
5. The sealant for filling slots shall be asphaltic emulsion sealant for asphaltic concrete pavement application and hot-melt rubberized asphalt sealant for Portland cement concrete pavement, both as specified in the State SSS.

Contractor shall contact the Town Inspector 72 hours in advance of work which will cut or damage any existing detector loop or lead-in wire. The Town will install appropriate timing in the traffic signal controller prior to the Contractor cutting the existing loops. Contractor shall make arrangements to replace damaged loop detectors within five days at the Contractor's expense.

Luminaires

Luminaires shall conform to the provisions of Section 86-6, "Lighting" of the SSS and the SSP.

Unless otherwise specified, luminaires shall be LED (Light Emitter Diode) light fixtures with lighting level equivalent to 70 watt HPS (High Pressure Sodium) on local and collector streets, 100 watt on arterial streets, 150 watt HPS at intersections, and 200 watt HPS for traffic signal safety lighting. The LED light fixture shall be Cree or Leotech, the latest model, or approved equal.

Luminaire circuit splicing shall conform to Section 86-2.095 "Fused Splice Connectors" or the SSS.

Photoelectric Controls

Photoelectric controls for luminaires shall conform to the provisions of Section 86-6.07, "Photoelectric Controls," of the SSS and the following.

Photoelectric controls shall be as follows:

Type II photoelectric control shall consist of a remote photoelectric unit in a weatherproof housing, a separate contactor and a test switch located in the service enclosure unless shown otherwise. The photoelectric control unit shall be pole-top mounted unless otherwise specified.

Type IV photoelectric control shall consist of a photoelectric unit in a weatherproof housing which plugs into an EEI-NEMA twist lock receptacle integral with the luminaire.

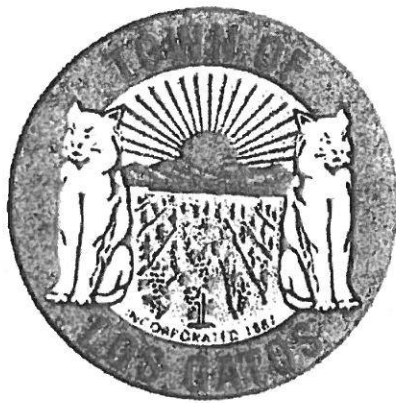
A switch to permit manual operations of the lighting circuit shall be provided for each Type II photoelectric control. The "auto-test" switch shall not have an "off" position.

Removing, Reinstalling or Salvaging Electrical Equipment

Removing and/or salvaging of equipment shall conform to the provisions of Section 86-7.01, "Removing Electrical Equipment," of the SSS and the following.

All salvaged equipment shall be delivered to the Town of Los Gatos Service Center at 41 Miles Avenue. The Contractor shall contact the Town of Los Gatos Department of Parks and Public Works at (408) 395-2859, forty-eight (48) hours in advance to arrange for acceptance of salvaged equipment.

Proposal for



Lighting and Traffic Signal Maintenance and
Repair Service

Project No: 14-5401-63364

Presented by:

St. Francis Electric

04/07/2015



EXHIBIT B

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Jessy Pu, Traffic Engineer
Town of Los Gatos
Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95030

Proposal for Lighting and Traffic Signal Maintenance and Repair Service (Project No: 14-5401-63364)

Dear Mr. Pu,

We are excited for this opportunity to introduce you to our Maintenance Division of St. Francis Electric, (aka SFE). SFE agrees to accept the terms and conditions in the Contract Specifications and other requirements in accordance within this RFP for the Town of Los Gatos.

Headquartered in San Leandro, CA, SFE is a California licensed and bonded Class "A-General Engineering" and "C-10 Electrical" contractor (CA license #335324). SFE has a long history of servicing Northern California's transportation and electrical needs, proving to be a beneficial resource when dealing with everyday maintenance and operations. Having a core business of traffic signal installation and maintenance, SFE has established itself as one of the top electrical service providers in Northern California, with satellite office locations in Sacramento, Napa, San Francisco, and San Jose. SFE's local office, located at the corner of Chynoweth Ave and Snell Ave in San Jose, is just 7 miles away from the Town of Los Gatos.

Our company currently has 200+ employees including a solid team of skilled IMSA certified traffic signal technicians, electricians, CA licensed traffic and civil engineers, project managers, and project engineers. SFE is well-established in the industry and having vast amounts of inventory allows us to serve maintenance and construction projects effectively. In addition, SFE specializes in installing, programming, and maintaining Intelligent Transportation Systems (ITS). We also offer transportation engineering services to the Town of Los Gatos as part of the traffic signal maintenance.

SFE sets high standards in customer service with regards to time and budget. We constantly monitor our staff's service quality to satisfy our clients and ultimately lead to better and safer lives for the citizens.

We thank you for giving SFE the opportunity to present this proposal and look forward to establishing a working partnership with the Town of Los Gatos. Allen Chen will be the project manager for servicing the Town of Los Gatos. (email - achen@sfe-inc.com and cellular phone 510-695-0582)

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Smith".

Guy Smith
Vice President

Background

St. Francis Electric History

The year was 1945, World War II had just ended and Lorenzo Spinardi was discharged from the Army Air Corps. Although he was born and raised on a tomato farm in Merced, California, he decided to settle down and make a go of it in the fast growing San Francisco Bay Area. He started as an electrician in San Jose, but Mr. Spinardi soon desired his independence.

In 1946, Lorenzo founded St. Francis Electric while living in San Leandro, California. The company has remained in business since that time under ownership and direction of the Spinardi Family.

In the early years, SFE offered wiring installation for homes in the numerous new housing tracts that were popping up all over the Bay Area. It quickly gained a reputation for honest, quality work at a fair price. By the late Fifties, in addition to its core business of tract homes, SFE was performing electrical work on commercial buildings and industrial facilities.

Since the core management consisted of veteran airmen from the Second World War, it was inevitable that the company would soon be doing work at the local airports. Gradually this division expanded to outlying areas, including Nevada. In those years, SFE was one of the few electrical companies that specialized in this type of work. In 1972, Lorenzo's oldest son, Thomas, joined the company. Together with their father, they expanded the company's geographical client base and core service offerings. They successfully completed more complex jobs such as installation of underground utilities, traffic signals, and airport projects.

In the mid-1980's, a decision was made to completely drop residential and commercial work, while devoting resources towards infrastructure development. This required a significant investment in equipment and a specialized trained workforce. Several of the employees from this period are still with the company. They represent some of the best skilled craftspeople in the local industry.

In the past 20 years, SFE has dedicated its goals of perfecting the art of infrastructure work. This quest has involved taking on numerous and a variety of challenging projects. The company's performance on these projects has always been excellent. The level of expertise possessed by the personnel has risen to the highest standard in the industry, and the equipment fleet has grown to be one of the largest owned and operated by any contractor in the Bay Area. Thomas Spinardi retired in 2002, yet still participates in an advisory role on special projects.

In 2003, management was restructured in order to expand the level of previous performance. Robert Spinardi became President, and promoted 3 long time employees to senior staff positions. Under new management team, SFE was able to increase the volume of work while maintaining the same quality, integrity, innovation, and service that defines its culture and personality.

Today, SFE has over 200 employees and services and clients throughout California and Nevada.

Statement of Qualifications

St. Francis Electric (SFE) agrees to provide routine preventative maintenance services, prompt scheduled repair, emergency response, non-emergency response, and routine Underground Service Alert (USA) to the Town's 1603 street lights, 119 parking lot lights, and 30 traffic signals traffic signals.

SFE will make every effort to satisfy the Town of Los Gatos in responding to the 24/7 emergency calls. All Emergency calls will be responded to within one hour following notification from the Town. SFE has large warehouse capacity, resources and inventory in San Jose and San Leandro to support the Town of Los Gatos and enables us to guarantee quick response times. SFE agrees to provide and maintain emergency service response of the Town's traffic signals on a twenty-four (24) hour a day, seven (7) days per week basis, including all holidays. SFE has a 24/7/365 telephone service for taking calls for reported inoperable signals and lighting and all calls will be tagged: 1-(844)-LIGHT88

SFE understands the Scope of work for this Lighting and Traffic Signal Maintenance and Repair Service. At a minimum, SFE will provide services to all items listed in the RFP for the monthly routine maintenance. SFE will also manually record inspection information and submit with recommendations to the Town of Los Gatos.

St. Francis Electric is one of the largest electrical companies in Northern California with a staff of experienced traffic signal technicians, electricians, project managers/engineers, estimators, fleet/maintenance crew & a California licensed Professional Civil and Traffic Engineer to support our client's needs. SFE's experienced traffic signal technicians have previously worked on, or are currently working for, local governments in providing traffic signal and street lighting maintenance. Our technicians are dedicated, enthusiastic and innovative in the day-to-day maintenance services. SFE's experienced team supports the technicians and the public agencies we serve with regards to equipment knowledge, implementation, programming, troubleshooting, and installation. One key factor that sets us apart from the typical maintenance contractor is the ability to provide "IN-HOUSE" traffic engineering services to our clients. With a local office and yard in San Jose and San Leandro, SFE will provide traffic signal and street light maintenance for the Town of Los Gatos to the Cities utmost satisfaction.

SFE also has complete stock of 332/NEMA cabinets, service pedestals, poles, DLC, Loop wire, traffic signal wire, signal LEDs in assorted sizes, conduit, pull boxes, lids, etc. SFE's vast inventory of equipment and material enables us to support any maintenance and emergency service needs. This has proven very critical for emergency service such as traffic signal/streetlight knock downs. In such cases, SFE has the inventory in house available immediately as opposed to the typical 3-6 month waiting period for a permanent replacement pole that other maintenance contractors would need without the inventory.

Proposed Personnel

Joshua Bailey	Maintenance Division Manager/Traffic Signal Technician
Allen Chen	Transportation Engineering Manager
Monica Kini	Project Manager/Estimator
Vance A Gonzales	Consultant Project Manager and Signal Technician
Stephanie Amaral	Project Administrative Support
Noriel Panganiban	Foreman/Traffic Signal Technician/Electrician
Dinh Vu	Senior Traffic Signal Technician/Lab Technician

St. Francis Electric | A and C-10 Licensed Contractor | 975 Corden St. San Leandro CA 94577
www.sfe-inc.com - Phone (510) 639-0639 - Fax (510) 639-9116 - 24/7/365 Traffic Signal Service 1-(844)-LIGHT88

Wes Perry	Superintendent
Michael Watchers	Traffic Signal/Street Light Technician/Electrician
Michael Delgado	Traffic Signal/Street Light Technician
Jonathan Bailey	Traffic Signal/Street Light Technician
Joseph Munoz	Traffic Signal/Street Light Technician

Summarized Resume

Joshua Bailey	Maintenance Division Manager/Traffic Signal Technician
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15 years of experience in the Traffic Signal and Street Light business in maintenance, construction, inspection, testing, repairs, and modification for public agencies from the Bay Area through Central Valley. Joshua has a reputation for providing excellent customer service and top notch technical knowledge when it comes to traffic signal and ITS.

- Supervisor responsible for managing 40+ employees;
- Previously worked for the City of Livermore as a Traffic Signal Technician;
- IMSA Level I & II Field and Bench and Level III Field Certified;
- State Certified General Electrician;
- NCCCO Certified Crane Operator with CDL "A" License;
- Experienced with CCTV installation, maintenance and troubleshooting;
- 12+ years of multiple Video Detection installation and maintenance, specifically: Iteris, Autoscope, Trafficon & Aldis;
- Current "C-10 Electrical" and "A- General Engineering" License qualifier for CSLB;
- Versed in 170 and NEMA controller programming;
- Traffic signal communication: ETA Certified, certified fiber optics installer;
- Experienced in TS-1, TS-2, and 332 cabinet troubleshooting and modification;

Allen Chen P.E., T.E.	Transportation Engineering Manager
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Allen is an experienced Traffic and Civil Engineer. He specializes in traffic signal operation, traffic signal and ITS equipment trouble shooting, signal design and modification, communication system design, coordination timing, traffic safety improvement, traffic control, and traffic calming. Allen is an enthusiast in serving the public to achieve a safer and better life for the citizens.

- Registered California Professional Civil Engineer (C 67936);
- Registered California Professional Traffic Engineer (TR 2368);
- IMSA Work Zone Safety Certification & Level I Traffic Signal Field;
- MS Degree in Mechanical Engineering, Cal Poly, San Luis Obispo, CA;
- BS Degree in Civil Engineering, Cal Poly, San Luis Obispo, CA;
- Previously worked with the City of Fremont and City of Santa Rosa as a traffic engineer, managing operations of 200+ traffic signals;
- Experienced traffic engineer (13 years) in operation of traffic signal, signal cabinet (NEMA TS-1, TS-2, & 332) and controller (170, 2070, & NEMA), TMC/TOC, traffic signal communication systems.

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Rugged Com and Actelis switches Installation, troubleshooting, and programming, and Intelligent Transportation Systems (ITS);

- Technical savvy in ITS: traffic signal communication system networking, fiber optic network and switch, Ethernet over copper switch, equipment programming, Traffic Management Center setups, CCTV camera, various presence detection systems, and pre-emption systems.
- Extensive experience in developing traffic signal coordination and traffic signal timing; Proficient in troubleshooting and solving traffic signal timing related issues and provide professional solutions;
- Applied and managed grant funding for transportation engineering projects;
- Managed Customer Service Request (CSR) program – proficient in serving the community and understands the importance of excellent customer service.
- Supervisory experience in managing 15 manufacturing employees and 3 traffic engineering technicians;

Monica Kint	Project Manager/Estimator
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Ms. Kint has almost a decade of experience in the Traffic Signal, ITS, and Street Light industry as a distributor & project manager. Monica has excellent relationships with manufacturers, contractors, municipalities, Regional Transportation Associations, and State Department of Transportation. Monica is experienced also as an estimator; with extensive vendor relationships she will provide the most cost effective equipment for any maintenance needs.

- AAS Degree in Business Software and Accounting;
- Extensive experience with estimating & take-offs of Traffic Signal Equipment;
- Experienced in scheduling, coordinating field work, support calls and intersection turn-on;
- Previously worked at Western Pacific Signal as Product Manager/Estimator as the main point of contact for all manufacturers;
- Provided inside sales support to (3) sales technicians from N. California to Washington;
- Experienced in the installation and programming of Accessible Pedestrian Systems;
- Provided forecasts and maintained project schedules & equipment;
- Experienced with certified payroll, monthly utilization reports & insurance documents;
- Familiar with Caltrans Specifications and MUTCD requirements;

Vance A. Gonzales	Consultant Project Manager and Signal Technician
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Over 25 years of experience in Traffic Signal manufacturing, maintenance, troubleshooting, installation and turn on support. Vance is currently with ITERIS as a Product Support Engineer and will provide consultant services to SFE to lead the maintenance support. Vance has extensive experience from manufacturing, installation, engineering, trouble shooting, testing within the traffic signal industry. Vance has IMSA Level III certification.

- Supervising and management experience;
- IMSA Level I & II & III & Senior field Level III Certified, IMSA Traffic Signal Inspector Certified, IMSA Fiber Optic Certified, and IMSA Traffic Maintenance Certified (IMSA Certification ID#: 54370 For Western Section);
- Factory trained TS1 and TS2 – Econolite, Siemens, and Naztec;

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- Extensive training from EIT - UC Berkeley, Adaptive traffic systems, 170/2070 controller – Safetran and McCain, ITS cabinet and controller, signal timing, coordination, and design;
- Experienced in video detection on all manufacturing – Iteris, Naztec, Flir, Aldis, Autoscope, and Leddartec;
- Experienced in Traffic Management Center Installation & in wireless communication 900.2.4 4.9 5.8
- Experienced in traffic signal communication networks – fiber, Ethernet over copper (Actelis), and various types of managed switches and servers, video management software;
- 10 years with SMI Peek in traffic signal equipment installation and maintenance, 4 years with Synchronex in installation and cabinet modification, 11 years with ITERIS in traffic equipment installation, video detection, Clary battery backup system and Encom Radios;

Noriei Panganiban	Foreman/Traffic Signal Technician/Electrician (Primary Signal Tech)
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Noriei has over 20 years of experience in traffic signal and street lighting maintenance service for the major cities in the Bay Area such as the City of Fremont and Hayward. Noriei has been a primary responder for many emergency calls such as traffic signal pole and cabinet knock downs and is very knowledgeable in trouble-shooting controllers and ITS equipment.

- Traffic signal technician/electrician with IMSA certifications;
- Resides in San Jose, CA within 18 miles of Los Gatos
- Proficient with Eagle EPAC, Naztec Apogee, BI-Tran Systems software;
- Experienced with traffic signal cabinet installation, maintenance & trouble shooting (NEMA TS-1 TS-2, P, M, and 332);
- Knowledgeable in Battery Backup Systems to include Alpha, Dimensions, Myers, and Tesco;
- Experienced with Video Detection software and maintenance, specifically Iteris, Autoscope, Trafficon, Aldis;
- Qualified for ITS equipment installation and repair;
- Extensive experience in traffic signal interconnect system installation and troubleshooting;
- Traffic Signal Maintenance & construction for 18 years

Dinh Vu	Senior Traffic Signal Technician/Lab Technician
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Dinh has over 40 years of experience in traffic signal and street lighting maintenance service for the major cities in the Bay Area. Dinh has been a primary responder for many emergency calls such as traffic signal pole and cabinet knock downs and is very knowledgeable in trouble-shooting controllers and ITS equipment.

- 20+ years of NEMA & Non NEMA (332) cabinet testing, certification and repair
- Traffic signal technician/electrician with IMSA Traffic Signal Technician Bench/Field Level II Certifications;
- Resides in San Jose, CA within 12 miles of Los Gatos;
- Proficient with Eagle EPAC, Naztec Apogee, BI-Tran Systems software;
- Experienced with traffic signal cabinet installation, maintenance & trouble shooting (NEMA TS-1 TS-2, P, M, and 332);
- Knowledgeable in Battery Backup Systems to include Alpha, Dimensions, Myers, and Tesco;

- Experienced with Video Detection software and maintenance, specifically Iteris, Autoscope, Trafficon, Aldis;
- Qualified for ITS equipment installation and repair;
- Extensive experience in traffic signal interconnect system installation and troubleshooting;
- Traffic Signal Maintenance & construction for 40 years;
- Certified electronic technician for over 30 years;
- CMU/MMU testing & certification with the latest ATSI PCMT-8000 tester

Wes Perry	Superintendent
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Wes provides support in maintenance services such as USA, detection loop installation, street light and traffic signal pole knockdown installation, foundations, and traffic signal/street lighting conduit installations.

- Traffic signal maintenance & construction for 20 years;
- Resides in San Jose, CA within 9 miles of Los Gatos
- OSHA - 30 hours of training;
- IMSA Work Zone Safety Certification & Level I Traffic Signal Field;
- Extensive knowledge of induction loop installation and repair;
- Extensive experience with Caltrans On-Call TOS Maintenance;
- Sensys Networks Installation and Certification;
- VTA Safety Training and Certification;
- CalTrain Safety Training and Certification;

Michael Watchers	Traffic Signal/Street Light Technician/Electrician
------------------	--

Michael has over 10 years of experience in street lighting installation & maintenance service for the major cities in the Bay Area such as the City of Fremont, Hayward and Redwood City. Michael has been a primary lead installer for LED retrofit projects in Palo Alto, Monterey, San Ramon, San Leandro and Sacramento County. These successful retrofit projects have a combined total of well over 30,000 lights.

- IMSA Work Zone Safety Certification & Level I Traffic Signal Field;
- Possesses strong written and oral skills when dealing with customers and professionals;
- Proficient in Street Light troubleshooting and general electrician work;
- State Certified General Electrician
- Experienced with CCTV installation, maintenance and troubleshooting
- 6+ years of multiple Video Detection installation and maintenance, specifically: Iteris, Autoscope, Trafficon & Aldis.
- Traffic Signal Maintenance & construction for 8 years

Michael Delgado	Traffic Signal/Street Light Technician/Electrician
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Michael Delgado has 20 years of experience in traffic signal and street lighting installation & maintenance service and miscellaneous electrical work in conduit, conductor, and switched.

- IMSA Work Zone Safety Certification & Level I Traffic Signal Field;
- Resides in San Jose, CA within 11 miles of Los Gatos;
- State Certified General Electrician;
- Extensive knowledge of traffic signal controller programming NEMA and 170;
- Experienced with traffic signal cabinet installation, maintenance & trouble shooting (NEMA TS-1 TS-2, P, M, and 332);
- Specialized in re-lamping of street light fixtures and troubleshooting wire problems;
- Experienced in troubleshooting communication systems and vehicle detection (loop and video);
- Traffic Signal Maintenance & construction for 18 years;

Jonathan Bailey	Traffic Signal/Street Light Technician
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Jonathan is versed in lighting and maintenance repair. He is also responsive to street light and traffic signal pole knockdowns and installation.

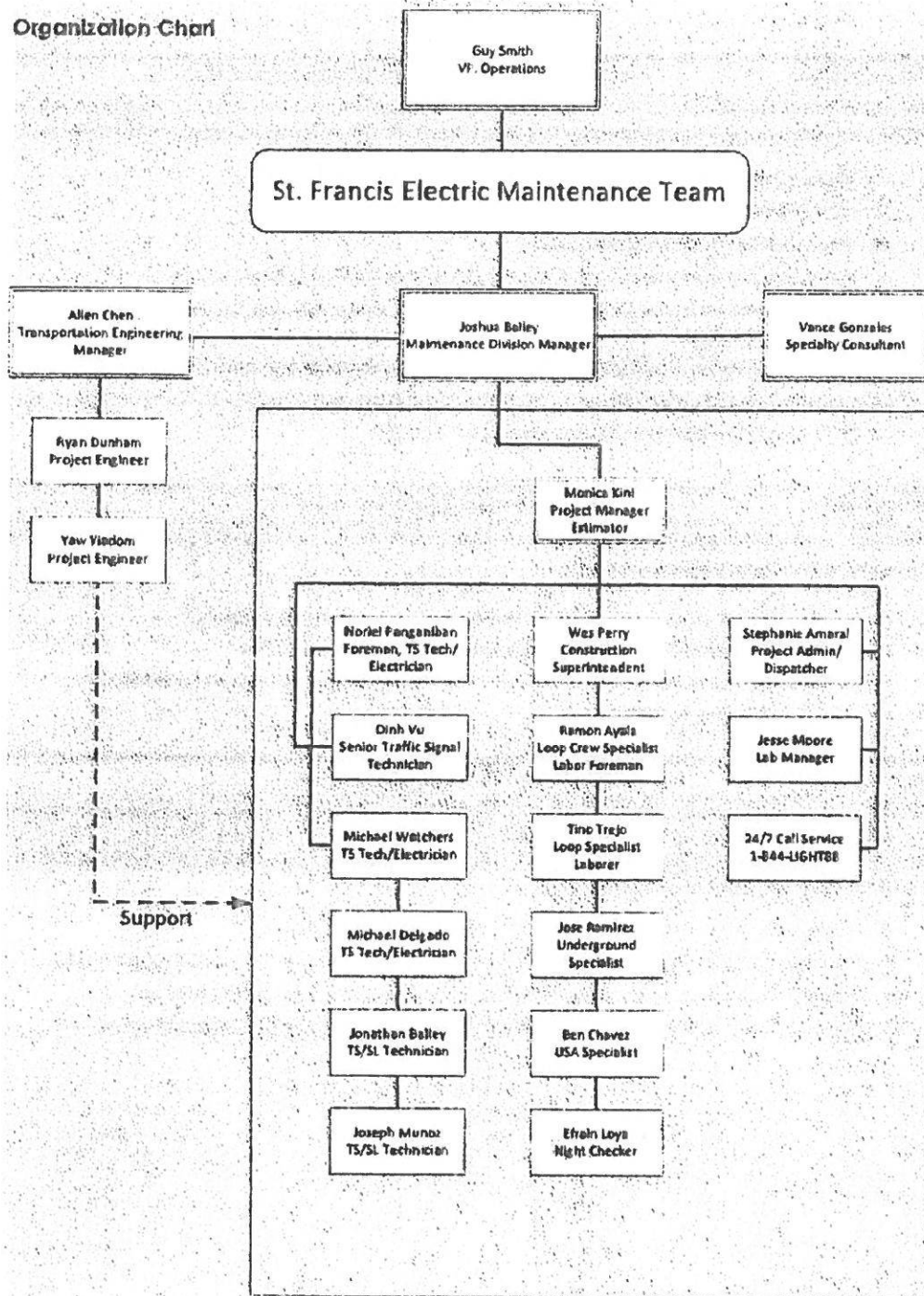
- Street Light/Traffic Signal combined maintenance & repair for 5 years;
- IMSA Work Zone Safety Certification & Level I Traffic Signal Field;
- Experience in re-lamping of street light fixtures and troubleshooting wire problems;
- OSHA – 10 hours of training

Joseph Munoz	Traffic Signal/Street Light Technician
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Joseph has over 6 years of experience in traffic signal and street lighting installation & maintenance service for the major agencies in the Northern California Area such as the Town of Los Gatos. Joseph has been a primary lead installer for LED retrofit projects. These successful retrofit projects have a combined total of well over 15,000 lights.

- IMSA Work Zone Safety Certification & Level I Traffic Signal Field;
- Possesses strong written and oral skills when dealing with customers and professionals;
- Trained for MMU/CMU testing/certification with newest PMCT-8000 ATSI tester.
- Experience in re-lamping of street light fixtures and troubleshooting wire problems.

Organization Chart



Equipment

The following is a list of equipment owned by SFE, which is available for use on the proposed work as required:

Quantity	Name, Type & Capacity	Condition	Location
8	Bucket Truck, Diesel Gas	Running Great	San Leandro
5	Bucket Truck, Diesel Gas	Running Great	San Jose
3	✓ Crane	Running Great	San Leandro
17	Dump Truck (Ford, GMC, and Ram)	Running Great	San Leandro
3	Bore Machine, American/Vermeer/Ditch Witch	Running Great	San Leandro
2	Bore Truck	Running Great	San Leandro
16	Arrow Board, Bemis Allmand, Eclips, Wanco, SolarTech, and Arrow Master	Excellent	San Leandro
3	Concrete Saw, Mecco and Core Cut	Running Great	San Leandro
23	Flatbed Truck, Ford, GMC, and Chevy	Running Great	San Leandro
4	Generator, Multiequip	Excellent	San Leandro
3	Saw Truck, Ford	Running Great	San Leandro
6	Trencher, Ditch Witch and Vermeer	Running Great	San Leandro
7	Light Tower	Running Great	San Leandro
1	✓ Conflict Monitor Tester (ATSI/PCMT 8000, CMU/MMU Tester)	Excellent Brand New	San Leandro
25+	Type-15 Street Light Poles	New	San Leandro
20+	1A, 1B, and 1D Poles	New	San Leandro
30+	SV and TV Framework Hardware	New	San Leandro
25+	Assorted 6' to 15' Luminaire Arms	New	San Leandro
100+	70w to 400w HPS Luminaires	New	San Leandro
10+	Pod Posts	New	San Leandro
20+	8" 3-section Vehicle Signals	New	San Leandro
30+	12" 3-section Vehicle Signals	New	San Leandro

References

The table below summarizes the list of Maintenance and On-Call Accounts that St. Francis Electric has established. We are proud of our customer service and encourage the Town of Los Gatos to verify the references and ask their customer satisfaction with SFE.

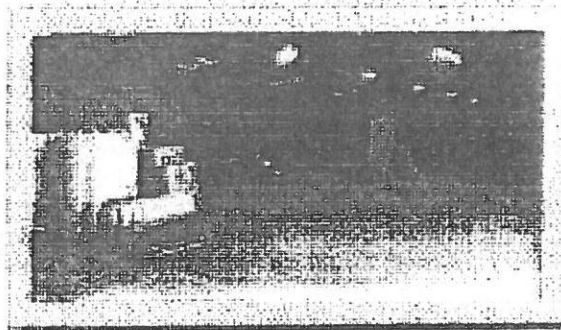
Agency	Description	Contact Name	Phone & Email	Year & Duration	Note
City of Mountain House CSD	Traffic Signal Maintenance & Repair Services	Doug Louie	(209) 831-5619 dlouie@sjaov.org	2014/3-yr+1	9 Traffic Signals and 2 Illuminated Cross Walks
City of Yuba City	Traffic Signal Maintenance Services	Benjamin Moody	(530) 822-4783 bmoody@yubacity.net	2014/1-yr+4	38 Traffic Signals
City of Pleasanton	Street Light Maintenance & Repair Services	Mike Truscott	(925) 931-5555 mtruscott@cityofpleasantonca.gov	2014/1-yr+2	7003 Street Lights
City of Mountain House CSD	Street Light Maintenance & Repair Services	Glenda Zurbito	(209) 831-5619 gzurbito@sjaov.org	2014/3-yr+1	1444 Street Lights
City of Burlingame	Traffic Signal Maintenance & Repair Services	Andrew Wong	(650) 558-7237 awong@ Burlingame.org	2015/Annually	14 Traffic Signals and 4 RRFBs
City of Salinas	Traffic Signal On-Call Services	Jose Saucedo	(831) 758-7197 josesau@ci.salinas.ca.us	2014/Annually	On-Call Services for 106 Traffic Signals, 4 Flash Beacons, 1 Lighted Cross Walk, and 2 RRFBs
City of Livermore	Traffic Signal, Street Light, and add-ons On-Call Repair Services	Chip King	(925) 260-4874 cking@ci.livermore.ca.us	2014/Annually	On-Call for All Public Works Needed Services from Traffic Signal to Street Lights, RRFBs, and others
Caltrans District 4	Traffic Operation Maintenance and Repair Services	Salvador Borrayo	(510) 377-4186 salvador.borrayo@dot.ca.gov	2013/On going	Service Entire Caltrans District 4 for Loop Repairs, Wire Theft and damage, CCTV, CMS, Traffic Signal and Street Lighting Repair and Maintenance
City of Daly City	Traffic Signal and Street Light On-Call Repair Services	Tom Lazerini	(650) 991-8167 tlazerini@dalycity.org	2014/On going	On-Call for All Public Works Needed Services from Traffic Signal to Street Lights, RRFBs, and others
City of Lafayette	Traffic Signal and Street Light On-Call Repair Services	Donna Feehan	(925) 766-6542 Dfeehan@ci.lafayette.ca.us	2014/On going	On-Call for All Public Works Needed Services from Traffic Signal to Street Lights, RRFBs, and others

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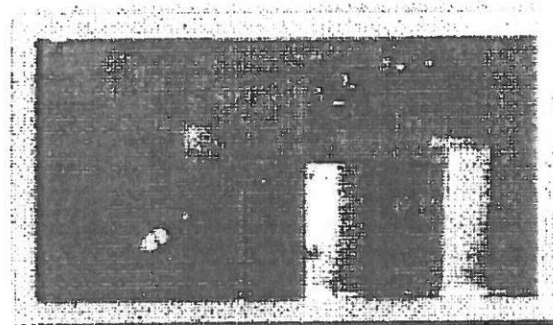
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City of Vacoville	Traffic Signal Emergency On-Call Repair Services	Agnes Liu	(707) 249-3251 agnes.liu@cityofvacoville.com	2014/Annually	69 Traffic Signals and Equipment
City of Fremont	Traffic Engineering Consultant Services	Donya Amiri	(510) 494-4757 damiri@fremont.ca.gov	2014/Annually	Provide traffic engineering consultant services to the City over traffic engineering design, dolly operation, and training.

Most of our Maintenance Division staff has previously worked for either a Traffic Signal & Street Light Maintenance Contractor or directly for a Government agency. We have a very strong and thorough team of Project Managers, technicians & engineers in order to serve the most sophisticated traffic signal needs. **St. Francis Electric has NO Negative History to report.**



SFE Maintenance Warehouse



SFE Testing Facility

Work Plan

SFE's maintenance team intends to approach this maintenance contract with 100% honest mentality and to provide the best customer service experience for the Town of Los Gatos and its citizens. SFE understands that, as a maintenance contractor, we represent the Town while working on the streets. Many of our team members have worked for municipalities; therefore we always thrive to provide honest, responsive, and innovated services to our clients.

Once selected, SFE will work with the Town of Los Gatos to implement the maintenance service contract as smoothly as possible by July 1st, 2015. If necessary, SFE offers to provide interim services during the transition before the contract begins to avoid interrupted maintenance for the Town. SFE will assign local electricians when responding to the routine maintenance and emergency response services.

SFE owns and operates approximately 100 service vehicles of various types and sizes throughout Northern California. To help ensure safety, our maintenance crews use hydraulic "bucket" trucks with aerial lifts which are Occupational Safety and Health Administration (OSHA) approved, inspected and certified as required by law. Our bucket trucks are typically equipped with the most common traffic signal gear, poles, and street light replacement parts to service most emergency responses such as pole knock downs. In addition, SFE's vehicles are equipped with a permanently mounted arrow board/stick, warning beacon/strobe lights, traffic cones & construction warning signs. Our "bucket truck" hydraulic lift is capable of reaching a height of at least forty (40) feet from the roadway surfaces. Our technicians are equipped with necessary laptops for the programming/testing of traffic signal controllers, CMU/MMU, Camera monitoring (CCTV, Video, etc), and various equipment. In addition, all SFE employees will be equipped with a smartphone/mobile tablet with 4G LTE access capable of email, text, photo, and internet. SFE is committed to maintain an inventory of all signal equipment used by the Town of Los Gatos. This commitment will ensure the Town avoiding long wait time on some equipment such as traffic signal poles.

SFE will make every effort to satisfy the Town of Los Gatos in responding to the 24/7 emergency calls. All Emergency calls will be responded to within one hour following notification from the Town. In addition, our primary technicians assigned to the Town of Los Gatos reside within Santa Clara County in order to respond to emergency services efficiently. SFE agrees to provide and maintain emergency service response of the Town's traffic signals on a twenty-four (24) hour a day, seven (7) days per week basis, including all holidays. SFE's 24/7/365 traffic signal telephone service: 1-(844)-LIGHT88.

SFE understands the Scope of Work for this Lighting and Traffic Signal Maintenance and Repair Service. This includes approximately 1603 street lights, 119 parking lot lights, 30 traffic signals, and a USA locating and marking service. For street lights, SFE agrees to provide 24-hour on-call services for repair of street light outages and 24-hour phone service taking light outage calls, perform night checks (quarterly) for light outages, response to and repair of trouble calls within the specified time, installation of lights as requested, and regular submission to the Town of accurately maintained and detailed work records. For traffic signal, SFE agrees to perform monthly preventive maintenance of all 30 traffic signals, repair and replacement of any traffic signal control devices as requested, regular submission to the Town of accurate activity records and reports of any and all work and service calls related to the Town's traffic signals, and response to all service request in a timely manner. For parking lot lights, SFE agrees to perform night checks (quarterly), response to and repair light and regular submission to the Town of accurately maintained work records. At a minimum, SFE will provide services to all items listed in the RFP for the monthly maintenance.

All reported inoperable street lights and parking lot lights will be serviced and repaired within five (5) working days or less. SFE agrees to provide a technician designated for the Town of Los Gatos with a minimum five years of experience in lighting, general electrical operation, maintenance, and repair. In addition, SFE's traffic signal technician will be experienced in the operation and maintenance of Econolite, and various NEMA controllers currently in use by the Town of Los Gatos. SFE's traffic signal technicians also have knowledge and experience of the operation and maintenance of inductive traffic loops, video detection systems, emergency vehicle preemption devices, twisted pair interconnect, and fiber optic cables. SFE has a dedicated traffic engineer with extensive experience in traffic signal design, operation, and maintenance to support our technicians in everyday operation and maintenance.

SFE agrees to manage all lighting and traffic signal related materials and devices under warranty. SFE offers a twelve (12) months warranty for all work and installed new materials and three (3) months warranty for all temporary installed replacement. SFE offers a large shop and storage facility for the Town of Los Gatos to house all necessary staff under the contract including a traffic signal controller cabinet testing facility capable of twenty-one day bench testing in accordance to Caltrans and Town specifications.

A monthly computerized report will be provided to the Town of Los Gatos to support every invoice. The report will include maintenance logs indicating dates, times, sites, work performed and technician's name as well as other required items listed in this RFP. The log shall be provided in Excel file format agreed by the Town. SFE agrees to maintain and provide all required maintenance/service forms (Attachment D, E, F, and G). A copy of the completed maintenance and service forms, in electronic format, shall be submitted to Town staff monthly. SFE agrees to maintain a copy of the monthly activity report (either electronic or hardcopy), maintenance/service forms, conflict monitor test result, and any service records for a period of not less than five years. SFE will meet with Town staff, when deemed necessary on a monthly basis or a mutually agreed upon time and place to review maintenance activities, operational and repair activities, pending work, estimates, work quality, and any items related to SFE's work under this contract.

SFE retains and will have readily available, in functioning order, all required tools, equipment, apparatus, facilities, and materials needed to perform all work necessary to maintain and repair the traffic signals and other Town equipment, in compliance with current Caltrans and Town of Los Gatos standards and specifications.

At SFE, we understand the importance for the Town of Los Gatos to provide quality service to its residents; therefore, we are here to do just that. Our focus is to provide the Town with high quality, cost effective, trouble free, and innovative maintenance.

ON-LINE ELECTRONIC DATABASE SERVICE

In order to better service the Town of Los Gatos, SFE will provide an online real-time electronic database service. SFE recognizes that speed, efficiency, and comprehensive service are the keys to customer satisfaction in our industry. With this in mind, we are constantly seeking innovative ways to improve our service delivery. SFE is proud to present Salesforce™, our computerized electronic maintenance and inventory management system. This cloud-based application represents what we believe to be the forefront of customer account management and maintenance tracking in our industry. Los Gatos' Salesforce™ account will include a complete list of all of the Town's intersections, equipment inventory, a log of repair and replacement parts, and records of all emergency calls received for the Town.

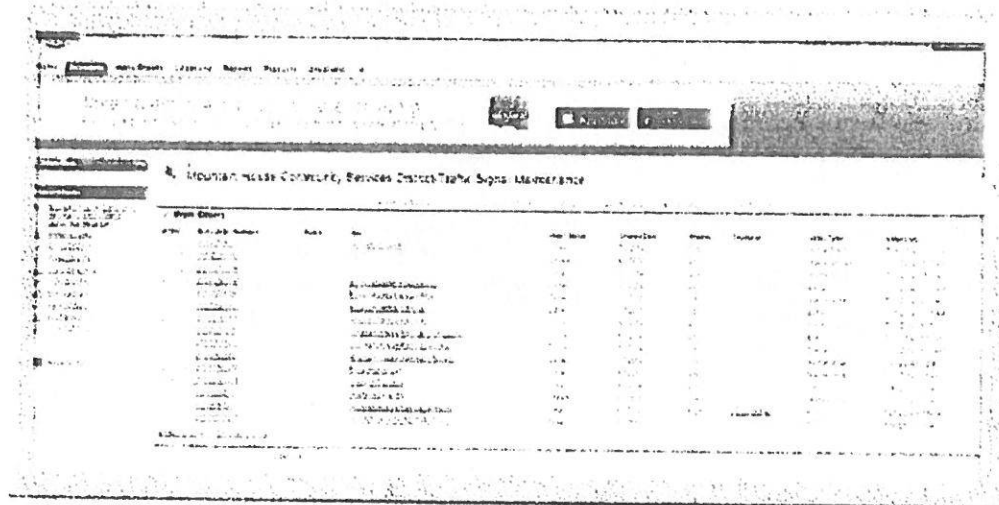
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Essential key functions of this online database are made available to the Town Traffic Engineer and authorized agent(s) to monitor maintenance, service call history and review all activities performed by SFE technicians working in the Town.

The information handled by Salesforce™ includes:

- Service Request Management and Scheduling, including time stamping and dispatching.
- Scheduled Maintenance Management and Scheduling.
- Intersection Details, inventories of equipment, maps, CAD drawing, timing sheets, etc.
- Report Generation: including invoices, materials use, etc.
- Inventory control, including real-time tracking of available and installed equipment.
- Information available to view or download through the Customer Portal, which includes:
 - Real-time status of Scheduled Maintenance and Service Request calls.
 - Real-time Intersection Inventories.
 - Real-time Equipment Inventories.
 - Intersection maintenance histories, maps, CAD drawings, digital photographs.
 - Account information, such as contacts and billing.



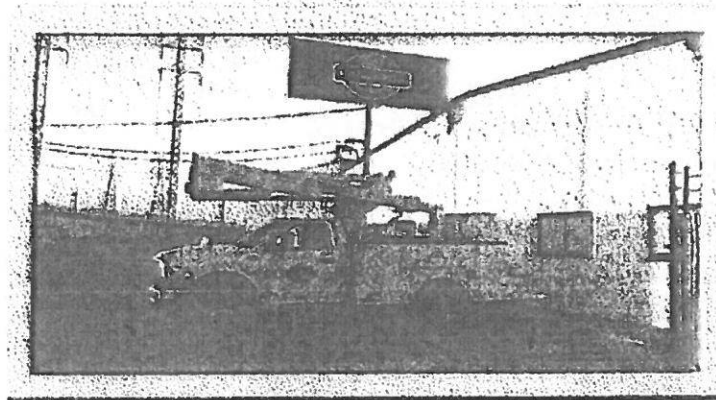
Salesforce™ Customer Portal

Quality Control

In order to ensure good quality from SFE staff, we believe in proper foresight and preparation. We train our technicians to IMSA, OSHA, State specific requirements, Caltrans specs, and Vendor Specific standards. We supply the "right tools" for the job, from hand tools to heavy equipment. Once the proper tools and training are supplied, we can then progressively inspect and ensure proper production and quality levels are met.

Inspection: We regularly and randomly inspect our technician's quality and thoroughness. We strive to "see things" from our customer's perspective. When performing maintenance on Traffic Signals and Street Lights, we believe that the efforts we put into the quality of our service prolongs the life and efficiency of the components.

If/when poor workmanship were to arise, SFE will assume a professional position and will make every effort to bring quality back up to the proper standards immediately. Our quality of work not only gives us prolonged business, but more importantly ensures the safety of the general public. We stand behind our work 100%.



Proposal Form

The undersigned proposer hereby offers to perform the required services for the following price(s) in strict compliance with the specifications, terms and conditions set forth in this Request for Proposals

A. Street Light Maintenance and Repair Flat Rates

Monthly Rates \$1.14 Per Street Light

B. Traffic Signal Preventive Maintenance Flat Rates

Monthly Rates \$105 Per Intersection

C. Parking Lot Light Maintenance and Repair Flat Rates

Monthly Rates \$1.14 Per Light

D. USA (Underground Service Alert) Locating and Marking Flat Rates

Per Ticket Rates \$70 Per Ticket

E. Labor Rates for Extra Work, As Required

Labor costs must reflect prevailing wages

Labor Category	Straight Time (\$ per hour)	Overtime (\$ per hour)
Journeyman	\$110	\$190
Foreman	\$125	\$220
Laborer	\$65	\$105
Crane Operator	\$85	\$150

F. Equipment Rates for Extra Work, as Required

Equipment Category	\$ Per Hour
Bucket Truck	\$30
Dump Truck	\$25
Crane Truck	\$65
Compressor	\$0
Arrow Board	\$0

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G. Miscellaneous Lighting Services, Extra Repair

Unless otherwise noted, rates shall include labor, equipment, and materials.

1	Install Town Standard HPS Fixture (non-decorative)	\$265	Each
2	Install Town Standard LED light fixture (non-decorative)	\$550	Each
3	Install Town furnished light fixture	\$110	Each
4	Install light pole with arm on existing foundation - Octalflute pole	\$2,500	Each
5	Install light pole with arm on existing foundation - Type 15 pole	\$1,850	Each
6	Install light pole with Town furnished arm on existing foundation - Octalflute pole	\$2,100	Each
7	Install light pole with Town furnished arm on existing foundation - Type 15 pole	\$1,650	Each
8	Construct light pole foundation and restore affected sidewalk	\$3,400	Each
9	Construct light pole foundation and restore affected area (no sidewalk)	\$2,100	Each
10	Install Town furnished light pole and arm	\$950	Each
11	Install luminaire arm on existing Octalflute pole	\$325	Each
12	Install luminaire arm on existing Type 15 pole	\$325	Each
13	Install Town furnished luminaire arm	\$205	Each
14	Install pull box (#3 1/2) and restore affected sidewalk	\$800	Each
15	Install pull box (#3 1/2) and restore affected area (no sidewalk)	\$285	Each

H. Miscellaneous Traffic Signal Services, Extra Repair

Unless otherwise noted, rates shall include labor, equipment, and materials. All vehicle signal indications shall be 12" LED's, Gelcore or approved equal. All pedestrian signal indications shall be pedestrian countdown, Gelcore LED's or approved equal.

1	Installation of Pole		
	a) 1B Pole on new foundation and restore affected sidewalk	\$2,800	Each
	b) 1B Pole on new foundation and restore affected area (no sidewalk)	\$1,450	Each
	c) 1B Pole on existing foundation	\$575	Each
	d) PPB post with ADA push button assembly on new foundation	\$900	Each
	e) PPB post with ADA push button assembly on existing foundation	\$500	Each
2.	Installation of Inductive Loops:		

	a) 6'x6' Type A, B, D, E, and C	<u>\$500</u> Each Loop
	b) 2'x6' Type C Bicycle Loop	<u>\$400</u> Each Loop
3.	Installation of LED modules:	
	a) For Non-PV Heads	
	1) Red	<u>\$185</u> Each Module
	2) Yellow	<u>\$185</u> Each Module
	3) Green	<u>\$205</u> Each Module
	b) For PV Head Retrofit	
	1) Red	<u>\$130</u> Each Module
	2) Yellow	<u>\$150</u> Each Module
	3) Green	<u>\$180</u> Each Module
	c) Pedestrian Countdown (Combo)	<u>\$210</u> Each Module
4.	Installation of 12" Signal Heads with LED modules (on existing framework), visors, back plates, and louvers as needed	
	a) Non-PV Heads	
	1) 3-Section	<u>\$850</u> Each
	2) 4-Section	<u>\$905</u> Each
	3) 5-Section	<u>\$1,100</u> Each
	b) PV Heads	
	1) 3-Section	<u>\$3,000</u> Each
	2) 4-Section	<u>\$3,500</u> Each
	3) 5-Section	<u>\$4,000</u> Each
5.	Installation of Mounting Bracket	
	a) MAS	<u>\$650</u> Each
	b) MAT	<u>\$400</u> Each
	c) TV-1-T	<u>\$325</u> Each
	d) TV-2-T	<u>\$350</u> Each
	e) TV-3-T	<u>\$375</u> Each
	f) SV-1-T	<u>\$350</u> Each
	g) SV-2-T	<u>\$375</u> Each

	h) SV-3-T	\$380	Each
	i) SP-1-T	\$200	Each
	j) SP-2-T	\$330	Each
6.	Installation of Pedestrian Signal Head (with LED Countdown)	\$415	Each
7.	Installation of Audible Pedestrian Signal	\$280	Each
8.	Installation of Pedestrian Push Button Assembly	\$250	Each
9.	Installation of Town finished signal controller cabinet assembly on existing foundation	\$1,950	Each
10	Install pull box and restore affected sidewalk	\$780	Each #4
		\$815	Each #5
		\$865	Each #6
11	Install pull box in street (traffic grade) and restore affected area	\$1,000	Each #4
		\$1,100	Each #5
		\$1,200	Each #6
12	Replace/Install pull box in dirt and restore affected area	\$275	Each #4
		\$315	Each #5
		\$385	Each #6
13	Conflict monitor (CMU/MMU) test	\$85	Each
14	Percent Markup on Materials	15	Percent

I. Additional Information

1. Company Name St. Francis Electric
2. Address from which service will be provided
975 Carden St. P.O. Box 2057, San Leandro CA94577
3. Location of Shop and Storage Facility (must be within 30 miles from Town limits):
San Jose Office/Yard: Snell Ave and Chynoweth Ave, San Jose CA95136
4. Number of Years Providing the Specified Service 2
5. Business Organization (Check One)
 - Individual Proprietorship
 - Partnership
 - Corporation

Other _____

If incorporated, provide the following information:

Date of incorporation 1976 State of incorporation State of California

Names and Titles of All Officers and Directors Robert Spinardi, President
Guy Smith, Secretary & Randy Krebs, Treasurer

If an individual or partnership, provide the following information:

Formation date of Company _____

Name and address of all partners, indicating whether they are general or limited partners:

6. List the names, titles, and qualifications of the key personnel who will perform work under this contract as well as their roles in relation to this contract. Identify the primary signal technician to be designated for the Town. Include their certifications, experience and training.

- Noel Panganiban: Primary Signal Technician - Dinh Vu: Secondary Signal Technician
- Josh Bailey: Maintenance Manager & Support Tech.
- Mike Watchers, Mike Delgado, and Jonathan Bailey: Lighting Technicians & Support Signal Tech.
- Monica Kint: Project Manager & Estimate/Quotation - Allen Chen: Traffic Engineering Support
- Stephanie Amoral: Dispatch/Project Administration/Invoice

* Additional information is provided in the proposal see page 5

7. Indicate whether proposer has ever failed to complete any contract awarded to it. If so, note when, where and why. Attach additional sheets, if necessary.

SFE has never failed to complete any contract awarded to us.

8. Indicate whether proposer has been or is the subject of a bankruptcy or insolvency proceeding or subject to assignment for the benefit of creditors.

Not Applicable

9. List subcontractors, if any, who will perform work under this contract. Attach additional sheets, if necessary.

a. Company Not Applicable

Location _____



Describe work to be subcontracted _____

b. Company _____
Location _____

Describe work to be subcontracted _____

c. Company _____
Location _____

Describe work to be subcontracted _____

10. List all current organizations within 60 miles from Los Gatos for whom proposer performs similar services of a similar contract and scope

- City of Burlingame: Traffic Signal Maintenance - City of Pleasanton: Street Lighting Maintenance
- Mountain House CSD: Traffic Signal and Lighting Maintenance
- City of Salinas/Livermore/Daly City/Lafayette: On Call Traffic Signal and Lighting Services

11. List three organizations for whom proposer performs/performed similar services of a similar scope in the last three years

a. Organization City of Burlingame

Location Burlingame, California

Contact Person Andrew Wong Telephone Number (650) 558-7237

Describe work performed by proposer Install traffic signal pedestrian signal heads, Polaroid push buttons, and RRFB Systems, and traffic signal maintenance services.

Date work was performed March 2015 - Current

b. Organization City of Pleasanton

Location Pleasanton, California

Contact Person Mike Truscott Telephone Number (925) 931-5500

Describe work performed by proposer Troubleshoot and repair lighting throughout the City facility, park, and pathway. Street lighting maintenance services.

c. Organization City of Fremont

Location Fremont, California

Contact Person Donya Amiri Telephone Number (510) 494-4757



Describe work performed by proposer: Design, program and install Ethernet over copper Actelis and Ethernet over serial devices, make connection to the existing fiber network.


* Additional information is provided in the proposal see page 12

ADDENDA

Proposer acknowledges receipt of the following Addenda:

Number _____	Date _____
Number _____	Date _____
Number _____	Date _____

SIGNATURE

	<u>SIGNATURE</u>
_____ Signature	Vice President _____ Title
Guy Smith _____ Name (printed or typed)	04/07/2015 _____ Date
(510) 639-0639 EXT 211 _____ Telephone Number	(510) 639-6453 _____ Fax Number
94-2378349 _____ Tax ID Number	38515 (Exp 12/31/2015) _____ Los Gatos Business License Number



ADDITIONAL INFORMATION

Other Supporting Documents

- ✓ Contractor A and C10 Licenses



- ✓ Department of Industrial Relation (SB 854) registration Number: 1000004346

- ✓ **Insurance Requirements**

SFE carries General Liability and Automotive Liability insurance to meet or exceed the minimum requirements of this RFP. SFE carries Worker's Compensation Insurance per State Law. SFE will meet all additional required insurance provision said in this RFP.

- ✓ **Key Contact Information**

Allen Chen P.E., T.E.
Transportation Engineering Manager
St. Francis Electric, Inc.
975 Carden St
San Leandro, CA 94577

(510) 639-0639 Ext. 268 Office
(510) 639-9116 Fax
(510) 695-0582 Mobile
achen@sfe-inc.com

24/7/365 Traffic Signal Telephone Service 1-(844)-LIGHT88
www.sfe-inc.com Web-site
maintenance@sfe-inc.com

St. Francis Electric | A and C-10 Licensed Contractor | 975 Carden St. San Leandro CA 94577
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CITY DEPARTMENT
10-16-16

FIRST AMENDMENT TO AGREEMENT FOR SERVICES

This FIRST AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 21st day of June, 2016 and amends that certain AGREEMENT FOR SERVICES dated August 1, 2015, made by and between the TOWN OF LOS GATOS, ("Town,") and ST. FRANCIS ELECTRIC, ("Supplier").

RECITALS

- A. Town and Supplier entered into an Agreement for Services on July 1, 2015 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town desires to amend the Agreement to increase the cost of the service agreement, reduce the maintenance cost for streetlights that remain in the agreement and extend the term of the agreement.


AMENDMENT

1. Section 2.3 Time of Performance is amended to read as follows:
- This Agreement will remain in effect from July 1, 2016 to June 30, 2017. The Town may extend the term of this Agreement up to three (3) additional one-year periods, through June 30, 2020, on the same terms and conditions as in effect and subject to Town Council budget appropriations for the scope of services.
2. Section 2.6 Compensation is amended to read as follows:
- Compensation for traffic signal and streetlight maintenance and repair services shall not exceed \$135,000 annually, effective July 1, 2016.
 - Additional compensation for unforeseen repair services in Fiscal Year 2015/16 shall not exceed \$10,000.
3. Page 18 of Proposal Form submitted (Attachment 2) is amended to read as follows:
- Item (A) Street Light Maintenance and Repair Flat Rates
Monthly Rates \$1.05 each Per Street Light
- Item (C) Parking Lot Light Maintenance and Repair Flat Rates
Monthly Rates \$1.05 each Per Light
- Item (D) USA (Underground Service Alert) Locating and Marking Flat Rates
Per Ticket Rates \$140 per Ticket/Service Call
4. All other terms and conditions of the Agreement remain in full force and effect.

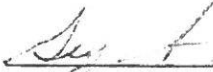
IN WITNESS WHEREOF, the Town and Supplier have executed this Amendment.

Town of Los Gatos by:

St. Francis Electric, by:




Laurel Prevetti
Town Manager



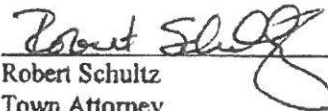
Guy Smith
VP

Recommended by:

Approved as to Form:



Matt Morley
Director of Parks and Public Works



Robert Schultz
Town Attorney

17.143
AGR 16-575
IHH _____

SECOND AMENDMENT TO AGREEMENT FOR SERVICES

This SECOND AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 1st day of July, 2017 and amends that certain FIRST AMENDMENT TO AGREEMENT FOR SERVICES dated June 21, 2016, made by and between the TOWN OF LOS GATOS, ("Town,") and ST. FRANCIS ELECTRIC, ("Supplier").

RECITALS

- A. Town and Supplier entered into an Agreement for Services on July 1, 2015 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Supplier entered into a First Amendment to Agreement for Services on June 21, 2016 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 2 to this Amendment.
- C. Town desires to amend the Agreement to exercise an option to extend the agreement.

AMENDMENT

- 1. Section 2.3 Time of Performance is amended to read as follows:

The effective date of this Second Amendment shall begin on July 1, 2017 and will continue through June 30, 2020, subject to appropriation of funds, notwithstanding any other provision in this agreement.

- 2. Section 2.6 Compensation, as amended in the First Amendment dated June 21, 2016, remains unchanged.

- 3. Add Section 4.11 to Section IV. General Terms as follows:

4.11 Prevailing Wages. In accordance with the provisions of Sections 1770 et seq., of the Labor Code, the Director of the Industrial Relations of the State of California has determined the general prevailing rate of wages applicable to the work to be done. Service Provider will be required to pay to all persons employed on the project by the Service Provider sums not less than the sums set forth in the documents entitled "General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code, part 7, Chapter 1, Article 2, Sections 1770, 1773, 1773.1." These documents may be obtained from the State of California.

Pursuant to Labor Code section 1725.5, no contractor or subcontractor may be awarded a contract for public works on a public works project unless registered with the Department of Industrial Relations.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations and/or the Town of Los Gatos.

The Contractor is required to post notices on Public Works requirements.

- 4. All other terms and conditions of the Agreement remain in full force and effect.

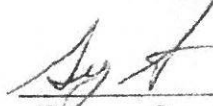
IN WITNESS WHEREOF, the Town and Supplier have executed this Amendment.

Town of Los Gatos by:



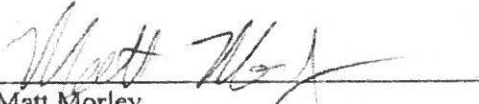
Laurel Prevetti *For:*
Town Manager

St. Francis Electric, by:



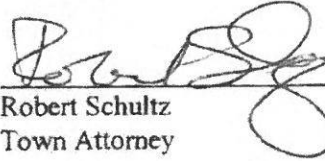
Guy Smith, Vice President

Recommended by:



Matt Morley
Director of Parks and Public Works

Approved as to Form:



Robert Schultz
Town Attorney



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/05/18

ITEM NO: 10

DATE: MAY 24, 2018

TO: MAYOR AND TOWN COUNCIL

FROM: LAUREL PREVETTI, TOWN MANAGER

SUBJECT: AUTHORIZE THE TOWN MANAGER TO EXECUTE A THIRD AMENDMENT TO THE AGREEMENT FOR SERVICES WITH ST. FRANCIS ELECTRIC TO INCREASE COMPENSATION FOR UNFORESEEN SERVICES FOR FISCAL YEAR 2017/18 IN THE AMOUNT OF \$15,000, FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$150,000 FOR FY 17/18 ONLY.

RECOMMENDATION:

Authorize the Town Manager to execute a third amendment to the Agreement for Services with St. Francis Electric to increase compensation for unforeseen services for Fiscal Year 2017/18 in the amount of \$15,000 for a total contract amount not to exceed \$150,000 for FY 17/18 only.

BACKGROUND:

On May 5, 2015, Council authorized the Town Manager to execute an Agreement for Services with St. Francis Electric for maintenance and repair of traffic signals and street lights and for Underground Service Alert (USA) locating (Attachment 1). The agreement became effective July 1, 2015, with options to extend through June 30, 2020 in an amount not to exceed \$120,000 annually, subject to Town Council budget appropriations for the scope of services.

On June 21, 2016, Council authorized a first amendment to the Agreement for Services to increase the compensation for traffic signal and street light repair services to \$135,000 annually effective July 1, 2016. In addition, the amendment added \$10,000 for Fiscal Year 2015/16, due to unexpected repairs and increasing number of USA markings. Finally, the first amendment extended the contract period to June 30, 2017.

In 2017, a second amendment to the Agreement was made to add prevailing wage language and extend the contract period through June 30, 2020 while all other terms and compensation remained unchanged.

PREPARED BY: JESSY PU
Traffic Engineer

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, Assistant Parks and Public Works Director/Town Engineer, and Parks and Public Works Director

PAGE 2 OF 2

SUBJECT: AUTHORIZE THE TOWN MANAGER TO EXECUTE A THIRD AMENDMENT TO THE AGREEMENT FOR SERVICES WITH ST. FRANCIS ELECTRIC TO INCREASE COMPENSATION FOR UNFORESEEN SERVICES FOR FISCAL YEAR 2017/18 IN THE AMOUNT OF \$15,000, FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$150,000 FOR FY 17/18 ONLY.

MAY 24, 2018

DISCUSSION:

The current not to exceed contract amount is \$135,000 annually for routine maintenance and repair of street lights and traffic signals, and for USA locating services. In Fiscal Year 2017/18, there were unexpected extra repairs and additional maintenance costs for the Town's traffic signal fiber optic cable, which resulted in higher than expected repair costs. Staff estimates an additional \$15,000 will be needed to fund the unforeseen expenses through the end of the 2017/18 Fiscal Year.

CONCLUSION:

Authorize the Town Manager to execute a third amendment to the Agreement for Services with St. Francis Electric to increase compensation for Fiscal Year 2017/18 in the amount of \$15,000, for a total contract amount not to exceed \$150,000 for this single fiscal year.

FISCAL IMPACT:

The one-time increase of \$15,000 for the unforeseen repair services will be absorbed within the FY 2017/18 Streets & Signals program budget.

ENVIRONMENTAL ASSESSMENT:

This is not a project as defined under CEQA, and no further action is required.

Attachments:

1. Third Amendment to Agreement for Services
2. Original agreement and two previous amendments



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 13

DATE: July 17, 2020

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Following Actions for the Massol Intersection Improvements Project (19-813-0236):

- a. Authorize the Town Manager to Award and Execute a Construction Agreement with Tennyson Electric in an Amount of \$328,792, and Authorize \$65,758 as a Construction Contingency for a Total Amount Not to Exceed \$394,550;
- b. Authorize Staff to Execute Future Contract Change Orders in an Amount Not to Exceed Twenty Percent of the Agreement Amount;
- c. Approve a Budget Transfer of \$57,148 in FY 2020/21 from the School Bus Pilot Program

RECOMMENDATION:

Authorize the following actions for the Massol Intersection Improvements Project (19-813-0236):

- a. Authorize the Town Manager to award and execute a construction agreement with Tennyson Electric in an amount of \$328,792, and authorize \$65,758 as a 20% construction contingency for a total amount not to exceed \$394,550;
- b. Authorize staff to execute future change orders in an amount not to exceed twenty percent of the agreement amount;
- c. Approve a budget transfer of \$57,148 in FY 2020/21 from the School Bus Pilot Program budget.

PREPARED BY: Michelle Quinney
Interim Town Engineer

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

BACKGROUND:

The adopted FY 2019/20-2023/24 Capital Improvement Program (CIP) Budget designates funding for the Massol Intersection Improvements Project (19-813-0236). This project is consistent with the Town's goal to improve public safety, primarily by enhancing pedestrian safety crossing State Route 9.

On June 2, 2020, the Town Council authorized the Town Manager to approve the plans and specifications and advertise the project for bid. The Town Manager was also authorized to award and execute a construction agreement in an amount not to exceed \$349,760, including a 20% contingency.

A 20% construction contingency was recommended due to the fact that the project is within the Caltrans right of way and will require the contractor to obtain a permit and abide by Caltrans requirements throughout completion of the project. Additionally, should a changed condition occur during the course of construction, remedies would require Caltrans approval and would likely require additional funds to complete.

DISCUSSION:

The project was advertised, and three bids were submitted to the Town on July 1, 2020. Three bids were received electronically and opened remotely through a secure system in order to meet the needs for social distancing during the COVID 19 pandemic. The bid results are as follows:

Tennyson Electric - \$328,792

Bear Electrical - \$340,237

Columbia Electric - \$474,654

Tennyson Electric was the lowest responsive bidder and was approximately 12% higher than the engineer's estimate of \$293,000, which can be attributed to the uncertainties in the construction field given the current pandemic. Staff has reviewed Tennyson's bid and has determined the bid to be reasonable and responsive and is recommending award of the project to Tennyson Electric, Inc. with a 20% construction contingency allocated to the project.

Additional budgeted funds will be needed in order to award the construction contract with the recommended contingency. These additional budgeted funds are available from unspent funds in the School Bus Pilot Program budget. Re-appropriating the funds will allow for project adjustments to meet changing needs and avoid any delays once the project begins. Any funds not utilized for this project specifically will remain available for re-appropriation by the Town Council in the future.

CONCLUSION:

Authorize the following actions for the Massol Intersection Improvements Project (19-813-0236):

- a. Authorize the Town Manager to award and execute a construction agreement with Tennyson Electric in an amount of \$328,792, and authorize \$65,758 as a 20% construction contingency for a total amount not to exceed \$394,550;
- b. Authorize staff to execute future change orders in an amount not to exceed twenty percent of the agreement amount;
- c. Approve a budget transfer of \$57,148 in FY 2020/21 from the School Bus Pilot Program budget.

COORDINATION:

This project has been coordinated with the Finance Department and the California Department of Transportation (Caltrans) as highlighted in the June 2, 2020 report.

FISCAL IMPACT:

The Parks and Public Works Department continues to plan for, and track costs associated with capital improvement projects. Where projects can be delivered within the workload of staff already budgeted in the Department's operating budget, no costs will be associated with the project. This project requires the use of some temporary staffing not included in the Department budget in order to meet schedule and workload commitments. The costs of the temporary employees will be charged to the project budget. This project also requires some permanent staff that are already budgeted in the Department's operating budget, and will not be charged to the project.

SUBJECT: Authorize Actions for the Massol Intersection Improvements Project

DATE: July 17, 2020

FISCAL IMPACT (continued):

Massol Intersection Improvements Project 813-0236		
	Budget	Costs
GFAR	\$ 450,000	
Budget Requested with the Staff Report	\$ 57,148	
Total Budget	\$ 507,148	
Construction - Tennyson Electric		\$ 328,792
Contingency		\$ 65,758
Design		\$ 72,965
Temporary Staff Costs		\$ 27,633
Materials Testing		\$ 12,000
Total Expenditures		\$ 507,148

Staff Costs		
Operating Budget (Full time with benefits)		\$ 8,744
Total		\$ 8,744

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is Categorical Exempt (Section 15301 (c)). A Notice of Exemption has been filed.

Attachment:

1. Construction Agreement including Exhibit A

CONSTRUCTION AGREEMENT

This Agreement is dated for identification this 4th day of August, 2020, and is made by and between the TOWN OF LOS GATOS, a California municipal corporation, whose address is 110 East Main Street, Los Gatos, California 95030 (hereinafter "TOWN"), and Tennyson Electric, Inc. whose address is 7275 National Drive, Suite A-2, Livermore, CA 94550 (hereinafter "CONTRACTOR").

NOW, THEREFORE, the parties agree:

ARTICLE I: WORK TO BE DONE AND DOCUMENTS FORMING THE CONTRACT.

That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the said TOWN, and under the conditions expressed in the two bonds hereunto annexed, the said CONTRACTOR agrees with the said TOWN, at his own proper cost and expense, to do all the work and furnish all the materials and equipment necessary to construct and complete, in accordance with the plans and specifications hereinafter mentioned, in a good, workmanlike and substantial manner, under the supervision of the Town Engineer, or his, of the TOWN OF LOS GATOS, California, all the works and improvements described, mentioned and set forth in those plans and specifications on file in the Office of the Parks and Public Works of said TOWN, entitled:

"Plans and Specifications for
Project #19-813-0236 Crosswalk Improvements on State Route 9 at Massol Avenue"

which said plans and specifications and all the documents therein contained, including the TOWN OF LOS GATOS's Standard Provisions, are hereby specially referred to and by such reference made part of this contract.

ARTICLE II: CONTRACTOR'S ACCEPTANCE

CONTRACTOR agrees to receive and accept the prices shown on Exhibit A (\$328,792), which is attached hereto and incorporated by reference herewith, as full compensation for furnishing all materials and equipment and for doing all the work described in the contract documents; also for all loss or damage as provided in the contract documents in the prosecution of the work until its acceptance by the Town Council of the TOWN OF LOS GATOS, and for well and faithfully completing the work, and the whole thereof, in the manner and according to the contract documents, plans and specifications, and the requirements of the Town Engineer.

ARTICLE III: ACCEPTANCE BY TOWN

The said TOWN hereby promises and agrees with the said CONTRACTOR to employ, and does hereby employ the said CONTRACTOR to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions above set forth; and the said parties for themselves their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ATTACHMENT 1

ARTICLE IV: COMPLETION OF AGREEMENT

Reference is made to Part I – Page 1 of the TOWN's Project Specifications Notice to Contractors which are hereby made a part of this contract. Inasmuch as the work called for under this contract concerns a needed public improvement, the time of performance and completion of this work is of the essence of this contract. It is expressly understood and agreed by the parties hereto that all the work called for under this contract, in all its parts and requirements, shall be completed forty (40) working days from Notice to Proceed.

ARTICLE V: HOURS OF LABOR

The CONTRACTOR shall forfeit, as a penalty, to the TOWN, Twenty-Five Dollars (\$25) for each workman employed in the execution of the contract by him or by any subcontractor for each calendar day during which any workman is required or permitted to labor more than eight (8) hours in violation of the provisions of Sections 1810-1815 inclusive of the Labor Code and all amendments thereto.

ARTICLE VI: APPRENTICES

Attention is directed to the provisions in Sections 1777.5, 1777.6 and 1777.7 of the Labor Code governing the employment of apprentices by the CONTRACTOR or any subcontractor under him. CONTRACTOR and any of his subcontractors shall comply with the requirements of said sections of the Labor Code; CONTRACTOR shall have full responsibility for compliance with the said sections regardless of any other contractual or employment relationships alleged to exist.

Information relative to apprenticeship standards and other requirements may be obtained from the Director of Industrial Relations ex officio the Administrator of Apprenticeship, San Francisco, California or from the Division of Apprenticeship Standards at its branch offices.

ARTICLE VII: NONDISCRIMINATION

The CONTRACTOR sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts.

Failure by CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate.

ARTICLE VIII: INDEPENDENT CONTRACTOR

It is agreed that CONTRACTOR is an independent contractor, and all persons working for or under the direction of CONTRACTOR are CONTRACTOR's agents, servants and employees, and said persons shall not be deemed agents, servants or employees of TOWN.

ARTICLE IX: OWNERSHIP OF DATA AND DOCUMENTS

CONTRACTOR agrees that all records, specifications, data, maps, designs, graphics, writings, recordings and other tangible materials regardless of form or format, including, without limitation,

electronically transmitted documents and ACAD files, and other collateral materials collected, compiled, drafted, prepared, produced and/or generated in the performance of this Agreement shall be the property of TOWN. CONTRACTOR shall regularly provide such documents to TOWN upon TOWN's request. In the event that this Agreement is terminated prior to completion of the scope of work, CONTRACTOR shall provide all such data and documents to TOWN forthwith.

ARTICLE X: INSURANCE

a. Commercial General Liability/Automobile Liability Insurance:

CONTRACTOR shall obtain and maintain Commercial General Liability insurance and Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit shall be twice the required occurrence limit. CONTRACTOR's insurance coverage shall be written on an occurrence basis.

b. Workers' Compensation Insurance:

CONTRACTOR shall obtain and maintain statutory Workers' Compensation insurance and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) per accident.

CONTRACTOR is familiar with the Workers' Compensation laws of California (generally contained in Section 3700 of the Labor Code), including those provisions which provide for specific exemptions from the requirement that all employers must carry Workers' Compensation insurance, and CONTRACTOR maintains they are exempted under the law from the requirement to maintain Workers' Compensation insurance coverage.

In addition, during the term of any work for TOWN under said agreement: (1) CONTRACTOR will not employ any person in any manner so as to become subject to the Workers' Compensation laws of California, or (2) should CONTRACTOR become subject to the Workers' Compensation provisions of Section 3700 of the Labor Code for any reason, CONTRACTOR shall forthwith comply with those provisions and send evidence of financial compliance to TOWN.

c. Acceptability of Insurers: Insurance is to be placed with insurers with a current *Best Rating* of A:VII unless otherwise acceptable to TOWN.

d. Verification of Coverage: Insurance, deductibles or self-insurance retentions shall be subject to TOWN's approval. Original Certificates of Insurance with endorsements shall be received and approved by TOWN before work commences, and insurance must be in effect for the duration of the contract. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to TOWN or increase the duration of the project.

e. Other Insurance Provisions:

(1) The TOWN OF LOS GATOS, its officers, officials, employees and volunteers are to be covered as additional insured by Endorsement CG 20 10 11 85 or other endorsement approved by Town Attorney for Commercial General and Automobile Liability coverage.

(2) For any claims related to this project, CONTRACTOR's insurance coverage shall be primary and any insurance or self-insurance maintained by TOWN, its officers, officials, employees and volunteers shall not contribute to it.

(3) Each insurance policy required shall be endorsed that a thirty (30) day notice be given to TOWN in the event of cancellation or modification to the stipulated insurance coverage.

(4) In the event CONTRACTOR employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of CONTRACTOR to ensure that all subcontractors comply with the same insurance requirements that are stated in this Agreement.

(5) Approval of the insurance by TOWN or acceptance of the Certificate of Insurance by TOWN shall not relieve or decrease the extent to which CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of TOWN's rights to insurance coverage hereunder.

(6) If, for any reason, CONTRACTOR fails to maintain insurance coverage that is required pursuant to this contract, the same shall be deemed a material breach of contract. TOWN, at its sole option, may terminate this contract and obtain damages from CONTRACTOR resulting from said breach. Alternately, TOWN may purchase such required insurance coverage, and without further notice to CONTRACTOR, TOWN may deduct from sums due to CONTRACTOR any premium costs advanced by TOWN for such insurance.

ARTICLE XI: HOLD HARMLESS

CONTRACTOR hereby agrees to and shall hold TOWN, its elective and appointive boards, commissions, officers, agents, registered volunteers, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage and any other claims of any sort whatsoever, including, but not limited to, any liabilities, claims, losses, or expenses in any manner caused by, arising out of, or in connection with, either directly or indirectly, the construction or installation of the work, the guarding of the work, the use of improper materials in construction of the work, or the negligent, willful, or intentional acts or omissions by CONTRACTOR or CONTRACTOR's subcontractors, agents, or employee operations under this Agreement, whether such operations by CONTRACTOR or by any of CONTRACTOR's subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for CONTRACTOR or any of CONTRACTOR's subcontractors during the progress of the work or at any time before its completion and final acceptance, excepting suits and actions brought by the CONTRACTOR for default of this Agreement or arising from the sole active negligence or willful misconduct of the TOWN. The Town Council may retain so much of the money due to the CONTRACTOR as shall be reasonably necessary to protect the TOWN, until disposition has been made of such suits or claims for damages as aforesaid.

CONTRACTOR agrees to and shall pay TOWN's cost of defense (or, at the sole option of the TOWN, CONTRACTOR shall defend with counsel approved by the TOWN Attorney) and indemnify TOWN and its elective and appointive boards, commissions, officers, agents, and employees from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this Agreement (exclusive of any such actions brought by CONTRACTOR), such indemnification to include all costs of defense, judgments, and any awards of attorneys' fees.

Should any accident or incident causing death, personal injury or property damage occur between the date CONTRACTOR is notified that its General Liability and/or Workers Compensation Insurance is canceled and the effective date of such cancellation, CONTRACTOR's obligation to indemnify, defend and save harmless the TOWN, as provided for hereinabove, shall in no manner be affected by the fact that the TOWN had not received the notice of cancellation prior to the date of such accident or incident.

ARTICLE XII: BONDING REQUIREMENT

CONTRACTOR agrees to post a Faithful Performance Bond and a payment bond for Labor and Materials, or other guarantees, in the required amounts upon bond forms provided by the TOWN, guarantying the performance of the terms of this Agreement. Surety issuing bonds for CONTRACTOR shall be approved by the U.S. Department of Treasury's Financial Management Service and shall be listed on the most current Treasury Circular 570 as contained in the Federal Register.

Contractor agrees to allow five percent of the faithful performance bond to remain in effect for a period of two years following Town Council project acceptance as guarantee for any needed repair or replacement caused by defective materials and workmanship.

ARTICLE XIII: MAINTENANCE AND GUARANTY

CONTRACTOR shall promptly repair, replace, restore, or rebuild, as the TOWN may determine, any finished product in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during a two (2) year period subsequent to the date of final acceptance.

This article does not in any way limit the guaranty on any items for which a longer guaranty is specified or on any items which a manufacturer gives a guaranty for a longer period, nor does it limit the other remedies of the TOWN in respect to a latent defect, fraud or implied warranties. CONTRACTOR shall furnish the TOWN all appropriate guaranties or warranty certificates upon completion of the project.

ARTICLE XIV: SHORING FOR TRENCHES

If the contract specifies an expenditure of Twenty-Five Thousand Dollars (\$25,000) or greater for trenching, and if the depth of the trench is five feet (5') or more, then Section 6705 of the Labor Code shall also be applicable.

ARTICLE XV: APPLICABLE LAWS AND ATTORNEY'S FEES

This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the TOWN Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

ARTICLE XVI: LIQUIDATED DAMAGES

It is mutually agreed by CONTRACTOR and TOWN that in the event that completion of the construction by CONTRACTOR under this Agreement is delayed beyond DATE, TOWN will suffer damages

and will incur other costs and expenses of a nature and amount which is difficult or impractical to determine. The Parties agree that by way of ascertaining and fixing the amount of damages, costs and expenses, and not by way of penalty, CONTRACTOR shall pay to TOWN the sum of One Thousand Dollars (\$1,000.00) per day in liquidated damages for each and every calendar day such delay in completion of the services under this Agreement continues beyond DATE. In the event that the liquidated damages are not paid, CONTRACTOR agrees that TOWN may deduct the amount of unpaid damages from any money due or that may become due to CONTRACTOR under this Agreement.

ARTICLE XVII: INTERPRETATION OF CONTRACT

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said CONTRACTOR, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE XVIII: AMENDMENTS AND CHANGE ORDERS

This Agreement may be amended from time to time as necessary by formal and written amendment or authorized change order executed by the Town Manager or designee and principal acting on behalf of the CONTRACTOR.

ARTICLE XIX: DBE RESPONSIBILITIES

For projects that are State or Federal funding; With respect to Disadvantaged Business Enterprises, CONTRACTOR shall do the following:

(1) Pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from TOWN. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of TOWN. This clause applies to both DBE and non-DBE subcontractors.

(2) Release all retainage owed to a subcontractor for satisfactory completion of the accepted work within thirty (30) days after TOWN's payment to CONTRACTOR. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of TOWN. This clause applies to both DBE and non-DBE subcontractors.

ARTICLE XX: PREVAILING WAGES

Prevailing Wage. This project is subject to the requirements of Section 1720 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Contractors and all subcontractors who perform work on the project are required to comply with these requirements. Prevailing wages apply to all projects over \$1,000 which are defined as a "public work" by the State of California. This includes: construction, demolition, repair, alteration, maintenance and the installation of photovoltaic systems under a Power Purchase Agreement when certain conditions are met under Labor Code Section 1720.6. This include service and warranty work on public buildings and structures.

1. The applicable California prevailing wage rate can be found at www.dir.ca.gov and are on file with the Town of Los Gatos Parks and Public Works Department, which shall be available to any interested party upon request. The contractor is also required to have a copy of the applicable wage determination posted and/or available at each jobsite.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime, weekend and holiday pay, and shift pay must be paid pursuant to applicable Labor Code section.
3. The public entity for which work is being performed or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violations identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.
4. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the TOWN, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the Agency or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
5. In addition to submitting the certified payrolls and related documentation to the TOWN, the contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and final payment.
6. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
7. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
8. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the TOWN for any fines assessed by

the California Department of Industrial Relations against the TOWN for such violation, including all staff costs and attorney's fee relating to such fine.

9. The TOWN shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the TOWN may continue to hold sufficient funds to cover estimated wages and penalties under the contract.

ARTICLE XXI: ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

ARTICLE XXII: PUBLIC RECORDS

The parties recognize and acknowledge that TOWN is subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure.

ARTICLE XXIII: NOTICES

Any notice required to be given to CONTRACTOR shall be deemed to be duly and properly given if mailed to CONTRACTOR, postage prepaid, addressed to:

Tennyson Electric, Inc.
7275 National Drive, Suite A-2
Livermore, CA 94550

or personally delivered to CONTRACTOR at such address or at such other addresses as CONTRACTOR may designate in writing to TOWN.

Any notice required to be given TOWN shall be deemed to be duly and properly given if mailed to TOWN, postage prepaid, addressed to:

Town Engineer
TOWN OF LOS GATOS
41 Miles Avenue
Los Gatos, California 95030

or personally delivered to TOWN at such address or at such other addresses as TOWN may designate in writing to CONTRACTOR.

ARTICLE XXIV: SECTION 7106 FORM

Attached to the Agreement is a fully executed and sworn non-collusion affidavit as required by Section 7106 of the California Public Contracts Code. Said affidavit is incorporated herein by this reference.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first written above.

APPROVED AS TO CONTENT:

Matt Morley
Director of Parks and Public Works

APPROVED AS TO FORM:

Robert Schultz
Town Attorney

CONTRACTOR:

Name: _____

Address: _____

Tax ID No. or SSAN:

"TOWN":
TOWN OF LOS GATOS

By: _____
Laurel Prevetti
Town Manager

Attest: _____
Shelley Neis
MMC, CPMC, Town Clerk

By: _____

Title: _____

By: _____

Title: _____

CONTRACTOR'S BOND FOR LABOR AND MATERIAL

KNOW ALL MEN BY THESE PRESENTS:

That _____, as Principal, and

_____ incorporated under the laws of the State of _____ and authorized to execute bonds and undertakings as Surety, are held and firmly bound unto any and all materialmen, persons, companies or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contracted to be executed or performed under the contract hereinafter mentioned, and all persons, companies or corporations renting implements or machinery, or hiring crews, for or contributing to said work to be done, and all persons who perform work or labor upon the same, and all persons who supply both work and materials, and whose claim has not been paid by the contractor, company, or corporations in the just and full sum of _____ Dollars (\$_____), for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally firmly by these presents.

The condition of the foregoing obligation is such that; WHEREAS, the above-bounden Principal has entered into a certain contract attached hereto and incorporated herein by reference as though fully set forth, with the TOWN OF LOS GATOS, to do and perform the following work; to wit:

Project #19-813-0236 Crosswalk Improvements on State Route 9 at Massol Avenue

as required by the plans and specifications, pursuant to the award made to said contractor by the Council of the TOWN OF LOS GATOS, on June 2, 2020, as will more fully appear by reference to the minutes of said Council of said TOWN of said date.

NOW, THEREFORE, if the above-bounden Principal, contractor, person, company, or corporation, or his agent, or the subcontractors, fails to pay for any materials, provisions, provender, or other supplies, or crews used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amount required to be deducted, withheld, and paid over to Franchise Tax Board, from the wages of employees of the contractor or subcontractor, pursuant to Section 18806 of the Revenue and Tax Code, then the Surety of this bond will also pay the same in an amount not exceeding the sum specified in the bond; and also, in case suit is brought upon this bond, a reasonable attorney's fee, which shall be awarded by the court to the prevailing party in said suit, said attorney's fee to be taxed as costs in said suit and to be included in the judgment therein rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

This bond is executed and filed to comply with the provisions of Sections 3247, *et seq.*, of the Civil Code.

Signed and sealed this _____ day of _____, 2020.

BY: _____

CONTRACTOR

(CORPORATE SEAL)

BY: _____

SURETY (Address and Phone No.)

(SURETY SEAL)

The amount of the within obligation is hereby fixed by the TOWN Council in the sum of Three Hundred Twenty Eight Thousand Seven Hundred Ninety Two Dollars (\$328,792), that sum being one hundred percent (100%) of the contract price, is by said TOWN Council deemed adequate, and is the sum fixed by it for that purpose and the TOWN Manager is hereby authorized to approve said bond.

APPROVED AS TO FORM:

Robert Schultz, Town Attorney

Laurel Prevetti, Town Manager

ATTEST: _____
Shelley Neis, Town Clerk

CONTRACTOR'S BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That _____, as Principal, and _____, incorporated under the laws of the State of _____, and authorized to execute bonds and undertakings as Surety, are held firmly bound unto the TOWN OF LOS GATOS, a municipal corporation of the State of California, in the sum of _____ Dollars (\$ _____), for payment whereof, well and truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that: WHEREAS, the above-bounden Principal has entered into a certain contract attached hereto and incorporated herein by reference as though fully set forth, with the TOWN OF LOS GATOS, to do and perform the following work; to wit:

Project # 19-813-0236 Crosswalk Improvements on State Route 9 at Massol Avenue

as required by the plans and specifications, pursuant to the award made to said contractor by the Council of the TOWN OF LOS GATOS, on June 2, 2020, as will more fully appear by reference to the minutes of said Council of said date.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

NOW, THEREFORE, if the above-bounden Principal shall well and truly perform the work contracted to be performed under said contract, then this obligation shall be void; otherwise, to remain in full force and effect.

Signed and sealed this _____ day of _____, 2020.

BY: _____

CONTRACTOR

(CORPORATE SEAL)

BY: _____

SURETY (Address and Phone No.)

(SURETY SEAL)

The amount of the within obligation is hereby fixed by the TOWN Council in the sum of Three Hundred Twenty Eight Thousand Seven Hundred Ninety Two Dollars (\$328,792), that sum being one hundred percent (100%) of the contract price, is by said TOWN Council deemed sufficient and adequate, and is the sum fixed by it for that purpose.

APPROVED AS TO FORM:

Robert Schultz, Town Attorney

Laurel Prevetti, Town Manager

ATTEST:

Shelley Neis, Town Clerk

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Town of Los Gatos Parks and Public Works Department
Project #19-813-0236 Crosswalk Improvements on State Route 9 at Massol Avenue

				Tennyson Electric	
ITEM NO	ITEM DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	EXTENSION
1.	Traffic Control	L.S.	1	\$45,269.00	\$45,269.00
2.	Changeable Message Signs	Ea.	2	\$2,600.00	\$5,200.00
3.	Adjust Sanitary Sewer Manhole to Grade	Ea.	1	\$1,100.00	\$1,100.00
4.	Install Curb (Type A1-8)	L.F.	167	\$185.00	\$30,895.00
5.	Detail 25A Striping - Thermoplastic	L.F.	168	\$15.00	\$2,520.00
6.	"Yield" Legend - Thermoplastic	Ea.	2	\$900.00	\$1,800.00
7.	"Green Bike Lane Symbol with Arrow" Legend - TLG Std. TR-A - Thermoplastic	Ea.	4	\$2,650.00	\$10,600.00
8.	5.0' Wide Dashed Green Bike Lane - Thermoplastic	L.F.	468	\$25.00	\$11,700.00
9.	Install New R1-5 (CA) Sign on New Post	Ea.	2	\$700.00	\$1,400.00
10.	Electrical Systems	L.S.	1	\$158,308.00	\$158,308.00
11.	Irrigation Systems	L.S.	1	\$18,500.00	\$18,500.00
12.	Landscape Planting	L.S.	1	\$37,500.00	\$37,500.00
13.	Remove Tree	Ea.	2	\$2,000.00	\$4,000.00
				TOTAL	\$328,792.00



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 14

DATE: July 29, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Open and Close a Public Hearing to Consider Objections to the 2020 Weed Abatement Program Assessment Report and Adopt a Resolution Confirming the Report and Authorizing Collection of the Assessment Charges

RECOMMENDATION:

Open and close a public hearing to consider objections to the 2020 Weed Abatement Program Assessment Report (Attachment 1) and adopt a resolution (Attachment 2) confirming the report and authorizing collection of the assessment charges.

BACKGROUND:

The purpose of the Weed Abatement program is to prevent fire hazards posed by vegetative growth and the accumulation of combustible materials, as defined in the Town Code, Chapter 11, Article II, Section 11.20.010. This is a monitoring program and the primary objective is to mitigate the spread of fire via voluntary compliance.

Typically, a property is placed in the program after a County inspector identifies a potential fire hazard on the premises. Fire Departments, Code Enforcement, Public Works and other public agencies also submit complaints to the County's Consumer and Environmental Protection Agency - Weed Abatement Program (County). Once a parcel is placed in the program, it will remain until it displays compliance for three consecutive years, at which point it will be removed.

The Program is administered by the County on behalf of the Town and is funded from fees charged to residents. Every year while in the program, the property owners are charged the inspection fee, and abatement fees if performed by the County.

PREPARED BY: Stefanie Hockemeyer
Executive Assistant, Parks and Public Works

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

PAGE 2 OF 3

SUBJECT: Open and Close a Public Hearing to Consider Objections to the 2020 Weed Abatement Program Assessment Report and Adopt a Resolution Confirming the Report and Authorizing Collection of the Assessment Charges

DATE: July 29, 2020

BACKGROUND (continued):

On December 3, 2019, the Town Council passed Resolution 2019-060 (Attachment 3) declaring hazardous vegetation (weeds) a public nuisance, providing for their abatement, and set January 21, 2020 as a public hearing date for the annual program.

The County mailed property owners a notice of the January 21, 2020 Public Hearing for the Los Gatos jurisdiction and guidelines on the Los Gatos Weed Abatement Program.

DISCUSSION:

The 2020 Weed Abatement Assessment Report list includes assessment charges for inspection fees and for performing weed abatement. The attached resolution affirms these costs and acknowledges the costs will be assessed by the County Tax Collector against the respective properties.

The Town of Los Gatos mailed property owners a notice of the August 4, 2020 Public Hearing for the Los Gatos jurisdiction, along with the assessment charges. This public hearing is an opportunity for residents who received an assessment to object to that assessment.

CONCLUSION:

Open and close a public hearing to consider objections to the 2020 Weed Abatement Program Assessment Report and adopt a resolution confirming the report and authorizing collection of the assessment charges.

COORDINATION:

This program has been coordinated with the County's Consumer and Environmental Protection Agency - Weed Abatement Program.

FISCAL IMPACT:

Funds allocated in the adopted Operating Budget cover the cost of publishing the legal notices for the program. The County's cost to administer and carry out the program are recovered through the tax roll assessment charges levied against the affected properties.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

PAGE 3 OF 3

SUBJECT: Open and Close a Public Hearing to Consider Objections to the 2020 Weed Abatement Program Assessment Report and Adopt a Resolution Confirming the Report and Authorizing Collection of the Assessment Charges

DATE: July 29, 2020

Attachments:

1. 2020 Weed Abatement Program Assessment Report.
2. Resolution 2020-XX Confirming the Report and Authorizing Collection of the Assessment Charges.
3. Resolution 2019-060 Declaring Hazardous Vegetation (Weeds) a Public Nuisance and Providing for their Abatement.

**2020 WEED ABATEMENT PROGRAM
ASSESSMENT REPORT
TOWN OF LOS GATOS**

	Situs		APN	OWNER ADDRESS			TAX ROLL AMT	TRA		
1	0	Calle Marguerita	409-04-049	Gupta, Mohit And Apan, Parul	4708 Grimsby Dr	SAN JOSE	95130-2037	\$683.00	3003	T
2	rail	Wedgewood	409-04-052	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$683.00	3003	S
3	0		409-08-001	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$3,244.00	3003	S
4	935	Castlewood	409-11-021	Yamaguchi, Judy C Trustee	0 Po Box 3390	SARATOGA	95070-1390	\$101.00	3003	T
5	17291	Wedgewood	409-14-013	Saffarian, Babak Trustee & Et Al	48817 Deer View Tr	FREMONT	94539	\$683.00	3003	T
6	14333	Mulberry	409-15-022	Bolandi, Hooman	14333 Mulberry Dr	LOS GATOS	95032-0000	\$101.00	3003	T
7	14311	Mulberry	409-15-038	Lee, Kwangho And Yunsun	14311 Mulberry Dr	LOS GATOS	95032-0000	\$101.00	3003	T
8	16245	Burton	424-06-115	Swenson, C B Trustee	777 1st St N Fl 5	SAN JOSE	95112	\$683.00	3003	T
9	14823	Los Gatos	424-07-065	14823 Lgb Llc	965 Page Mill Rd	PALO ALTO	94304	\$683.00	3003	T
10	15439	National	424-12-137	Aurora Loan Services Llc	1851 First St E 10th Fl	SANTA ANA	92705	\$101.00	3003	T
11	15710	Winchester	424-27-013	Donnelly, Tessa I Et Al	15710 Winchester Bl	LOS GATOS	95030-3305	\$683.00	3003	T
12	18481	Overlook	510-40-019	Dickinson, Patricia J	19 Asanta Cruz Av N	LOS GATOS	95030-5968	\$101.00	3003	T
13	0	Laurel	510-41-068	Gertridge, John H Et Al	1080 College Av	MENLO PARK	94025	\$101.00	3003	T
14	110	Wood	510-47-038	Covia Communities	2185 California Bl N Ste 275	WALNUT CREEK	94596-3508	\$101.00	3003	T
15	138	Wood	510-47-044	Frenkel, Lily M And Draa, Justin S	138 Wood Rd	LOS GATOS	95030-6740	\$101.00	3003	T
16	779	Blossom Hill	523-04-037	Blanton, Louise C Trustee	779 Blossom Hill Rd	LOS GATOS	95032-3502	\$101.00	3003	T
17	15931	Blossom Hill	523-25-028	Terry, Naka K	15931 Blossom Hill Rd	LOS GATOS	95032-4808	\$101.00	3003	T
18	16009	Stephenie	523-26-006	Capriola, Joan C Trustee	1466 Sutter Creek Dr	EL DORADO HILLS	95762	\$101.00	3003	T
19	263	Pinehurst	523-43-019	Gorman, Robert L And Theresa A	263 Pinehurst Av	LOS GATOS	95032-3917	\$101.00	3003	T

**2020 WEED ABATEMENT PROGRAM
ASSESSMENT REPORT
TOWN OF LOS GATOS**

	Situs		APN	OWNER ADDRESS			TAX ROLL AMT	TRA		
20	15941	Quail Hill	527-02-006	Khosravi, Arvin And Mozafar,	15941 Quail Hill Rd	LOS GATOS	95032-4819	\$683.00	3003	T
21	15925	Quail Hill	527-02-007	Diep, John And Allison	5950 Country Cruz Py	SAN JOSE	95138	\$101.00	3003	T
22	145	Drysdale	527-03-003	Zukin, Margaret S Trustee	145 Drysdale Dr	LOS GATOS	95032-4847	\$101.00	3003	T
23	0	Gum Tree	527-03-007	Quint, Robert A Trustee & Et Al	0 Gum Tree Ln	LOS GATOS	95032-0000	\$101.00	3003	T
24	16200	Greenridge	527-15-001	Ormandy, Roman And Bibiana	16200 Greenridge Tr	LOS GATOS	95032-4914	\$101.00	3003	T
25	16084	Greenridge	527-15-002	Luu, Richard T	952 5th St N	SAN JOSE	95112-4411	\$683.00	3003	T
26	0	Larga Vista	527-16-013	Guevara, Maria E Trustee & Et Al	14975 Larga Vista Dr	LOS GATOS	95032-4917	\$101.00	3003	T
27	14960	Larga Vista	527-16-016	Prouty, Kymberly K And Paul R	14960 Larga Vista Dr	LOS GATOS	95032-4918	\$101.00	3003	T
28	401	Surmont	527-20-002	Bate, Rosemary S	110 Belvale Dr	LOS GATOS	95032	\$683.00	3003	T
29	258	Union	527-44-012	Cashmere Bouquet 1031 Llc	2470 Winchester Bl S D	CAMPBELL	95008	\$101.00	3003	T
30	258	Union	527-44-013	Cashmere Bouquet 1031 Llc	2470 Winchester Bl S D	CAMPBELL	95008	\$101.00	3003	T
31	land	Woodland	529-06-072	Cross Creek Los Gatos Llc	3553 Meadowlands Ln	SAN JOSE	95135-0000	\$101.00	3003	T
32	615	Blossom Hill	529-16-026	Dunn Properties Lp Etal	301 Alta Loma Ln	SANTA CRUZ	95062	\$2,489.35	3003	T
33	0	Bella Vista	529-21-010	Charlene And Tony	385 Bella Vista Ave	LOS GATOS	95032-5416	\$101.00	3003	T
34	0	Bella Vista	529-23-003	Runyan, Peter And Choi, Hyung Mee	331 Bella Vista Av	LOS GATOS	95032-5416	\$101.00	3003	T
35	0	Bella Vista	529-23-015	Peters, Jake C And Katherine H	0 P O Box 3486	KETCHUM	83340	\$683.00	3003	T
36	0	Bella Vista	529-23-016	Ross, Daniel Lee Trustee	188 Villa Av	LOS GATOS	95030-0000	\$683.00	3003	T
37	0	Bella Vista	529-23-019	Harlan, Marilyn S Trustee	4168 Riva Ridge	FAIR OAKS	95628-6429	\$683.00	3003	T
38	0	Bella Vista	529-23-020	Hedberg, Pernilla And Claes J	350 Bella Vista Av	LOS GATOS	95032-5400	\$683.00	3003	T

**2020 WEED ABATEMENT PROGRAM
ASSESSMENT REPORT
TOWN OF LOS GATOS**

Situs		APN	OWNER ADDRESS				TAX ROLL AMT	TRA	
39	Reservoir	529-29-065	Douglas, Vasiliki	0 Reservoir Rd	LOS GATOS	95032-7028	\$101.00	3003	T
40	0 Reservoir	529-29-066	Kidder, Vasiliki	0 Reservoir Rd	LOS GATOS	95030-0000	\$101.00	3003	T
41	148 Cleland	529-34-043	Hattar, Marie C	148 Cleland Av	LOS GATOS	95030-0000	\$101.00	3003	T
42	0 (vacant)	529-39-047	St Ward Props Lp	107 Foster Rd	LOS GATOS	95030-0000	\$683.00	3003	T
43	16386 Hilow	532-04-080	Ganapathy Govindaswamy &	16386 Hilow Road	Los Gatos	95032	\$101.00	3003	T
44	16666 Topping	532-09-018	Lin, Arthur W And Chang, Christine	4100 Moorpark Av Ste 205	SAN JOSE	95117	\$101.00	3003	T
45	16510 Kennedy	532-17-025	Mckenzie, Jaclyn J Trustee	16510 Kennedy Rd	LOS GATOS	95032-6431	\$683.00	3003	T
46	16461 Kennedy	532-17-027	Chaudhry, Faisal And Reem C	16461 Kennedy Rd S	LOS GATOS	95030-0000	\$101.00	3003	T
47	16481 Kennedy	532-17-028	Hakhu, Jai K And Nalini	7 Shore Pine Dr	NEWPORT COAST	92657	\$683.00	3003	T
48	248 Jared	532-34-071	Pan, Sam Shiwei	1901 Nobili Av	SANTA CLARA	95051-2229	\$101.00	3003	T
49	17511 Phillips	532-39-009	Uplift Family Services	251 Llewellyn Av	CAMPBELL	95008	\$101.00	3003	T
50	17652 Tourney	537-04-043	Yu, Margaret And Rolandi, Marco	17652 Tourney Rd	LOS GATOS	95030-7166	\$101.00	3003	T
51	15220 Kennedy Rd	537-15-004	Susan K. Bezecny And James R.	15220 Kennedy Road	Los Gatos	95032	\$101.00	3071	T
52	233 Forrester	537-21-010	Jackson Street Equities Llc	0 Po Box 27421	SAN FRANCISCO	94127	\$683.00	3003	T
53	229 Forrester	537-22-011	Satia, Jagat B And Indira	229 Forrester Rd	LOS GATOS	95032-6508	\$101.00	3003	T
54	155 Wooded View	537-23-028	Ownbey, Douglas V Trustee	0 P.o. Box 9277	SAN JOSE	95157	\$101.00	3003	T
55	210 Wooded View	537-23-046	Cunningham, James	210 Wooded View Dr	LOS GATOS	95032-5738	\$101.00	3003	T
56	15876 Shannon	537-26-009	Live Well Homes Inc	409 Casselino Dr	SAN JOSE	95136-0000	\$101.00	3003	T
57	15760 Shannon Rd	537-26-018	Kellermann Marc Et Al	15760 Shannon Rd	LOS GATOS	95032-5759	\$101.00	3050	T

**2020 WEED ABATEMENT PROGRAM
ASSESSMENT REPORT
TOWN OF LOS GATOS**

Situs		APN	OWNER ADDRESS			TAX ROLL AMT	TRA	
58	16060 Cerro Vista	537-30-004	Brezoczky, Blasius Trustee & Et Al	16060 Cerro Vista Dr	LOS GATOS	95032-0000	\$683.00	3003
						TOTAL	\$21,865.35	

RESOLUTION 2020-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
ADOPTING REPORT DESCRIBING PARCELS OF REAL PROPERTY,
AND SHOWING AMOUNT OF HAZARDOUS VEGETATION (WEEDS)
ABATEMENT ASSESSMENTS TO BE COLLECTED ON THE
SECURED PROPERTY TAX ROLL OF THE TOWN OF LOS GATOS IN
THE COUNTY OF SANTA CLARA, FOR 2020**

WHEREAS, the Town Council of the Town of Los Gatos, pursuant to Sections 39501 and 39502 of the Government Code of the State of California, has adopted by ordinance a procedure for the abatement of hazardous vegetation (weeds) and the collection of the charges therefore on the tax roll, as contained in Chapter 11, Article II, Sections 11.20.010 through 11.20.45 of the Los Gatos Town Code; and

WHEREAS, pursuant thereto, Resolution No. 2019-060 declaring weeds a public nuisance and providing for their abatement, was adopted by the Town Council on December 3, 2019; and

WHEREAS, pursuant to notice duly and regularly given, the public hearing was held with respect thereto on January 21, 2020, overruling objections and ordering abatement of weeds as a public nuisance, was adopted by the Town Council; and

WHEREAS, a written report has been filed with the Town Clerk of the Town of Los Gatos, containing a description of each parcel of real property, and showing the amount of the charge to be collected on the secured property tax roll with respect thereto, computed in conformity with the charges prescribed by said ordinance; and

WHEREAS, the Town Clerk has set the 4th day of August 2020, utilizing teleconferencing, as the time and place when and where said Town Council would hear and consider all objections or protest, if any, to said report.

RESOLVED, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town Council does hereby find and declare:

1. That notice of said public hearing was duly and regularly published and given as required by Section 11.20.035 of the Los Gatos Town Code and as otherwise required by law; and

ATTACHMENT 2

2. All persons desiring to be heard during said hearing were given an opportunity to do so, all matters and things pertaining to said report were fully heard and considered by the Town Council, and all protests and objections, if any, are hereby overruled.

FURTHER RESOLVED, that said report, and each charge thereon, with any charges that may be noted on the face of said report pursuant to action taken by this Town Council, is hereby confirmed and approved.

FURTHER RESOLVED, that the charges are affirmed and shall be assessed against the real properties listed on the property tax bill if not sooner paid.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 4th day of August 2020, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

RESOLUTION 2019-060

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
DECLARING WEEDS TO BE A PUBLIC NUISANCE AND
SET HEARING DATE OF JANUARY 21, 2020 TO CONSIDER OBJECTIONS FOR
PROPOSED REMOVAL**

WHEREAS, Section 39501 and Section 39502 of the Government Code of the State of California authorize the Town of Los Gatos to prescribe a procedure for compelling the owner, lessees or occupant of buildings, grounds, or lots to remove hazardous vegetation (weeds) from such buildings or grounds and adjacent sidewalks, and, upon his failure to do so, to remove such hazardous vegetation (weeds) at owner's expense, making the cost thereof a lien upon such property; and

WHEREAS, the Town of Los Gatos, by ordinance, has adopted such a procedure, codified in Chapter 11, Article II, Sections 11.20.010 through 11.20.045 of the Los Gatos Town Code.

NOW, THEREFORE, BE IT RESOLVED: that the Town Council hereby finds that hazardous vegetation "weeds," as that term is defined in Section 11.20.010, are growing upon and adjacent to private property within the Town of Los Gatos, and declares that all hazardous vegetation (weeds) growing upon any private property or properties, and in any sidewalk street, or alley within the Town of Los Gatos are a public nuisance and should be abated.

BE IT FURTHER RESOLVED that unless such nuisance be abated by the destruction or removal of such hazardous vegetation (weeds) within thirty (30) days after the adoption of this resolution, or within the time specified in a written agreement with the Town of Los Gatos Director of Parks and Public Works, or his representative, whichever time shall be later, as provided in Chapter 11, Article II, of the Los Gatos Town Code, the Town of Los Gatos shall cause such nuisance to be abated, and the expense thereof assessed upon the lots and lands from which, or in the front and rear of which, such hazardous vegetation (weeds) shall have been destroyed or removed, such expense constituting a lien upon such lots or lands until paid, and to be collected upon the next tax roll upon which general municipal taxes are collected.

BE IT FURTHER RESOLVED that the Director shall execute a "Notice to Destroy Hazardous Vegetation (Weeds)" in the form set forth in Section 11.20.020(b) and shall cause same to be published and posted in the manner prescribed by Section 11.20.020(c).

BE IT FURTHER RESOLVED that on the 21st day of January, 2020 at a meeting of the Town Council beginning at 7:00 p.m. in the Council Chambers of the Civic Center, 110 E. Main Street, Los Gatos, California, a public hearing will be held during which all property owners in the Town of Los Gatos having any objections to the proposed destruction or removal of such hazardous vegetation (weeds) will be heard and given due consideration.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 3rd day of December 2019 by the following vote:

COUNCIL MEMBERS:

AYES: Steve Leonardis, Rob Rennie, Marico Sayoc, Barbara Spector, Mayor Marcia Jensen

NAYS: None

ABSENT: None

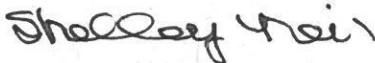
ABSTAIN: None

SIGNED: 

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 12/11/19

ATTEST:



TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 12/11/19



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 14

DESK ITEM

DATE: August 4, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Open and Close a Public Hearing to Consider Objections to the 2020 Weed Abatement Program Assessment Report and Adopt a Resolution Confirming the Report and Authorizing Collection of the Assessment Charges

REMARKS:

Attachment 4 contains public comments which contain five protests received between Wednesday, July 29, 2020 and 11:00 a.m., Tuesday, August 4, 2020. Two of which were received by County Weed Abatement staff on July 29th and inadvertently not received by the Town Clerk until August 4, 2020; therefore, not included with the staff report, but instead with this Desk Item.

The protests are for parcel numbers:

424-07-065
527-03-003
532-17-028
537-30-004
537-23-028

Town staff reviewed the protests of the proposed assessments with the County and recommend the fees should be assessed.

Attachments previously received with the August 4, 2020 Staff Report:

1. 2020 Weed Abatement Program Assessment Report.
2. Resolution 2020-XX Confirming the Report and Authorizing Collection of the Assessment Charges.
3. Resolution 2019-060 Declaring Hazardous Vegetation (Weeds) a Public Nuisance and Providing for their Abatement.

PREPARED BY: Stefanie Hockemeyer
Executive Assistant, Parks and Public Works

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

PAGE 2 OF 2

SUBJECT: Open and Close a Public Hearing to Consider Objections to the 2020 Weed Abatement Program Assessment Report and Adopt a Resolution Confirming the Report and Authorizing Collection of the Assessment Charges

DATE: August 4, 2020

Attachment received with this Desk Item:

4. Public comments received between Wednesday, July 29, 2020 and 11:00 a.m., Tuesday, August 4, 2020

From: zukinp@comcast.net <zukinp@comcast.net>
Sent: Monday, August 03, 2020 7:31 PM
To: Clerk <Clerk@losgatosca.gov>
Subject: Protesting 2020 weed abatement assessment

My property, APN **527-03-003** at 145 Drysdale Drive has had the weeds abated by RN Pearman Landscaping Co every May. This year the work was done on May 20, 2020, at the cost of \$1500.00 paid by my personal WellsFargo check #13672.

Thank you.

Margaret S. Zukin

From: Jai Hakhu

Sent: Sunday, August 02, 2020 1:05 PM

To: Clerk <Clerk@losgatosca.gov>

Subject: Written Protest - Proposed 2020 Weed Abatement Assessment Charges APN **532-17-028**

Dear Town Clerk:

We have been owners of 16481 S Kennedy Rd property for the last 22 years and have been completing weed abatement. We understand the value and importance of the annual Weed Abatement program and strive to comply with the necessary deadlines for the benefit of everyone in the Los Gatos community and in the Bay Area. Unfortunately due to COVID-19, this year we were unable to enlist the services on our own for weed abatement by the April 15, 2020 deadline. When it was possible, however, we were able to complete the weed abatement in late May 2020 (please see the attached pictures).

Due to the unique circumstances this year, we kindly request the \$582.00 first administrative fee (failed inspection/work order processing) be waived from our proposed assessment of \$683.00 indicated on Exhibit A1 in the 2020 Weed Abatement Program Assessment Report Town of Los Gatos (report date: June 24, 2020) from the July 17, 2020 notice we received.

Thank you for your time and consideration.

Kind regards,

Jai and Nalini Hakhu
16481 S Kennedy Rd
Los Gatos, CA 95030
408-307-8807



APN 532-17-028



From: Balazs, Blasius, Bo Brezoczky
Sent: Sunday, July 26, 2020 4:52 PM
To: Clerk <Clerk@losgatosca.gov>
Subject: [EXTERNAL] CONTESTING THE 2020 WEED ABATEMENT PROGRAM ASSESSMENT on 16060 Cerro Vista Dr. **APN 537-30-004**

According to the S.C. county inspector; they came and took some pictures on March 13 2020. We have cleared the property: bulldozed the growing bushes, and cut the grass prior April 1st 2020. (\$2500.-), therefore we are opposing your assessment of \$623.
Sincerely: B. Brezoczky

P.S.: Prior year S.C. in mail specified the clearing until April 1.

From: Kumre, Moe <Moe.Kumre@cep.sccgov.org>
Sent: Monday, August 03, 2020 7:06 AM
To: Stefanie Hockemeyer <SHockemeyer@LosGatosCA.gov>
Subject: CONTESTING THE 2020 WEED ABATEMENT PROGRAM ASSESSMENT on 16060 Cerro Vista Dr. APN 537-30-004

Parcel 537-30-004 was inspected on May 13 pictures are attached the property failed that inspection and is being charged for the inspection and the work order processing fee for a total on \$683.



Moe Kumre
Weed Abatement manager
County of Santa Clara
Consumer and Environmental Protection Agency
office: (408)282-3123 email: moe.kumre@cep.sccgov.org



SCC WeedAbatement

From: Red Dogue
Sent: Wednesday, July 29, 2020 2:34 PM
To: SCC WeedAbatement
Subject: [EXTERNAL] Contestation of weed abatement fine/tax

Hello.

My name is Doug Ownbey. I own the property at 155 Wooded View Drive in Los Gatos, **APN: 537-23-028**. Please consider this my contestation of the weed abatement fine/tax proposed by the Town of Los Gatos and Santa Clara County.

Until this past week, when I contacted the SCC weed abatement department, I was not aware that my property was in violation. Apparently, my property was in violation in 2017 and 2018.

Had I known I was in violation, I would have taken immediate action to fix the problems. I have made multiple requests for copies of the violation notices, but have received nothing but a picture of my property from 5/11/2018 showing tall green grass.

I was told that my property was not in violation for 2019 and 2020, and that it will be removed from the list if it is not in violation in 2021.

I request that my property not be fined/taxed under the weed abatement program. I was not notified of previous years' violations and my property has been in compliance for the past two years.

Respectfully,

Doug Ownbey

On Jul 29, 2020, at 1:52 PM, Red Dogue <reddog1106@gmail.com> wrote:
Who do I submit them to, the Town?

Get [BlueMail for Android](#)

On Jul 29, 2020, at 12:19 PM, SCC WeedAbatement <scc.weedabatement@cep.sccgov.org> wrote:

Hello,

APN: 537-23-028 has had the same mailing address since at least 2016, notices are sent to the mailing address on file.

We send notices to the same place the tax bill is sent.

Submit your written contest for fees associated with 2020 fees by 3pm today.

Brian Rosa Weed Abatement Inspector
County of Santa Clara

Consumer and Environmental Protection Agency *Weed Abatement Service Number:* (408) 282-3145 Building 1, 1553 Berger Drive - San Jose, CA. 95112

From: Rosa, Brian <brian.rosa@cep.sccgov.org>
Sent: Tuesday, August 04, 2020 2:08 PM
To: Stefanie Hockemeyer <SHockemeyer@LosGatosCA.gov>
Subject: RE: Weed abatement assessment - **APN 537-23-028**

Hey Stefanie,

I attached the contests I am aware of in the Town. Parcel 537-23-028, last violation on record, 5/11/2018. Owner never contacted program on the appropriate years to request or contest decisions made by the program. First communications on record was on 7/23/2020. The fee is \$101 – initial inspection.

Request is inappropriate for the purpose of the hearing. Purpose of the hearing is to contest fees associated with this fiscal year, Aug 2019 – Aug 2020. My notes indicate I replied with the 2018 notice, he could have replied for more data. Please detail what you would like from previous years, I can provide that in the form of a snip from the database.

SCC WeedAbatement

To: Christina Le
Subject: RE: [EXTERNAL] RE: APN 424-07-065 Contest

Hey Christina,

I placed the updated contest into the Los Gatos folder for submission to the Town Council.



Brian Rosa Weed Abatement Inspector
County of Santa Clara
Consumer and Environmental Protection Agency
Weed Abatement Service Number: (408) 282-3145
Building 1, 1553 Berger Drive - San Jose, CA. 95112

From: Christina Le <cle@shpco.com>
Sent: Wednesday, July 29, 2020 3:21 PM
To: SCC WeedAbatement <SCC.WeedAbatement@cep.sccgov.org>
Subject: RE: [EXTERNAL] RE: APN 424-07-065 Contest

Hi Brian,

Thank you for the call just now. As we clarified over the phone, this property is located in Los Gatos so the contest request is for the August 4th Los Gatos meeting.

Here is the updated written request to contest:

To The Town Council of the Town of Los Gatos,

This request is acknowledging receipt of the notice dated July 17, 2020 regarding the Weed Abatement Program for parcel number #424-07-065 located at 14823 Los Gatos Blvd, Los Gatos, CA 95032, owner (14823 Lgb LLC, 965 Page Mill Road, Palo Alto, CA 94304). We would like to contest the inspection fee of \$101 and Non Compliance fee of \$582 due to hardship from the COVID-19 pandemic. We have been maintaining the landscape and weeds on the property, which was last addressed the end of 2019. Unfortunately, due to the global pandemic of COVID-19 and the Public Health Ordinance to shelter in place, our day to day operations were significantly impacted. We have corrected our operations to make sure this does not happen again. The weeds on the 14823 LGB property have been addressed and we are requesting to have the fees waived. Please see photos attached. Thank you in advance for your understanding and consideration regarding this matter. I look forward to your response.

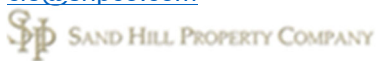
Thank you,





Christina Le
Property Manager

Direct: 650 413 9876
cle@shpco.com



From: SCC WeedAbatement <SCC.WeedAbatement@cep.sccgov.org>
Sent: Wednesday, July 29, 2020 2:23 PM
To: Christina Le <cle@shpco.com>
Subject: RE: [EXTERNAL] RE: APN 424-07-065 Contest

Hearing Officer requires a couple of weeks normally, this is not a normal year, maybe 3 weeks? Not sure.

From: Christina Le <cle@shpco.com>
Sent: Wednesday, July 29, 2020 1:16 PM

To: SCC WeedAbatement <SCC.WeedAbatement@cep.sccgov.org>

Subject: [EXTERNAL] RE: APN 424-07-065 Contest

Hi Brian,

Thank you for confirming our submission.

Unfortunately we did not receive the notice dated 5/6. How and when will we know if our request was approved?

Thank you,

Christina Le
Property Manager

Direct: 650 413 9876

cle@shpco.com



From: SCC WeedAbatement <SCC.WeedAbatement@cep.sccgov.org>

Sent: Wednesday, July 29, 2020 1:12 PM

To: Christina Le <cle@shpco.com>

Subject: APN 424-07-065 Contest

Hello,

Thank you for participating in the County Weed Abatement Program Assessment Hearing process.

Your written contest has been processed for submittal to the hearing officer.

The Hearing Officer is a neutral party whose decision is final. According to the record a courtesy notice was sent to the mailing address on file. Inspected 4/29 & Notice Sent 5/6.



Brian Rosa Weed Abatement Inspector

County of Santa Clara

Consumer and Environmental Protection Agency

Weed Abatement Service Number: (408) 282-3145

Building 1, 1553 Berger Drive - San Jose, CA. 95112

From: Christina Le <cle@shpco.com>

Sent: Wednesday, July 29, 2020 12:47 PM

To: SCC WeedAbatement <SCC.WeedAbatement@cep.sccgov.org>

Subject: RE: [EXTERNAL] RE: Weed Abatement

Hi Brian,

Was there a notice sent regarding the inspection on 4/29/20? If so, we did not receive it. Yes, I would like to contest. Please let me know if I need to include anything further.

To whom it may concern,

In regards to the notice dated July 17, 2020 regarding the Weed Abatement Program for parcel number #424-07-065 located at 14823 Los Gatos Blvd, Los Gatos, CA 95032, owner (14823 Lgb LLC, 965 Page Mill Road, Palo Alto, CA 94304) would like to contest the inspection fee of \$101 and Non Compliance fee of \$582. We have been maintaining the weeds on the property and it was last addressed the end of 2019. Due to the global pandemic impact of COVID-19, our day to day operations have been significantly impacted. The weeds on the 14823 LGB property are being addressed today we are requesting to have the fees waived. I can send completion photos should you require it. We appreciate your consideration regarding this matter. I look forward to your response.

Thank you,

Christina Le
Property Manager

Direct: 650 413 9876
cle@shpco.com



From: SCC WeedAbatement <SCC.WeedAbatement@cep.sccgov.org>
Sent: Wednesday, July 29, 2020 12:06 PM
To: Christina Le <cle@shpco.com>
Subject: RE: [EXTERNAL] RE: Weed Abatement

Hello Christina,

Fees were Incurred upon failed inspection on 4/29/2020.

Initial inspection fee of \$101 & Non Compliance fee of \$582.

If you want to contest, submit your written statement with an e-mail reply by 3pm, so we can prepare it for the hearing tomorrow.



Brian Rosa Weed Abatement Inspector
County of Santa Clara
Consumer and Environmental Protection Agency
Weed Abatement Service Number: (408) 282-3145
Building 1, 1553 Berger Drive - San Jose, CA. 95112

From: Christina Le <cle@shpco.com>
Sent: Wednesday, July 29, 2020 10:55 AM
To: SCC WeedAbatement <SCC.WeedAbatement@cep.sccgov.org>
Subject: [EXTERNAL] RE: Weed Abatement

When were the charges incurred? We had the weeds addressed last fall and due to COVID-19, we've had to modify our facilities schedules and unfortunately was not able to address until we received the notice.

Christina Le
Property Manager

Direct: 650 413 9876

cle@shpco.com



From: SCC WeedAbatement <SCC.WeedAbatement@cep.sccgov.org>

Sent: Wednesday, July 29, 2020 10:28 AM

To: cle@shpco.com

Subject: Weed Abatement

The charges are to recover cost already incurred by the county.

First Name: Christina

Last Name: Le

Street Address: 14823 Los Gatos Blvd

City: Los Gatos

State: CA

ZIP Code: 95032

Telephone Number: 650-413-9876

Best Time To Call: Weekday Midmornings

E-mail Address: cle@shpco.com

Question or Concern

Concern: Received notice of meeting regarding Weed Abatement Program letter dated July 17th. Our property made it to the list, but we have a landscaper addressing the weeds today. How do I go about sending photos of completion and having charges removed.

APN: 424-07-065



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 15

DATE: August 4, 2020
TO: Mayor and Town Council
FROM: Lynne Lampros, Deputy Town Attorney
SUBJECT: Introduction by Title Only of an Ordinance of the Town of Los Gatos Amending Chapter 18, by Adding Article IX, Sections 18.90.010- 18.90.050 of the Los Gatos Town Code Entitled Drones and Unmanned Aircraft Systems

RECOMMENDATION:

Introduction by title only of an Ordinance of the Town of Los Gatos amending Chapter 18, by adding Article IX, Sections 18.90.010-18.90.050 of the Los Gatos Town Code entitled Drones and Unmanned Aircraft Systems.

BACKGROUND:

Unmanned Aircraft Systems, known commonly as “drones,” have historically been the province of small groups of hobbyists, kept few in number by the time-consuming construction of remote-controlled model airplanes that were limited in their scope of use. Recent technological advancements have increased the proliferation of drones that are preconstructed, affordable, and can be integrated with the use of camera technology that dramatically increase the potential uses from government to business applications such as real estate or insurance, to wide ranging recreational use such as amateur photography and videography.

With these greater numbers of drone users comes the need for local agencies to create a regulatory framework that provides for the appropriate uses of this technology, while also addressing important public safety, nuisance and other issues that arise as drones are increasingly used for recreational, business, and governmental purposes.

PREPARED BY: Lynne Lampros
Deputy Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

DISCUSSION:

The Federal Aviation Administration (FAA) rules for small unmanned aircraft (UAS) operations other than model aircraft – Part 107 of FAA regulations – cover a broad spectrum of commercial and government uses for drones weighing more than 0.55 pounds. While the FAA regulates all airspace the FAA also states, “Laws traditionally related to state and local police power — including land use, zoning, privacy and law enforcement operations — generally are not subject to federal regulation.” This statement identifies a window for local regulation of drone activities.

Currently, the Los Gatos Monte Sereno Police Department lacks the ability to enforce federal law because the FAA claims jurisdiction over the airspace. For example, a resident who is being disturbed by a drone circling over their home would need to call the FAA. The League of California Cities adopted a drone policy in 2018 which articulates the need for local law enforcement to have the authority to enforce drone laws, so that a resident with a drone issue could call 911 and have the local Police Department respond rather than needing to contact the FAA. The elements of the accompanying draft Ordinance are predicated on the League policy and state and federal law.

The League of California Cities drone policy sets out suggested minimum rules for the state, including but not limited to, the following activities:

- Ensuring that drones are properly registered with the FAA;
- Upholding public safety standards for privacy and safety; and
- Granting immunity from liability for jurisdictions that establish drone areas or parks.

The policy advocates that local law enforcement should have the authority to enforce state and local drone laws to ensure that problems associated with drones can be addressed at the local level.

Finally, the League policy identifies the role that towns/cities should play including but not be limited to:

- Retaining the ability to impose time, place, and manner restrictions on drone operations under 400 feet in city airspace;
- Retaining the ability to enact and enforce rules of general applicability to address unsafe drone operations, such as trespassing, nuisance or noise issues;
- Ensuring that local drone ordinance information is readily available to drone operators;
- Establishing clear rules for hobbyists by adopting community-based safety guidelines;
- Adopting guidelines for how drones would be used within the city’s airspace; and
- Planning appropriately for the use of drones in public spaces and designating “no fly” zones around critical infrastructure.

DISCUSSION (continued):

The proposed Ordinance incorporates the League guidance. The addition of this Ordinance to the Town Code would enable Police and Code Compliance staff to address these safety and land use considerations while establishing clear guidance for hobbyists and commercial users of drone technology.

CONCLUSION:

Staff recommends that Council accept public comment and then move for the introduction and first reading of an Ordinance, by title only, amending Chapter 18, by adding Article IX, Sections 18.90.010-18.90.050 of the Los Gatos Town Code Entitled Drones and Unmanned Aircraft Systems.

ALTERNATIVES:

Council could refer the matter back to staff for consideration of any issues raised.

COORDINATION:

This report was coordinated through the Town Attorney's Office and the Parks and Public Works Department, and the Police Department.

FISCAL IMPACT:

There are no significant fiscal impacts associated with the approval of these amendments. Potential enforcement costs may be offset by penalties levied.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Draft ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING CHAPTER 18 OF THE LOS GATOS TOWN CODE BY
ADDING ARTICLE IX SECTIONS 18.90.010-18.90.050 ENTITLED DRONES
AND UNMANNED AIRCRAFT SYSTEMS**

WHEREAS, Unmanned Aerial Systems (UAS), or “drones,” are an important technology that can be used in a number of beneficial ways for recreational, commercial, and governmental purposes; and

WHEREAS, given the proliferation of this technology, while respecting the jurisdiction of the Federal Aviation Administration (FAA), it is important for local agencies and the state to craft a regulatory framework that provides for the appropriate uses of this technology, while also addressing important public safety, nuisance and other issues that arise as drones are increasingly used for recreational, business, and governmental purposes; and

WHEREAS, the operation of UAS, such as model UAS and civil UAS, commonly referred to as drones, can at times pose a hazard to full-scale aircraft in flight, and to first responders, including firefighting aircraft, air ambulance helicopters, and law enforcement helicopters and to persons and property on the ground, including law enforcement and medical personnel; and

WHEREAS, imposing community-based safety requirements and restrictions on the operation of UAS that do not preempt federal aviation rules or authority, or state law, is necessary to mitigate such risks and to protect the public from the hazards associated with the operation of UAS; and

WHEREAS, it is proposed that the addition of Article IX, Sections 18.90.010-18.90.050 to Chapter 18 of the Los Gatos Municipal Code, will provide safety to the people in the Town through education and enforcement, while strengthening and preserving property rights.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS. The Town Council of the Town of Los Gatos finds that all Recitals are true and correct and incorporate them herein by this reference.

SECTION 2. LOS GATOS TOWN CODE AMENDMENTS. Chapter 18 Article IX of the Los Gatos Town Code is hereby added as follows:

ATTACHMENT 1

Article IX - DRONES AND UNMANNED AIRCRAFT SYSTEMS

Sec. 18.90.010 - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Civil UAS* shall mean an unmanned aircraft or unmanned aircraft system operated by any person for any purposes other than strictly hobby or recreational purposes, including, but not limited to, commercial purposes or in the furtherance of, or incidental to, any business or media service or agency.
- (b) *Drone* refers to any UAS.
- (c) *FAA* means the Federal Aviation Administration.
- (d) *Model UAS* shall mean an unmanned aircraft or unmanned aircraft system operated by any person strictly for hobby or recreational purposes.
- (e) *Person* shall mean natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer, or employee of any of them.
- (f) *Public UAS* shall mean an unmanned aircraft or unmanned aircraft system operated by any public agency or its authorized officers, employees, contractors, or agents for a governmental purpose, including but not limited to fire suppression, Emergency response, law enforcement and code enforcement operations, surveying and mapping property, inspecting infrastructure, monitoring traffic, and recording local events.
- (g) *Special event* means any event as defined in Town Code Chapter 14 Article X.
- (h) *Unmanned aircraft* shall mean an aircraft without a human pilot onboard, that is controlled by an operator on the ground, and is operated without the possibility of direct human intervention from within or on the aircraft.
- (i) *Unmanned aircraft system (UAS)* shall mean an unmanned aircraft and associated elements, including, but not limited to, any communication links and components that control the unmanned aircraft.
- (j) *Visual line of sight* means that a person operating an unmanned aircraft has an unobstructed view of the unmanned aircraft. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the unmanned aircraft. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight to the unmanned aircraft, except as otherwise permitted by federal law. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the unmanned aircraft do not constitute visual line of sight of the person operating the unmanned aircraft.

Sec. 18.90.030 – Regulations.

The following shall apply to the operation of any UAS within the Town of Los Gatos, unless otherwise exempted:

1. No person shall operate any UAS within the Town of Los Gatos in a manner that is prohibited by any federal statute or regulation, or state of California statute or regulation.
2. No person shall operate any UAS within the Town of Los Gatos in a manner that interferes with manned aircraft, and any person operating any UAS shall always give way to any manned aircraft.
3. No person shall takeoff, land or operate any model UAS or civil UAS within the Town of Los Gatos beyond the "visual line of sight" of the person operating the model UAS or civil UAS.
4. No person shall operate any model UAS or civil UAS within the Town of Los Gatos other than during daylight hours defined as between official sunrise and official sunset for local time, except that a person may operate a model UAS or civil UAS during periods of civil twilight if the UAS has lighted anti-collision lighting visible for at least three (3) statute miles. As used herein, "civil twilight" means a period of time that begins thirty (30) minutes before official sunrise and ends at official sunrise, and a period of time that begins at official sunset and ends thirty (30) minutes after official sunset.
5. No person shall operate any model UAS or civil UAS within the Town of Los Gatos more than four hundred (400) feet above the earth's surface, unless the UAS is both flown within a 400-foot radius of a structure and does not fly higher than four hundred (400) feet above the structure's immediate uppermost limit.
6. Excluding takeoff and landing, no person shall operate any model UAS or civil UAS within the Town of Los Gatos closer than twenty-five (25) feet to any individual, who is not in a vehicle or covered structure, except the operator or the operator's helper(s).
7. No person shall takeoff or operate a model UAS or civil UAS on private property without the consent of the property owner.
8. No person shall takeoff, land or operate a model UAS or civil UAS over special events without prior notification to and authorization of the Town. Permitting fees may apply.
9. No person shall takeoff, land or operate a model UAS or civil UAS within one thousand five hundred (1,500) horizontal feet of any manned or unmanned aircraft.
10. No person shall operate any UAS in a manner that interferes with firefighting, emergency services, law enforcement, or a military operation in response to an Emergency.
11. No person shall takeoff, land or operate a model UAS or civil UAS within five hundred (500) feet of any emergency vehicle that is operating with lights and/or sirens.
12. No person shall takeoff, land or operate a model UAS or civil UAS within five hundred (500) feet of any active law enforcement or emergency response incident.

13. No person shall takeoff, land or operate a model UAS or civil UAS within two hundred (200) feet of a school facility without prior notification and authorization of school officials.
14. No person shall takeoff, land or operate a model UAS or civil UAS within one hundred (100) feet of any public building without prior notification, and authorization of the Town.
15. No person shall operate a model UAS or civil UAS that has any type of weapon attached to it.
16. No person shall operate any model UAS or civil UAS within the Town of Los Gatos in violation of any temporary flight restriction (TFR) or notice to airmen (NOTAM) issued by the Federal Aviation Administration.
17. No person shall operate any model UAS or civil UAS within 500 feet of a critical infrastructure site, such as communication facilities, hospitals, dams, helicopter/helicopter pads, bridges, water treatment plant, without the prior written consent of the owner or operator of the critical infrastructure.
18. No person shall operate any UAS within the Town of Los Gatos in a careless or reckless manner so as to endanger the life or property of another. The standard for what constitutes careless and reckless operation under this section shall be the same as the standard set forth in any federal statutes or regulations governing aeronautics including but not limited to Federal Aviation Rule 91.13.
19. No person shall operate any model UAS or civil UAS within the Town in a manner designed, intended or which serves to harass, stalk, vex, annoy, disturb, frighten, intimidate, injure, threaten, victimize or place in extreme mental or emotional distress any person, whether that person is located on public or private property. The conduct described in this subsection includes, but is not limited to, using a model UAS or civil UAS to follow and film, video-record, live-stream or photograph a person who has not consented to such activity.
20. No person shall operate any model UAS or civil UAS within the Town to capture, record or transmit any visual image or audio recording of any person or private real property located in the Town under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private office and inside a hotel room). This provision is intended to supplement, rather than duplicate, the prohibition against trespassing into the air space above the land of another person in order to capture any type of visual image or sound recording of a person engaging in a private, personal, or familial activity in a manner that is offensive to a reasonable person, pursuant to California Civil Code Section 1708.8.
21. UAS operators are required to show proof of federal registration to local law enforcement officials upon request.
22. No person shall operate any UAS while under the influence of alcohol or drugs that impair the ability of a person to operate a drone.
23. No person shall operate any model UAS or civil UAS while operating a motor vehicle.

24. Pursuant to federal law, a person must be 16 years of age or older to operate a drone independently. For those under the age of 16, a person over the age of 21 and a registered drone operator with the FAA must be present.
25. Civil UAS users must obtain a business license pursuant to Town Code Chapter 14 Article II and may be required to obtain a permit pursuant to Town Code Chapter 14 Article IX to engage in commercial activity within Town borders.
26. The noise restrictions of Chapter 16 of the Los Gatos Town Code may apply to the operation of any model UAS or civil UAS.

Sec. 18.90.040 - Exemptions.

1. The provisions of this chapter shall not apply to any public UAS operated by any public safety agency or code enforcement agency for lawful purposes and in a lawful manner or to any public agency or to the extent of delivering contracted services to a public agency.
2. The provisions of this chapter may not apply to any civil UAS operated pursuant to and in compliance with the terms and conditions of a valid Town-issued film permit or special event that allows the use of a drone.
3. The provisions of this chapter shall not apply to any UAS weighing less than 0.55 lbs.

Sec. 18.90.050 - Violations; penalties.

A violation of this Section can be charged or cited as a misdemeanor or infraction or administrative citation. Any person in violation of this Section may be subject to criminal, civil or administrative fines and penalties. Any violation of this Chapter is declared a public nuisance.

SECTION 3. CONSTRUCTION. The Town Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent. To the extent the provisions of the Los Gatos Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 4. CEQA. The Town Council finds and determines that the adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines under the General Rule (Section 15061(b)(3)), which sets forth that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that the proposed Town Code text amendments will have no significant negative effect on the environment.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The Town Council of the Town of Los Gatos hereby declares that it would have passed this ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that

any one or more sections, subsections, sentences, clauses or phrases be declared invalid. Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 4th day of August 2020, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the ____ day of ____ 2020. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 16

DATE: July 30, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution Authorizing the Town Manager to Execute the North 40 In Lieu Traffic Fee Credit Agreement, North 40 Transportation Demand Management Agreement (Bellterra), and North 40 Transportation Demand Management Agreement (Market Hall) for Phase 1 of the North 40 Development

RECOMMENDATION:

Adopt a Resolution authorizing the Town Manager to execute the North 40 In Lieu Traffic Fee Credit Agreement, North 40 Transportation Demand Management Agreement (Bellterra), and North 40 Transportation Demand Management Agreement (Market Hall) for Phase 1 of the North 40 development.

BACKGROUND:

On August 1, 2017 the Town Council approved the applications for Phase 1 of the North 40 Specific Plan. Phase 1 included several conditions of approval, including the requirement for a Traffic Demand Management (TDM) Plan and the payment of Traffic Impact Mitigation Fees. Staff has worked with Summerhill Homes to address both of these issues as agreements (Attachments 2 -4).

DISCUSSION:

Staff provided Summerhill Homes with a target reduction of 15% of daily trips in order to achieve compliance with the TDM requirement. Establishing an effective TDM plan on a development like the North 40 that is unsupported by significant transit can prove challenging. The project has programmed in standard TDM measures, such as bike racks, improved

PREPARED BY: Mike Weisz
Senior Civil Engineer

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

PAGE 2 OF 3

SUBJECT: Adopt a Resolution Authorizing the Town Manager to Execute the North 40 In Lieu Traffic Fee Credit Agreement, North 40 Transportation Demand Management Agreement (Bellaterra), and North 40 Transportation Demand Management Agreement (Market Hall) for Phase 1 of the North 40 Development
DATE: July 30, 2020

DISCUSSION (cont'd):

pedestrian and bicycle access, car share parking spaces and ridesharing programs, transit passes, shower facilities for the Market Hall and a transportation coordinator. In addition, staff recommended that the project, through future assessments on property owners, provide funding for future Town-wide TDM initiatives, such as a Town operated shuttle. The TDM requirement may be a requirement for future developments as well. The TDM program will accumulate funds until such time as sufficient funds are available to begin implementation of specific measures. For the North 40 project, funds will begin to accumulate once each certificate of occupancy is issued.

Although the Town's work to complete vehicle miles travelled (VMT) policies is not yet complete, mandates for compliance with CEQA will lead to the establishment of TDM measures. Establishing this program now will provide a foundation for future TDM measures and the limitation on the use of fees is broad enough to both meet short term goals and remain flexible for long term evolutions in transportation.

The Town's Traffic Impact Mitigation Fee allows for developers to complete mitigation projects as an offset to the calculated impact fee. This allows for the completion of projects in the right of way that the Town would otherwise need to complete. Often the developer can complete these projects at a more affordable cost than the Town could as they are mobilized at the site and have the resources ready and available. As the first developer on the site, Summerhill Homes is completing all of the adjacent impact fee related projects. Attachment 2 identifies a process in which traffic impact mitigation fees from future developers on the North 40 site will reimburse Summerhill Homes for the upfront costs of these improvements. The Town benefits by not needing to deliver capital projects, by having the impact fee related projects completed all at once, and by having Summerhill Homes front all of the project costs.

CONCLUSION:

Staff recommends that Council adopt a resolution authorizing the Town Manager to execute the above-listed agreements for Tract Number 10441 (North 40 Phase 1).

COORDINATION:

This project has been coordinated with the Town Attorney.

FISCAL IMPACT:

PAGE 3 OF 3

SUBJECT: Adopt a Resolution Authorizing the Town Manager to Execute the North 40 In Lieu Traffic Fee Credit Agreement, North 40 Transportation Demand Management Agreement (Bellaterra), and North 40 Transportation Demand Management Agreement (Market Hall) for Phase 1 of the North 40 Development

DATE: July 30, 2020

The Town will see revenue accumulation for TDM measures.

ENVIRONMENTAL ASSESSMENT:

As part of the Specific Plan preparation process, the Town also prepared and circulated an Environmental Impact Report (EIR) that analyzed the potential environmental consequences of the Specific Plan, in accordance with the California Environmental Quality Act (CEQA). The EIR can be found at the following link: www.losgatosca.gov/DocumentCenter/Index/413. The Town Council certified the Final EIR on June 17, 2015.

Attachments:

1. Resolution
2. North 40 In Lieu Traffic Fee Credit Agreement
3. North 40 Transportation Demand Management Agreement (Bellaterra)
4. North 40 Transportation Demand Management Agreement (Market Hall)

DISTRIBUTION:

SummerHill N40 L.L.C., 777 California Avenue, Palo Alto, CA 94304

RESOLUTION 2020-

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
AUTHORIZING THE TOWN MANAGER TO EXECUTE THE NORTH 40 IN LIEU
TRAFFIC FEE CREDIT AGREEMENT, NORTH 40 TRANSPORTATION DEMAND
MANAGEMENT AGREEMENT (BELLATERRA) AND NORTH 40
TRANSPORTATION DEMAND MANAGEMENT AGREEMENT (MARKET HALL), IN
SUBSTANTIAL CONFORMANCE WITH THE CONDITIONS OF APPROVAL AND
SUBJECT TO FINAL TOWN ATTORNEY APPROVAL.**

WHEREAS, on August 1, 2017, the Town Council of the Town of Los Gatos approved the Architecture and Site Application S-13-090 and Vesting Tentative Map Application M-13-014, with conditions; and

WHEREAS, those conditions required the Owner or Subdivider to do the following:

1. That the Owner or Subdivider shall enter into and execute an agreement between the Town of Los Gatos and the said Owner or Subdivider on that certain proposed in lieu traffic fee credit agreement ("Credit Agreement") on file in the Office of the Town Clerk, entitled, "North 40 In Lieu Traffic Fee Credit Agreement", wherein the Town and the Owner or Subdivider shall agree to reimburse the construction costs for eligible off-site improvements per the Town's traffic mitigation fee policy.
2. That the Owner or Subdivider shall enter into and execute an agreement between the Town of Los Gatos and the said Owner or Subdivider on that certain proposed traffic demand management agreement ("Bellaterra TDM Agreement") on file in the Office of the Town Clerk, entitled, "North 40 Traffic Demand Management Agreement (Bellaterra)", wherein the Owner or Subdivider shall prepare a Transportation Demand Management (TDM) Plan for the residential and commercial uses for Town approval, within which a minimum of those measures identified in the Specific Plan shall be included.
3. That the Owner or Subdivider shall enter into and execute an agreement between the Town of Los Gatos and the said Owner or Subdivider on that certain proposed traffic demand management agreement ("Market Hall TDM Agreement") on file in the Office of the Town Clerk, entitled, "North 40 Traffic Demand Management Agreement (Market Hall)", wherein the Owner or Subdivider shall prepare a Transportation Demand Management

(TDM) Plan for the residential and commercial uses for Town approval, within which a minimum of those measures identified in the Specific Plan shall be included; and

WHEREAS, the Owner or Subdivider has complied with the conditions of Architecture and Site Application S-13-090 and Vesting Tentative Map Application M-13-014; and

NOW, THEREFORE, BE IT RESOLVED that the Town Manager is hereby authorized to execute the North 40 In Lieu Traffic Fee Credit Agreement, North 40 Traffic Demand Management Agreement (Bellaterra) and North 40 Traffic Demand Management Agreement (Market Hall), in substantial conformance to the Conditions of approval as set forth above and subject to final Town Attorney approval.

PASSED AND ADOPTED at a regular meeting of the Town Council held on the 4th day of August, 2020, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CA

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

NORTH 40 IN LIEU TRAFFIC FEE CREDIT AGREEMENT

This North 40 In Lieu Traffic Fee Credit Agreement (“Agreement”) is entered into effective this ___ day of August, 2020, by and between the Town of Los Gatos, a California General Law City (“Town”) and SummerHill N40 LLC, a California limited liability company (“SummerHill”), each a “Party” and collectively “Parties,” with respect to the following facts and circumstances:

WHEREAS, in 2017, the Town approved Phase 1 of the North 40 project (“Project”) to be developed on part of the property known as the North 40 site, bounded generally by California State Route 17 to the west, Lark Avenue to the south, California State Route 85 to the north and Los Gatos Boulevard to the east. SummerHill is the developer of the Project; and

WHEREAS, the Town by Resolution 2014-59 adopted a Traffic Impact Policy (the “Policy”). Under the Policy, developments such as the Project must pay Traffic Impact Mitigation Fees based upon trip generation of the development. The Policy contains a Traffic Improvements Project List, which identifies traffic improvement for which a developer that installs such improvements is granted a credit against its Traffic Impact Mitigation Fees; and

WHEREAS, per the conditions of approval of Architecture and Site Application S-13-090 for the Project, the Project’s Traffic Impact Mitigation Fee shall be paid before issuance of a building permit.

WHEREAS, SummerHill N40 LLC is ready to pull building permits for Lots 1-22, 24-27, and 30-39 of Tract 10441 recorded on October 11, 2018 that will result in the generation of 2,338 average daily trips resulting in a Traffic Impact Mitigation Fee obligation (the “Phase 1 Traffic Fees”) of Two Million One Hundred Seventy-Four Thousand and Seventy-Five Dollars (\$2,174,075);

WHEREAS, the Project is required by its conditions of approval to construct four improvements that are on the Traffic Improvements Project List: (1) Westbound Lark to Hwy 17 northbound ramps, (2) Lark/Los Gatos Intersection Improvements, (3) Complete street Improvements – Lark from Garden Hill to Los Gatos, and (4) Local Bikeway Improvements (collectively, the “Phase 1 Traffic Improvements”); and

WHEREAS, the Town and SummerHill have worked together to refine the exact scope of the Phase 1 Traffic Improvements. Pursuant to such agreed-upon scope, SummerHill has caused its contractor DeSilva Gates to prepare a detailed estimate of the cost of each of these Phase 1 Traffic Improvements based on actual bids. These estimates (the “Current Estimates”) are memorialized in SummerHill’s letter of February 20, 2020 to the Town. The two-page letter (including the eight-page attachment from DeSilva Gates) is attached hereto as Exhibit “A” and incorporated herein by this reference; and

WHEREAS, the Town and SummerHill agree that SummerHill shall have credits applied to the Traffic Impact Mitigation Fee that it pays to the Town in order to obtain building permits for the Project in amounts based upon the Current Estimates, with adjustments detailed below.

NOW THEREFORE, in consideration of the foregoing recitals and the conditions and covenants contained herein, the parties hereto agree as follows

1) Traffic Improvements. The amount of credits that shall be applied against the Phase 1 Traffic Fees to determine the amount of such fees that Summerhill must pay to obtain building permits shall be based upon the Current Estimates. For each of the four Phase 1 Traffic Improvements listed above, the applicable amount of the Current Estimates for each improvement shall be as listed below:

- a) Westbound Lark to Hwy 17 northbound ramps: Construction total of \$1,268,000 plus 12% for both soft costs and contingencies, for a total of \$1,572,320.
- b) Lark/Los Gatos Intersection Improvements: Construction total of \$769,000 plus 12% for both soft costs and contingencies, for a total of \$953,560.
- c) Complete street Improvements – Lark from Garden Hill to Los Gatos: Construction total of \$213,000 plus 12% for both soft costs and contingencies, for a total of \$264,120.
- d) Local Bikeway Improvements: No credit requested.

2) Initial Amount of Credits. The total credit based upon paragraph 1 above shall be in the amount of \$2,790,000 (the "Baseline Costs"), which includes the construction costs, soft costs and contingencies. Subtracting the Phase 1 Traffic fees from the Baseline Costs leaves a potential credit amount for future reimbursement to SummerHill (the "Baseline Credit") of Six Hundred Fifteen Thousand Nine Hundred and Twenty-Five Dollars (\$615,925). Thus, the parties agree that SummerHill's obligation to pay Traffic Impact Mitigation Fees to obtain building permits for the Project shall be satisfied by the completion of the Phase I Traffic Improvements.

3) Adjustment of Credits. Should significant changes to the scope of work occur due to unforeseen circumstances, adjustments to the credits may be granted by the Town up to a total of ten percent. This adjustment is not intended to address minor variation in quantities, labor, or other construction costs. Following completion of the Phase 1 Traffic Improvements, SummerHill may elect to provide to the Town a summary of expenses reasonably supported by invoices from their general contractor, subcontractors, and soft cost vendors in the event that the actual costs of completing the Phase 1 Traffic Improvements (the "Actual Costs") have exceeded the Baseline Costs. The Town may reasonably audit these numbers at its own expense, with any such audit to be completed within sixty (60) days of submission of the supporting documentation. If the Actual Costs as finally agreed upon by the Parties exceed the Baseline Costs, then the Baseline Credit shall be increased by the difference between the Actual Costs and the Baseline Costs. The increased amount, together with the original amount of the Baseline Credit, shall be deemed to be the "Adjusted Credit." If an Adjusted Credit has not been computed pursuant to this paragraph, then the Adjusted Credit as used in paragraph 4 herein shall be deemed to be the Baseline Credit.

4) Reimbursement From Other Development That is a Part of Tentative Map M-13-014. Each time that one or more building permits are ready for release by the Town for any or all lots 23, 28, 29 of Tract 10441 or APN 424-07-036 and 037, the Traffic Impact Mitigation Fee for each such lot shall be calculated per the impact fee policy in effect at the time and paid by the building permit applicant. If the Adjusted Credit is a positive number, then such amount of such fees will be paid by the Town as a reimbursement to SummerHill N40 LLC within thirty (30) days of receipt thereof. Each time a payment is made to SummerHill pursuant to this paragraph 4, the Adjusted Credit shall be reduced by such payment. This obligation shall cease once the Adjusted Credit reaches zero or the original

building permits as identified in this section have been issued. This section shall be in effect for a period of five years.

5) No Reimbursement. No reimbursement for the Phase 1 Traffic Improvement from future projects that are not a part of Tentative Map M-13-014 shall be paid to SummerHill.

6) Dispute Resolution. Any dispute under this agreement, including with regard to the payment amounts to be paid pursuant to paragraph 3 hereunder shall first be negotiated by the Parties. If negotiation fails, either Party may demand binding arbitration, which shall be conducted under the auspices of the Judicial Arbitration and Mediation Service (JAMS). Each party shall bear its own costs and attorneys' fees in the arbitration, regardless of the outcome thereof.

7) Good Faith Cooperation. The Parties shall cooperate and use their good faith efforts to expedite the issuance of any necessary permits or permissions from the Town or from third parties for the construction of the Phase 1 Traffic Improvements. The Parties to this Agreement agree to execute any and all documents reasonably necessary to effectuate the terms, conditions, purposes, and aims of this Agreement.

8) Integrated Agreement. This Agreement, together with the exhibit attached hereto, shall be deemed the complete and total agreement of the parties concerning the subject matter hereof, which supersedes memoranda or correspondence, if any, and any previous drafts or oral understandings, if any, made by the parties concerning the subject matter hereof. Nothing herein shall preclude the parties from executing such other documents as are necessary to perfect this Agreement.

9) No Third-Party Beneficiaries. This Agreement is intended exclusively for the benefit of the Parties hereto, and no third parties are entitled to any rights hereunder or to claim to be beneficiaries hereof.

10) Successors and assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, transferees and assigns.

11) Amendments to be in Writing. This Agreement may not be altered, amended, modified or changed in any respect or particular whatsoever except by writing duly executed by all the parties to this Agreement.

12) Miscellaneous. This Agreement may be signed in counterparts. Each executed duplicate hereof shall be considered as an original. Facsimile or signatures on electronically transmitted documents in PDF form and copies of signatures shall have the same force and effect as original signatures. The captions and titles herein are for convenience only and shall not be used to interpret this Agreement.

IN WITNESS WHEREOF, The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

SummerHill N40 LLC, a California limited liability company

By: SummerHill Homes LLC, its Manager

By: _____

Its: _____

By: _____

Its: _____

TOWN OF LOS GATOS, a California municipal corporation

By: Laurel Prevetti

Its: Town Manager

APPROVED AS TO FORM:

Robert Schultz
Town Attorney

ATTEST:

Shelley Neis
Town Clerk

WHEN RECORDED MAIL TO:

**TOWN OF LOS GATOS
110 E. MAIN STREET
LOS GATOS, CA 95030
ATTN: TOWN CLERK**

**NO FEE PER GOVERNMENT CODE
SECTIONS 6103 AND 27383**

**NORTH 40 TRANSPORTATION DEMAND MANAGEMENT AGREEMENT
(BELLATERRA)**

This North 40 Transportation Demand Management Agreement (“TDM Agreement”) is entered into effective this ___ day of _____, 2020, by and between the Town of Los Gatos, a California General Law City (“Town”) and SummerHill N40 LLC, a California limited liability company (“SummerHill”), each a “Party” and collectively “Parties,” with respect to the following facts and circumstances:

WHEREAS, in 2017, the Town approved Phase 1 of the North 40 project (“Project”) to be developed on part of the property known as the North 40 site, bounded generally by California State Route 17 to the west, Lark Avenue to the south, California State Route 85 to the north and Los Gatos Boulevard to the east; and

WHEREAS, the Project includes (i) approximately two hundred fifty-three (253) for-sale residential units, and (ii) forty-nine (49) affordable senior apartments, and one (1) manager’s apartment (the “Senior Affordable Units”); and

WHEREAS, that portion of the North 40 site to be benefitted and burdened by the effect of this Agreement (the “Property”) is more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, the Property comprises the Bellaterra residential development (“Bellaterra”); and

WHEREAS, a Homeowners Association (the “HOA”) will be formed to manage and own common property of Bellaterra within the Project; and

WHEREAS, the requirements of development approved for the Project include the implementation of a TDM program (the “TDM Program”); and

WHEREAS, it is not practicable for the Project to mitigate transportation impacts on and through Project site only TDM Program; and

WHEREAS, the TDM program will serve the North 40 and other Town locations and measure effectiveness by total reductions in vehicle miles for travel originating and concluding both within and outside the Property, in order to offset the impact of the Property; and

WHEREAS, the Town is best positioned to implement, monitor, and adjust such a program.

NOW THEREFORE, in consideration of the foregoing recitals and the conditions and covenants contained herein, the Parties hereto agree as follows

1. TDM Contribution. The total SummerHill contribution to the TDM Program shall be in the form of annual payments, each of the sum of Forty-one Thousand Two Hundred Eighty-Three Dollars (\$41,283) funded from Bellaterra. The Bellaterra HOA CC&Rs shall incorporate and reference this agreement and the funding requirement for the TDM Contribution.

2. The first such payment shall be due and payable within ten (10) days after the issuance by the Town of the Certificate of Occupancy for the 215th unit of Bellaterra. Subsequent annual payments shall be due and payable on each annual anniversary of the date of the first payment. Each annual payment shall be adjusted by the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year.

2) Use of Funds. The Town shall program the use of funds for townwide TDM measures, such measures being at the Town’s sole discretion. The funds shall be used toward TDM measures, which may include the accrual of funds over time without limit, to be used toward future TDM measures.

3) Satisfaction. The above contribution in Section 1 also satisfies any and all obligation of the Senior Affordable Units to contribute to the TDM Program.

4) Term. As the transportation impact from the Property will continue in perpetuity, so shall the TDM Program and fees shall continue in perpetuity or until such point as the Town acts to cancel the TDM Program.

5) Operation of TDM Program. The Parties acknowledge that the TDM Program is a Town-operated and managed program. SummerHill’s role is limited to providing funding as required by this Agreement. No relationship of agency, partnership, or joint venture exists between the Parties with respect to the TDM Program. The Town shall defend, indemnify, and hold harmless SummerHill and its agents, members, managers, employees, officers, directors, shareholders, successors and assigns from any third party claims, lawsuits, damages, liabilities, costs and expenses (including attorneys’ fees and costs) for personal injury or property damage

arising out of, or relating to, the operation of the TDM Program, except to the extent the claim at issue is caused by the negligence or willful misconduct of SummerHill.

6) Dispute Resolution. Any dispute under this TDM Agreement, including with regard to the payment amounts to be paid pursuant to Section 1 hereunder, shall first be negotiated by the Parties. If negotiation fails, either Party may demand binding arbitration, which shall be conducted under the auspices of the Judicial Arbitration and Mediation Service (JAMS). Each Party shall bear its own costs and attorneys' fees in the arbitration, regardless of the outcome thereof.

7) Integrated Agreement. This TDM Agreement shall be deemed the complete and total agreement of the Parties concerning the subject matter hereof, which supersedes memoranda or correspondence, if any, and any previous drafts or oral understandings, if any, made by the Parties concerning the subject matter hereof. Nothing herein shall preclude the Parties from executing such other documents as are necessary to perfect this Agreement.

8) No Third-Party Beneficiaries. This TDM Agreement is intended exclusively for the benefit of the Parties hereto, and no third parties are entitled to any rights hereunder or to claim to be beneficiaries hereof.

9) Successors and assigns. This TDM Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, transferees and assigns. This TDM Agreement may be assigned by SummerHill to any entity that controls, is controlled by or is under common control with SummerHill. In addition, the Parties acknowledge that it is expressly contemplated that this TDM Agreement will be assigned by SummerHill to the HOA, which will assume all obligations of SummerHill hereunder. SummerHill shall give written notice of such assignment to the Town. Upon the giving of such notice, SummerHill shall be released from all obligations and duties of any nature hereunder. If requested by SummerHill, Town shall record a document releasing SummerHill or its affiliated assignee(s) from all such obligations in the Official Records of Santa Clara County

10) Amendments to be in Writing. This TDM Agreement may not be altered, amended, modified or changed in any respect or particular whatsoever except by writing duly executed by all the Parties to this TDM Agreement.

11) Notice. All notices shall be given personally or by first class mail, postage prepaid, addressed as shown below. Notices shall be deemed given on the earlier of the date delivered or the second day following the date on which the same have been mailed in the manner required by the prior sentence. Any of the Parties may, by notice given in the manner required by this Section, designate any further or different addresses to which subsequent notices shall be sent.

a) Notice to the Town:

Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030
Attn: Town Manager

b) Notice to SummerHill

SummerHill N40 LLC
 3000 Executive Parkway, Suite 450
 San Ramon, CA 94583
 Attn: Chief Operating Officer

with a copy to

SummerHill N40 LLC
 777 South California Ave.
 Palo Alto, CA 94304
 Attn: General Counsel

12) Recording. The Parties shall cause this TDM Agreement and all amendment and supplements to it, to be recorded against the Property in the Official Records of Santa Clara County.

13) Covenants to Run with the Land. All rights and obligations under this Agreement are intended by the Parties to be, and shall be construed as, covenants running with the Property. All persons who may have or may acquire an interest in the Property, including but not limited to the HOA, shall be deemed to have notice of, and be bound by, the terms of the Agreement.

Individual homebuyers and individual owners of lots and/or condominiums upon which residential other uses are constructed (“Individual Owners”) benefit from the right to use TDM Agreement program. However, with respect to Bellaterra only, upon the transfer of title to the first condominium under the authorization of a final subdivision public report issued by the Department of Real Estate, Individual Owners in Bellaterra shall have none of the rights and obligations described in this Agreement except for the obligation to fund regular or special assessments to the HOA. At the point of such initial transfer of title, the HOA shall be responsible alone for performing the obligations of this Agreement.

14) Mortgagee Protection. No breach of this Agreement shall defeat or render invalid the lien of any deed of trust or mortgage recorded against all or any portion of the Property. No lender taking title to all or any portion of the Property through foreclosure or deed in-lieu of foreclosure shall be liable for any defaults or monetary obligations of SummerHill arising prior to acquisition of possession of such property by such lender. The foreclosing lender shall have the right to find a substitute developer to assume the obligations of SummerHill, which substitute shall be considered for approval by the Town pursuant to this Agreement, which approval shall not be unreasonably withheld, conditioned or delayed. The Town agrees to provide any lender of SummerHill who has recorded a deed of trust or mortgage against all or any portion of the Property of which the Town has been given notice (each, a “Lender”) with written notice of any default relating to SummerHill and/or the Property given by the Town to SummerHill. The Town agrees that, notwithstanding anything to the contrary contained in this Agreement, Lender shall have an additional ninety (90) days from the date Lender receives notice of a default to cure any such default, provided that Lender shall not have any obligation to cure any such default.

15) Miscellaneous. This TDM Agreement may be signed in counterparts. Each executed duplicate hereof shall be considered as an original. Facsimile or signatures on electronically transmitted documents in PDF form and copies of signatures shall have the same force and effect as original signatures. The captions and titles herein are for convenience only and shall not be used to interpret this TDM Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, The Parties acknowledge and accept the terms and conditions of this TDM Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this TDM Agreement shall become operative on the date first above written.

SummerHill N40 LLC, a California limited liability company
By: SummerHill Homes LLC, its manager

By: _____
Its: _____

By: _____
Its: _____

TOWN OF LOS GATOS, a California municipal corporation
By: Laurel Prevetti

Its: Town Manager

APPROVED AS TO FORM:

Robert Schultz, Esq.
Town Attorney

ATTEST:

Shelley Neis
Town Clerk

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Real property located in the Town of Los Gatos, County of Santa Clara, State of California, described as follows:

LOTS 1-22, 24-26 AND 30-39, AND PARCELS A-U, Z-OO, QQ-QQQ, and TTT AS SHOWN ON THE MAP OF “TRACT 10441”, FILED FOR RECORD ON OCTOBER 11, 2018 IN BOOK 918 OF MAPS, AT PAGES 4 THROUGH 18, SANTA CLARA COUNTY RECORDS.

WHEN RECORDED MAIL TO:

**TOWN OF LOS GATOS
110 E. MAIN STREET
LOS GATOS, CA 95030
ATTN: TOWN CLERK**

**NO FEE PER GOVERNMENT CODE
SECTIONS 6103 AND 27383**

**NORTH 40 TRANSPORTATION DEMAND MANAGEMENT AGREEMENT
(MARKET HALL)**

This North 40 Transportation Demand Management Agreement (“TDM Agreement” or “Agreement”) is entered into effective this ___ day of _____, 2020, by and between the Town of Los Gatos, a California General Law Town (“Town”) and SummerHill N40 LLC, a California limited liability company (“SummerHill”), each a “Party” and collectively “Parties,” with respect to the following facts and circumstances:

WHEREAS, in 2017, the Town approved Phase 1 of the North 40 project (“N40 Phase 1”) to be developed on part of the property known as the North 40 site, bounded generally by California State Route 17 to the west, Lark Avenue to the south, California State Route 85 to the north and Los Gatos Boulevard to the east; and

WHEREAS, N40 Phase 1 includes a commercial condominium development that will be created on Lot 27 of Tract 10441 (within N40 Phase 1) that is expected to contain a commercial condominium containing approximately 20,761 square feet of commercial space plus 2,772 square feet of community space (the “Market Hall Commercial Condo”), a garage condominium, and forty nine (49) affordable senior apartments and (1) manager apartment within one commercial condominium (the “Senior Affordable Condo”), collectively known as the “Market Hall Development”; and

WHEREAS, that portion of the N40 Phase 1 site to be benefitted and burdened by the effect of this Agreement is, initially, the entire Market Hall Development, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (provided that the legal description of the burdened property is subject to adjustment as provided in Section 13 hereof); and

WHEREAS, the requirements of development approved for the Market Hall Condo include the implementation of a TDM program (the “TDM Program”); and

WHEREAS, it is not practicable for the Market Hall Condo to mitigate transportation impacts on and through a Market Hall Condo site-only TDM Program; and

WHEREAS, the TDM program will serve N40 Phase 1 and other Town locations and measure effectiveness by total reductions in vehicle miles for travel originating and concluding both within and outside the Market Hall Development, in order to offset the impact of the Market Hall Development; and

WHEREAS, the Town is best positioned to implement, monitor, and adjust such a program.

NOW THEREFORE, in consideration of the foregoing recitals and the conditions and covenants contained herein, the Parties hereto agree as follows

1. TDM Contribution. The total SummerHill contribution to the TDM Program for the Market Hall Condo shall be in the form of annual payments, each of the sum of Seventeen Thousand Six Hundred Forty-Nine and 75/100 Dollars (\$17,649.75) (the “TDM Contribution”). The first such payment shall be due and payable within ten (10) days after the issuance by the Town of the Certificate of Occupancy for the tenant improvements of the Market Hall Condo. Subsequent annual payments shall be due and payable on each annual anniversary of the date of the first payment. Each annual payment shall be adjusted by the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year.

2) Use of Funds. The Town shall program the use of funds for townwide TDM measures, such measures being at the Town’s sole discretion. The funds shall be used toward TDM measures, which may include the accrual of funds over time without limit, to be used toward future TDM measures.

3) Senior Affordable Condo Is Not Obligated by this TDM Agreement. Although Exhibit A to this Agreement initially describes all of the Market Hall Development (Lot 27 of Tract 10441), it is the intent of SummerHill and the Town that this TDM Agreement not bind or burden the Senior Affordable Condo consisting of forty nine (49) affordable senior apartments and (1) manager apartment because the TDM Program funding obligation for the Senior Affordable Condo is being met by a separate TDM Agreement that has been entered into between SummerHill and the Town with respect to an adjacent residential project known as “Bellaterra.” Accordingly, the TDM Contribution referenced above and this TDM Agreement shall not bind the Senior Affordable Condo or the garage condominium that will be created within Lot 27 when a condominium plan is recorded, which separation shall be effected pursuant to the terms of Section 13, below.

4) Term. As the transportation impact from the Market Hall Condo will continue in perpetuity, so shall the TDM Program and fees shall continue in perpetuity or until such point as the Town acts to cancel the TDM Program.

5) Operation of TDM Program. The Parties acknowledge that the TDM Program is a Town-operated and managed program. SummerHill's role is limited to providing funding as required by this Agreement. No relationship of agency, partnership, or joint venture exists between the Parties with respect to the TDM Program. The Town shall defend, indemnify, and hold harmless SummerHill and its agents, members, managers, employees, officers, directors, shareholders, successors and assigns from any third party claims, lawsuits, damages, liabilities, costs and expenses (including attorneys' fees and costs) for personal injury or property damage arising out of, or relating to, the operation of the TDM Program, except to the extent the claim at issue is caused by the negligence or willful misconduct of SummerHill.

6) Dispute Resolution. Any dispute under this TDM Agreement, including with regard to the payment amounts to be paid pursuant to Section 1 hereunder, shall first be negotiated by the Parties. If negotiation fails, either Party may demand binding arbitration, which shall be conducted under the auspices of the Judicial Arbitration and Mediation Service (JAMS). Each Party shall bear its own costs and attorneys' fees in the arbitration, regardless of the outcome thereof.

7) Integrated Agreement. This TDM Agreement shall be deemed the complete and total agreement of the Parties concerning the subject matter hereof, which supersedes memoranda or correspondence, if any, and any previous drafts or oral understandings, if any, made by the Parties concerning the subject matter hereof. Nothing herein shall preclude the Parties from executing such other documents as are necessary to perfect this Agreement.

8) No Third-Party Beneficiaries. This TDM Agreement is intended exclusively for the benefit of the Parties hereto, and no third parties are entitled to any rights hereunder or to claim to be beneficiaries hereof.

9) Successors and assigns. This TDM Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, transferees and assigns. This TDM Agreement may be assigned by SummerHill to any entity that controls, is controlled by, or is under common control with SummerHill. In addition, the Parties acknowledge that it is expressly contemplated that this TDM Agreement will be assigned by SummerHill to the Market Hall Commercial Condo owner, which will assume all obligations of SummerHill hereunder. SummerHill shall give written notice of such assignment to the Town. Upon the giving of such notice, SummerHill shall be released from all obligations and duties of any nature hereunder. If requested by SummerHill, Town shall record a document releasing SummerHill or its affiliated assignee(s) from all such obligations in the Official Records of Santa Clara County, California.

10) Amendments to be in Writing. This TDM Agreement may not be altered, amended, modified or changed in any respect or particular whatsoever except by writing duly executed by all the Parties to this TDM Agreement.

11) Notice. All notices shall be given personally or by first class mail, postage prepaid, addressed as shown below. Notices shall be deemed given on the earlier of the date delivered or the second day following the date on which the same have been mailed in the manner required by the prior sentence. Any of the Parties may, by notice given in the manner required by this Section, designate any further or different addresses to which subsequent notices shall be sent.

a) Notice to the Town:

Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030
Attn: Town Manager

b) Notice to SummerHill

SummerHill N40 LLC
3000 Executive Parkway, Suite 450
San Ramon, CA 94583
Attn: Chief Operating Officer

with a copy to

SummerHill N40 LLC
777 South California Ave.
Palo Alto, CA 94304
Attn: General Counsel

12) Recording. The Parties shall cause this TDM Agreement and all amendments and supplements to it, to be recorded against the property described in Exhibit A in the Official Records of Santa Clara County, California.

13) Covenants to Run with the Land. All rights and obligations under this Agreement are intended by the Parties to be, and shall be construed as, covenants running with the Market Hall Development, subject to the provisions of this section. All persons who may have or may acquire an interest in the Market Hall Development shall be deemed to have notice of, and be bound by, the terms of the Agreement, subject to the provisions of this section. When SummerHill closes escrow on the sale of any or all of the condominiums within the Market Hall Development, SummerHill will assign all of its rights and obligations under this Agreement to the new owner of the Market Hall Commercial Condo only (excluding the garage condominium and/or the Senior Affordable Condo), and thereafter SummerHill shall be released from all obligations under this Agreement that arise from and after the date of such closing and assignment. Written notice of such assignment shall be provided to the Town.

At any time after a condominium plan has been recorded that creates the condominiums within the Market Hall Development, at the request of the Town, SummerHill, or the owner of the Senior Affordable Condo, the Parties to this Agreement shall enter into an amendment to this Agreement that replaces Exhibit A of this Agreement with the legal description for only the Market Hall Commercial Condo and excluding the Senior Affordable Condo and the garage condominium.

14) Mortgagee Protection. No breach of this Agreement shall defeat or render invalid the lien of any deed of trust or mortgage recorded against all or any portion of the Market Hall Development. No lender taking title to all or any portion of the Market Hall Development

through foreclosure or deed in-lieu of foreclosure shall be liable for any defaults or monetary obligations of SummerHill arising prior to acquisition of possession of such property by such lender. The foreclosing lender shall have the right to find a substitute developer to assume the obligations of SummerHill, which substitute shall be considered for approval by the Town pursuant to this Agreement, which approval shall not be unreasonably withheld, conditioned or delayed. The Town agrees to provide any lender of SummerHill that has recorded a deed of trust or mortgage against all or any portion of the Market Hall Development of which the Town has been given notice (each, a “Lender”) with written notice of any default relating to SummerHill and/or the Market Hall Development given by the Town to SummerHill. The Town agrees that, notwithstanding anything to the contrary contained in this Agreement, Lender shall have an additional ninety (90) days from the date Lender receives notice of a default to cure any such default, provided that Lender shall not have any obligation to cure any such default.

15) Miscellaneous. This TDM Agreement may be signed in counterparts. Each executed duplicate hereof shall be considered as an original. Facsimile or signatures on electronically transmitted documents in PDF form and copies of signatures shall have the same force and effect as original signatures. The captions and titles herein are for convenience only and shall not be used to interpret this TDM Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, The Parties acknowledge and accept the terms and conditions of this TDM Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this TDM Agreement shall become operative on the date first above written.

SummerHill N40 LLC, a California limited liability company
By: SummerHill Homes LLC, its manager

By: _____
Its: _____

By: _____
Its: _____

TOWN OF LOS GATOS, a California municipal corporation
By: Laurel Prevetti

Its: Town Manager

APPROVED AS TO FORM:

Robert Schultz, Esq.
Town Attorney

ATTEST:

Shelley Neis
Town Clerk

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THIS TDM AGREEMENT

Real property located in the Town of Los Gatos, County of Santa Clara, State of California, described as follows:

LOT 27 AS SHOWN ON THE MAP OF “TRACT 10441”, FILED FOR RECORD ON OCTOBER 11, 2018 IN BOOK 918 OF MAPS, AT PAGES 4 THROUGH 18, SANTA CLARA COUNTY RECORDS.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 17

DATE: July 20, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Approve the Santa Clara County Fire District Emergency Route Recommendation for Alpine Avenue and Remove Parking on One Side of the Street

RECOMMENDATION:

Approve the Santa Clara County Fire District (SCCFD) emergency route recommendation for Alpine Avenue and remove parking on one side of the street.

BACKGROUND:

At the June 2, 2020, Town Council meeting, two residents inquired about the safety associated with the ingress/egress of Alpine Avenue in the event of emergencies and/or evacuations. One of the residents provided a photo (Attachment 1) illustrating the varying widths of Alpine Avenue.

The Town Council referred the item back to staff for research and any further action.

DISCUSSION:

As noted in the Town's October 2019 Wildland Urban Interface Evacuation Assessment, "Many of the hillside collector and local roadways are one-way in and one-way out designs potentially complicating any evacuation. During wildfire events, the routes emergency responders take to the fire are often the same routes being used by residents who may be attempting to flee from the fire. Due to the critical importance of roads for providing ingress for firefighting apparatuses while simultaneously evacuating the public, certain factors such as width, grade, and turning radius need to be considered in an evacuation".

PREPARED BY: Arn Andrews
Assistant Town manager

Reviewed by: Town Manager, Town Attorney, and Director of Parks and Public Works

DISCUSSION (Continued):

In addition, the assessment identified “Special Concerns” regarding characteristics of the Civic Center Community Emergency Response Team (CERT) zone: “The existing roadway network throughout the zone is entirely comprised of one-way in and one-way out ingress/egress options. Some of the same routes that allow access to the area for responders are the same routes that could be needed for evacuation.”

Based on the Council direction, Town staff reached out to the Santa Clara County Fire District Fire Chief to assess the resident concerns and provide any recommendations. On June 22, 2020, SCCFD and Town staff toured Alpine Avenue. Based on the site tour and other factors, Fire Chief Bowden provided the Town with a memorandum recommending that Alpine Avenue be converted to allow parking on only one side of the street (downhill or northeasterly side) at all times (see Attachment 2).

Staff conducted Alpine Avenue resident outreach regarding the emergency route recommendation through email and doorhanger distribution. The email list was generated through resident contact information from 2016 outreach and current Alpine Avenue parking permit emails. Doorhangers were distributed to each residence located on Alpine Avenue.

CONCLUSION:

Based on the recommendation of the Fire Chief, and the Town’s own recognition of the ingress/egress complexities of the Civic Center CERT zone, staff concurs with removing parking on the southwesterly side of Alpine Avenue at all times.

COORDINATION:

This staff report was coordinated with the Town Manager, Town Attorney, Director of Parks and Public Works, and Santa Clara County Fire District.

FISCAL IMPACT:

If approved by the Town Council, the implementation of no parking on one side of the street can be absorbed in the Parks and Public Works budget.

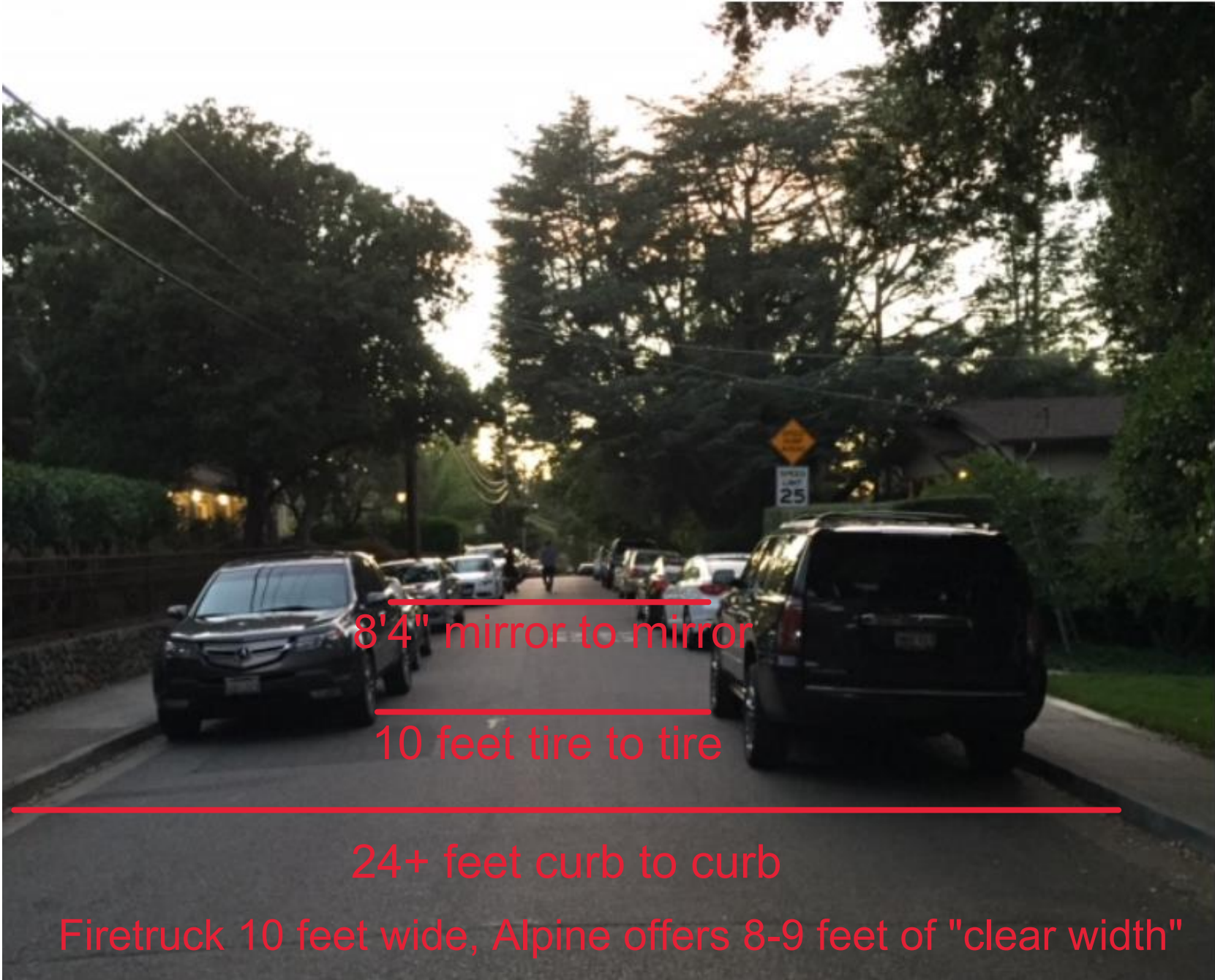
ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. June 2, 2020 Council Meeting Verbal Communication
2. June 25, 2020 Memorandum and Recommendation from Fire Chief Bowden

Parking on Alpine Avenue





MEMORANDUM

June 25, 2020

TO: Laurel Prevetti, Town Manager / Los Gatos

FROM: Tony Bowden, Fire Chief

SUBJECT: Alpine Avenue

BACKGROUND

At a recent Town Council Meeting, a Los Gatos resident raised concerns regarding the street width, parking, and the impacts to ingress/egress on Alpine Avenue should a wildfire and/or emergency occur. The Santa Clara County Fire Department was contacted by the Assistant Town Manager to assess the concerns raised by the Town resident and to provide a recommendation should the Fire Department determine that a potentially hazardous condition exists.

Staff was able to confirm the following: Alpine Avenue has an approximate average width of 25 feet from curb to curb. On June 22, 2020 at 11:00, the Santa Clara County Fire Department staff, including: the Fire Chief, the Assistant Fire Chief, Fire Prevention Deputy Fire Marshals, Battalion 83, Engine 77, and the Town of Los Gatos staff, met at Alpine Avenue. This is a two-way street and parking is currently allowed on both sides of the street. Multiple cars were present on both sides of Alpine Avenue on June 22nd. The current width of emergency fire response vehicles in Los Gatos is 100 inches, not including the mirrors. With small to average vehicles parked on both sides of the street, the fire engine had approximately 12-18 inches of clearance on either side when driving on Alpine Avenue. (*See Attachment A*) A parked full-size vehicle or truck would significantly reduce this clearance.

The current requirement for road width, in new residential developments, is a minimum road width of 36 feet to allow parking on both sides of the road, between 28 feet and 35 feet to allow parking on one side of the road, and roads that are less than 28 feet in width are not allowed to have on-street parking. It is well understood that codes and ordinances have evolved over time and there are many streets/roads throughout the county of Santa Clara that do not meet this current standard. However, in areas with limited ingress/egress, or in high-hazard fire severity zones, it is important that local jurisdictions assess these situations on a case-by-case basis as there are many factors to consider such as the fire severity zone, emergency vehicle response routes, alternate access routes, and traffic flow, to name a few.

ATTACHMENT 2

BACKGROUND (cont'd)

Alpine Avenue serves as the most direct means of ingress for emergency response vehicles and the most direct means of egress for residents of the Alpine Avenue, Foster Road, Tourney Road, and the Sund Avenue neighborhoods. Alpine Avenue is in a Wildland Urban Interface (WUI) area and a very high-hazard severity zone, according to the California State Fire Marshal. (See Attachment B) Johnson Avenue and Loma Alta Avenue serve as secondary means of egress for the above mentioned as they are not the most direct route of egress. This is further complicated by a very narrow section of road connecting Foster Road to Johnson Avenue and by a section of one-way roadway on Johnson Avenue.

IMPACT

Understanding the current road width, parking conditions, wildland fire risk and emergency response vehicle width, a fire engine responding to an emergency response via Alpine Avenue would be directly impeded, should it encounter a vehicle driving in the opposite direction, with vehicles parked on both sides of the street. In this scenario, the direct impacts would be: a delayed response to the emergency (fire, medical, etc.); reduced ability/inability of residents to evacuate; and the reduced ability/inability for emergency response vehicles to get to the emergency during an evacuation.

The impact of restricted ingress/egress can be better understood by examining past wildland fires in communities with similar access issues, such as the Oakland Hills, Tunnel Fire of 1991 and the Camp Fire in the city of Paradise in 2018. During both of these fires, the ability for citizens to evacuate, and the ability for first responders to access the fires, was impacted due to narrow and blocked roads.

RECOMMENDATION

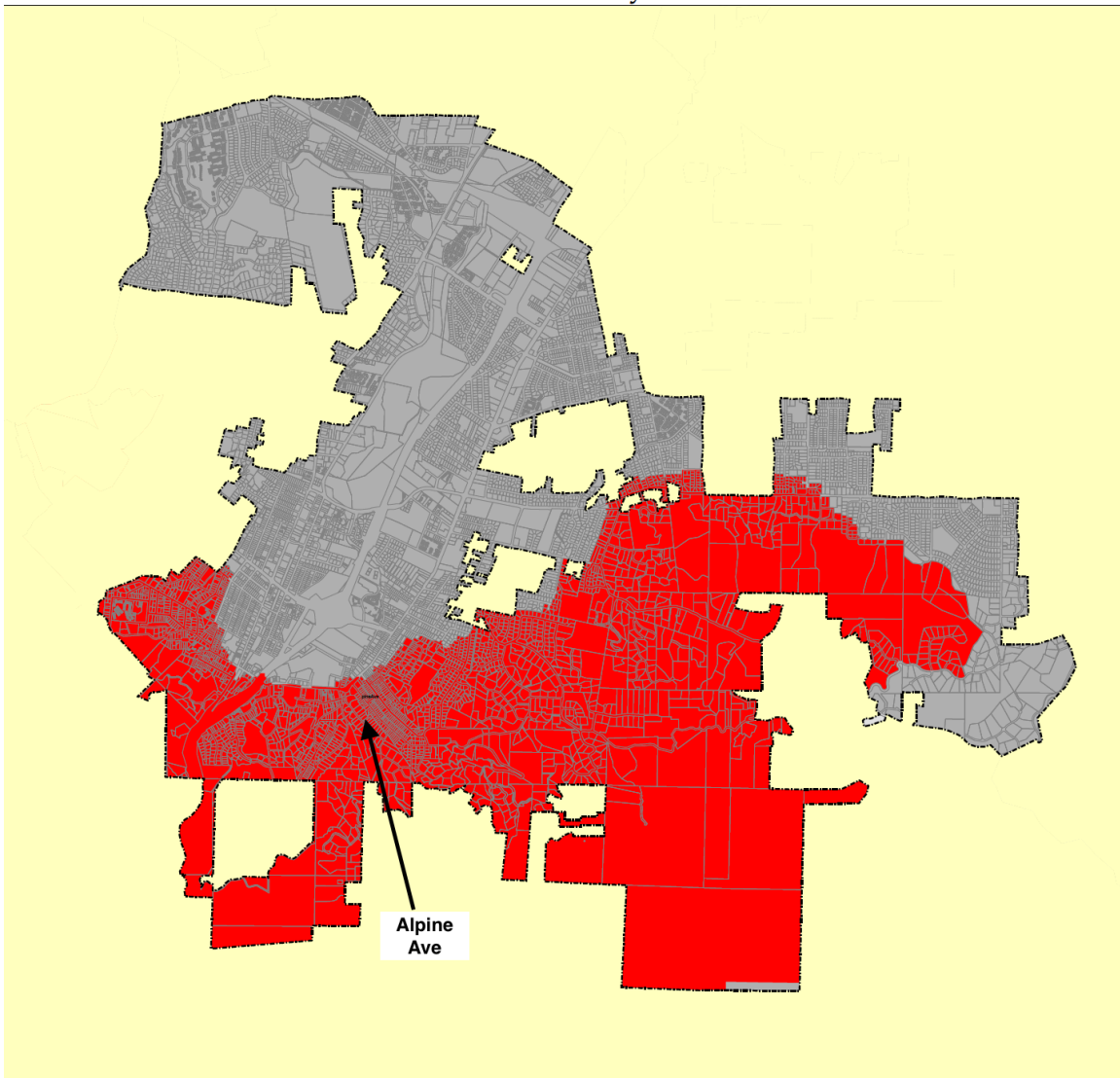
Santa Clara County Fire Department staff recommend that the Town of Los Gatos restrict parking on Alpine Avenue to one side of the street at all times. We recommend that parking be allowed on the North side of the street only, which would place parked vehicles in a position to quickly evacuate in the direction of egress, should a fire occur. If vehicles were allowed to park on the South side of Alpine Avenue, it would require vehicles to make a multipoint turn in the middle of the street during an evacuation. This action would directly impede emergency response vehicles responding to the emergency and slow the evacuation of other citizens.

Attachment A



Attachment B

Very High Fire Hazard Severity Zones in LRA
As Recommended by CAL FIRE





**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 17

ADDENDUM

DATE: July 20, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Approve the Santa Clara County Fire District Emergency Route Recommendation for Alpine Avenue and Remove Parking on One Side of the Street

REMARKS:

Attachment 4 contains public comment received since the issuance of the staff report on Thursday, July 30, 2020, and before 11:00 a.m. Monday, August 3, 2020.

Attachments previously received with the Staff Report:

1. June 2, 2020 Council Meeting Verbal Communication
2. June 25, 2020 Memorandum and Recommendation from Fire Chief Bowden

Attachment distributed with this Addendum:

3. Public Comments received 11:01 a.m. Thursday, July 30, 2020 and 11:00 a.m. Monday, August 3, 2020.

PREPARED BY: Arn Andrews
Assistant Town manager

Reviewed by: Town Manager, Town Attorney, and Director of Parks and Public Works

From: Janet Gutierrez
To: Arn Andrews
Subject: Alpine ave parking
Date: Thursday, July 30, 2020 2:53:14 PM

Since the majority of the traffic on Alpine Avenue comes off Main Street , has anyone considered that having parking on the north side goes against the natural flow of traffic and will require a lot of turning around, either in our driveways or at the top of Alpine, to park on the north side. Doesn't make sense to me. I agree with the idea of parking on one side, just not the side that has been chosen.

Janet Gutierrez

ATTACHMENT 3

From: Dirk Franklin
To: Arn Andrews
Cc: Rob Rennie; Gwen Dawkins
Subject: Re: Emergency Response Street Modifications - Alpine Ave
Date: Saturday, August 1, 2020 11:15:31 AM

Arn,

My family is greatly disappointed with the lack of notice for this proposal.

Notice date 7/30 for a meeting on 8/4? Does this comply with town guidelines AND best practices in transparency in government?

Lucky Covid has kept most in town and available to join the council meeting. I expect a robust Alpine Ave turnout as usual.

The Town has some responsibility in this parking problem. The Town issued many building permits on a known narrow street without ANY REQUIREMENT for a parking plan. The parking issue is ONLY based on Construction parking. Not the residents.

Health and Safety of residents is critical, but just because there is a lack of planning and execution we DO NOT SEE THE NEED TO HAVE OUR PROPERTY RIGHTS NEGATIVELY IMPACTED.

For the record [REDACTED] is against this new regulation.

Dirk and Gwen Franklin

On Jul 30, 2020, at 8:53 AM, Arn Andrews <aandrews@losgatosca.gov> wrote:

Good Morning Alpine Avenue Residents,

You are receiving this email to inform you of proposed emergency response modifications for your street. On June 22, 2020, the Santa Clara County Fire Department staff performed an inspection of the width of Alpine Avenue as it relates to ingress/egress of emergency vehicles and residents in the event of an emergency and/or evacuation. On June 25, 2020, the Town received a recommendation from the Santa Clara County Fire Chief to limit street parking to one side (northerly side) of Alpine Avenue year-round. The recommendation is intended to ensure the safe and expeditious passage of emergency responders and residents in the event of emergency and/or evacuation. The recommendation is scheduled to be considered at the August 4th, 2020, Town Council meeting. If you are not able to attend the meeting and have questions, concerns, or comments, please contact Arn Andrews, Assistant Town Manager, at 408-354-6836, or email aandrews@losgatosca.gov.

Thank you

From: Henry Richards
To: Arn Andrews
Subject: ALPINE AVE emergency access
Date: Saturday, August 1, 2020 4:19:43 PM

Dear Arn Andrews,

I am writing to you in response to your request for comments in re. the “Emergency Response Modifications” proposed for Alpine Avenue.

First of all, let me say that I wholeheartedly support adequate access for emergency vehicles through our street and I believe that was one of the concerns raised when street parking was restricted as it is now. In fact, the restriction was extremely effective in keeping Alpine Avenue clear so long as the regulations were enforced. Recent construction along the street has created unsatisfactory “congestion” however the current parking restrictions have not been stringently enforced and has allowed the problem to persist.

I would like the council to consider the following:

1. Order the enforcement of current regulations to mitigate the congested parking situation for now.
2. Defer or table any current decisions until feedback, comment and input for those of us who are directly impacted by your decisions can be solicited.
3. Timely notification to the residents of Alpine Avenue is essential to this process.

Thank you for your attention to this matter.

Sincerely yours,
Henry Richards



From: Jeff Gallinat
To: Arn Andrews
Subject: Alpine Avenue Parking Change - Town Council item for Tuesday, August 4th
Date: Sunday, August 2, 2020 8:58:17 PM
Attachments: Alpine Parking Note - Aug 2 - v3.docx

Arn,

I am attaching a letter here that several residents on our street (15 total) have helped to author and agreed to regarding the request to implement one-way restricted parking on Alpine Avenue.

I would appreciate it very much if you would ensure this is forwarded to the Council members, per process, ahead of the Zoom call/discussion on this issue on Tuesday, where many of us will be attending.

Would appreciate return acknowledgement of this note, and should you want to clarify/discuss anything, please feel free to give me a call.

Thanks very much,

Jeff Gallinat

A large black rectangular redaction box covering the signature area.

August 2, 2020

To: Arn Andrews and the Los Gatos Town Council

Re: Alpine Ave Parking Changes to be discussed in August 4, 2020 Town Council Meeting

We are respectfully submitting this input ahead of the council discussion on this issue.

Our request is for a 30-day delay/continuance of the implementation of the proposed changes to allow representatives of the Town, the Santa Clara County Fire Department, and the Alpine Avenue Community to fully communicate and work together to build a solution that best addresses the needs of both Los Gatos and our Alpine Avenue residents.

As you may remember, we've had a number of previous discussions over the past couple of years (and subsequent positive changes) to address the unique challenges of our street, and would like to repeat that proven process on this issue as well. We want the right solution for the 'common good' here – both us and the residents of Los Gatos. There are several reasons for our request:

- 1.** Unfortunately, we didn't get an acceptable amount of time to understand and create an informed (and possibly collective) response to this notification. We are an engaged set of neighbors, and many of us are surprised (and some frustrated) with the short notice here, given similar issues we've had in the past, and our desire to really be involved in any solution. Specifically, we've had less than 5 days since any formal notification, even the Town had the fire department recommendation for more than 5 weeks. We do understand there may be urgency to this request, but given our inability to completely discuss the recommendation, jointly assess its impact, and understand other possible solutions, ***we want a reasonable amount of time to properly engage here with the relevant parties.***
- 2.** Our fellow citizens who recently raised this issue with the town (who are not residents of our street) undoubtedly could have seen congestion on Alpine. We all have, from time to time. Recently, though, this has been largely due to a series of construction projects by our fellow residents, some of which were major and were done in areas with limited parking and access to the properties involved. Most Alpine residents let this temporary inconvenience pass, in support of our neighbors. However, if there actually was a concern within the Town about larger issues, ***the Town certainly had the ability and the obligation to address this within the current policy.*** So, this is an exceptional and temporary situation, and one we agree needs to be addressed going forward, probably by both the town and our residents, but through planning, permitting, and enforcement. ***If we actually abide by the current policies here, we believe the present parking solution will work, and represents a limited risk to the community as a whole.***

3. Although we all understand and appreciate the Town’s responsibility to manage risk and ensure public safety, the proposed solution could present other potential risks that need to be considered and fully assessed in a new traffic assessment. Today’s parking practices using both sides of the street in a “light and controlled” manner (when we are not in the “exceptional mode” we’ve been in recently). The present restrictions actually give the residents the permitted parking they need, limit overall congestion, balance the ‘load’ of each side of the street, also serve as an additional deterrent to speeding (which is the KEY issue, highlighted in the previous HS parking situation). We believe the proposed single-side parking solution would create a ‘clear lane’ for emergency traffic, but would also burden half of the residents and restrict their traffic views, and would also contribute to further speeding, which are also risks to our community and the public (and might be far more frequent ones). Alpine is unique in construction, and is often used by many town residents for many different purposes (walking, biking, etc.), and that needs to be considered as well. ***We believe additional study and discussion on this is proposal is warranted to understand and balance these risks. We need to find a solution that is truly holistic and balanced, and truly safe on a daily/ongoing basis.***

4. Finally, there has been no discussion or disclosure on any possible alternatives to provide emergency access to other homes that we are aware of. We don’t know what the alternatives are here, or if they even exist. What we DO know is that a lot of large heavy equipment already transits through our narrow street daily, and that they have done so for decades, largely to the benefit of those on Foster and other streets. ***We want to understand, explore, and assess any other alternatives for emergency access that might be available to address this concern.***

To conclude, there is no debate that we want Alpine to remain safe, and there is also no debate from any of us on the need for appropriate access for public safety vehicles to all town residents. We believe if the present regulations are actually adhered to and enforced, the solution we have already created together will work to balance all interests, and we would prefer the Town take this path first. If the Town genuinely feels there is a need to make a change here, we want the opportunity to formally exercise our rights to engage in that conversation and jointly participate in whatever solution is really the best one available.

My wife and I will be at the meeting (as will several of our neighbors who have agreed to be included in this letter, noted below). Please do take this letter under advisement, and please ensure the Council members see it before our item comes up for discussion on Tuesday.

Jeff and Julie Gallinat [REDACTED]
Tom and Ann Atkinson [REDACTED]
Steve and Linda Rice [REDACTED]
Ernie and Nancy Boitano ([REDACTED])

John Thomsen [REDACTED]
Phil and Melanie Branon [REDACTED]
Lou and Cheryl Ryan [REDACTED]
Dirk Franklin and Gwen Dawkins [REDACTED]

From: Lisa Roberts
To: mjensen@losgatosc.gov; BSpector; Rob Rennie; Marico Sayoc; Arn Andrews
Subject: Agenda Item 17, August 4, 2020 Town Council Meeting: Alpine Avenue
Date: Monday, August 3, 2020 9:31:52 AM
Attachments: Letter Town Council re Parking Proposal 8 3 2020.pdf

Dear Mayor Jensen, Vice Mayor Spector, Council Member Rob Rennie, Council Member Marico Sayoc, and Assistant Town Manager Arn Andrews:

Attached is a letter from my husband Peter Rehon and me regarding the above-referenced agenda item. We would appreciate your careful consideration of this letter, along with other letters and emails sent in this matter by other Alpine Avenue residents.

Thank you very much,

Lisa Roberts

Lisa C. Roberts

[REDACTED]

██████████ ALPINE AVENUE
LOS GATOS, CALIFORNIA 95030

August 3, 2020

Town Council
c/o Arn Andrews, Assistant Town Manager
aandrews@losgatosca.gov
110 E. Main Street
Los Gatos, CA 95030

**Re: Item No. 17 on August 4, 2020 Town Council Meeting Agenda re
Alpine Avenue**

Dear Mayor, Vice Mayor, and Members of the Town Council:

We reside at ██████████. We are writing to express our opposition to the action proposed under the above-referenced agenda item, specifically, the proposed action to “Approve the Santa Clara County Fire District Emergency Route Recommendation for Alpine Avenue and Remove Parking on One Side of the Street.” We have read the letter of yesterday from our neighbors at ██████████ and ██████████ Alpine, and whole-heartedly agree with the sentiments it expresses, and by this letter, wish to lend our voices to theirs in asking the Town Council not to adopt the proposed parking measure.

As set forth below, we believe that the Council should not adopt the parking proposal. Alternatively, should there be any indication of positive support for this action, we request that the matter be continued for at least 30 days to obtain necessary input including the preparation and review of a traffic study and meaningful input by all neighbors affected—including most particularly the residents of Alpine Avenue, none of whom had any part in this item being placed on the Agenda. It is the residents of Alpine who would be directly, materially, and permanently affected by its approval, and who have not been given adequate notice and an opportunity to respond.

The proposal has not been properly researched, vetted, or considered. However well-intentioned it is and how important is the need to address fire safety, it has completely ignored other critical issues of safety—longstanding ones that the residents and users of Alpine encounter on a daily basis. It has received no input at all from Alpine residents.

The grounds for not adopting the proposal, or at a minimum, continuing this matter, are set forth below.

- **The Residents of Alpine Were Given Inadequate Notice of this Proposed Dramatic Change of Their Street, Neighborhood, and Safety.**

As discussed further in the sections following this one, the proposed alterations to Alpine Avenue are dramatic, Draconian, and pose unconsidered safety and other risks to Alpine residents and other residents of Los Gatos and elsewhere who regularly walk, bike, stroller, jog, and drive Alpine Avenue. It warranted significant prior notice to all interested parties, and most importantly, the residents of Alpine. To the contrary, we were given inadequate notice. This has not only resulted in the appearance of unfairness, it has presented us with the reality of not having been given a meaningful opportunity to respond.

As each member of the Council is aware, Alpine is an extraordinarily engaged community of residents. It has been before the Council on several, significant, and memorable occasions in the recent past, in full force, most times acting if not unanimously nearly so, and, indeed, the very issues on which it has been recently extremely active are the matters directly at issue here: parking and public safety. The lack of reasonable notice in this case is even more perplexing given the knowledge by the Council and Staff of this history of engagement.

The Town gave no notice of any kind to Alpine of the pendency of this proposal until an email sent at 8:53 a.m. on Thursday, July 30 (followed thereafter by door hangers). In other words, it gave the persons with the most direct interest in this proposal—only 2 hours and 7 minutes to respond before the deadline for submission in the regular packet—an impossible task, thereby depriving them of the opportunity of having their submissions setting forth their concerns and opposition considered methodically along with the proposal. It gave Alpine only two business days even to submit a response before the deadline for submission in the Addendum and only three business days' notice of the hearing. This has provided Alpine residents with no meaningful time to confer with one another (even though supposedly the Town likes residents to work together), to formulate an appropriate response by them to the Town, or to consider or suggest other options much less make inquiry or investigation into such other options.

The Town gave its notice to the Alpine neighbors on July 30th even though Staff was in possession of the report by the Fire Marshal suggesting this action on June 25—five weeks before any notice was given to Alpine.

The Town also gave this short notice notwithstanding the obvious effects of the COVID pandemic on people's ability to meet, whether between themselves or before the Council. It is appreciated that videoconferencing is available; what the Town does not fully appreciate is that one must study the Town's website and the notices accompanying the agenda to find out about videoconferencing and learn what must be done to even address the Council. Given the fact that videoconferencing can be a challenge even to the technologically savvy, and given the new requirements imposed just for speaking to the Council, it is likely that many residents of the Town may not have their voices heard just because of this short notice.

Every governmental agency has lengthened notice periods and rescheduled hearings because of the COVID emergency, and for the Town to give such extremely short notice of this important matter is directly contrary to the purpose and intent of the State and County emergency orders.

The speed with which the Town is acting to pass this action with minimal opportunity for public input is in stark contrast to a long history of making Alpine wait months—years—for safety projects involving traffic, speeding, and parking that were in the past sorely needed.

At a minimum, this matter should be continued to allow for further investigation by the Town and further input by Alpine residents, including the opportunity to speak with each Council member and formulate a response which addresses the Fire Marshal's concerns and those of the community.

- **The Proposed Action is Premature and Ill-Considered.**

For the foregoing reasons, we are unable to set forth a full statement of our concerns over this proposal. However, just thus far, the concerns include the following:

1. The impetus for this proposal has not come from a single Alpine resident, but by two non-Alpine residents. The first, whose address is unknown, identified himself to the Town Council at the June 2 meeting as "representing the Civic Center Hillside Neighborhood, as you all know." The second is a resident of Foster Road.

2. While fire safety and emergency access is equally a concern of Alpine residents, it is not the only significant safety risk presented to Alpine residents, who, along with other users of the street, will be most impacted by the proposed changes.

3. The most paramount—and daily—safety concern for Alpine users is speeding and the resulting immediate and constant risk to human life and safety—all-year-round and not just during fire season. This concern has been the primary safety concern voiced time and again by Alpine residents and recognized by the Town. The proposed changes will dramatically increase that risk. This increased risk must be measured against the perceived potential benefits of this plan. Yet, the Town has failed to do any investigation—no traffic study or other apparent steps—to weigh that risk.

4. Allowing parking on only one side will drastically increase speeding—and the danger associated with it. Putting the parking to one side will effectively open a virtual speedway on the remainder of the road, and it will present a clear, present, and daily danger to everyone who uses Alpine (including, as noted above, pedestrians including with baby strollers, bikers, and joggers).

5. The danger will be even more pronounced than ever before because the South sidewalk on which no parking will be allowed (and no cars will be present to slow down racing) is narrow and has no median. There have already been numerous instances of cars jumping the curb on Alpine. So far, they have not been fatal. That this trend of good luck will continue is not a bet we are willing to make.

6. As noted in the Fire Marshal report, one-sided parking results in U-turns. That is why it chose north side parking so drivers could leave the hillside area without doing a U-turn. This proposal will require residents on the south side (including residents including cottage dwellers and others who lack off-site parking) to park on the north side—which they can do only by either driving up Alpine and doing a U-turn or by accessing Alpine via another street, such as Johnson Avenue. This is not just a matter of convenience. It is a matter of safety. Just the recent presence of construction vehicles has led property owners to choose (as is their right) to block their driveways to prevent the danger, wear, and tear of trucks turning around, and this proposal will lead to the same, or other neighbor issues associated with the public use of driveways as turnarounds. Alpine has no intersecting streets. A legal U-turn without use of private property requires a trip to the top, at the narrow intersection of Foster. That, and anywhere else on the street, is not safe for the U-turns that this proposal will mandate.

7. The matter of U-turns—and the need for south-side residents to increase crossing the street to get to and from their homes—further increases the already-present—and by this proposal, greatly exacerbated—risk of unfettered speeding.

8. The proposed alterations will undo the street changes that have been made over recent times—with the strong engagement and support of Alpine residents—including speed bumps and parking limitations. This is not only unwise, it is disrespectful of Alpine residents who fought hard for and supported those much-needed changes and went through the sacrifices associated with getting them and having them imposed on their street.

9. The Town has also not taken into account its own role in the problem. Alpine already has in force a parking program that would likely reduce the congestion that could affect access, but the Town has not enforced it. There is currently construction on the street (some of it sped up in recent months to make up for COVID delays). We have no opposition to the construction and indeed regard it as a positive part of living in a vibrant and changing community. We do question why the Town has not better managed parking on Alpine or enforced the parking rules that were long sought by the Alpine community and finally implemented by the Town.

10. In making this proposal based solely on a fire safety report with no other issues of safety taken in consideration, the Town has also failed to consider other potential consequences of its action—including the piecemeal nature of addressing fire safety. The non-Alpine residents who initially raised this issue on June 2 suggested a review of Johnson Avenue as well. They also apparently addressed only certain areas of Los Gatos (the Civic Center hillside area). There are countless other areas in Los Gatos similar to—or more challenging—than the area above Alpine. If steps are to be taken, they should be taken on a Town-wide basis, and the considerations should include all relevant circumstances, including traffic safety, including whether the proposed changes will impact other streets, and whether the steps taken as to one street or area are fair and equitable in comparison to other similarly situated streets or areas.

11. Safety is paramount, but it also bears mentioning that Alpine is in an historic district. The Town and its residents will also be affected. Alpine is a residential street treasured by its residents, but it is also a charming, provincial, and symmetrical neighborhood that harkens back to Los Gatos's past. The proposed changes, akin to ones that might be expected for an expressway or commercial throughway, are antithetical to the character of the street and would be a sore disappointment, we believe, to the many people who use Alpine, along with many other lovely streets in Los Gatos, to stroll, bike, and spend some of their leisure time. In addition to making the street far more dangerous on a daily basis, the associated destruction of the charm and character of the street would be a permanent loss to Los Gatos, and one that, if sufficient careful attention is given to the issues of safety, should not be necessary.

In summary, we request that the Town not adopt the parking proposal, or, at a minimum, continue this matter to allow for further study and an opportunity for the community to respond, and for a more measured and reasonable approach to this imp.

Thank you for your consideration.

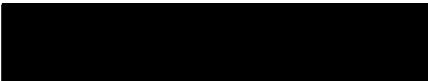
Sincerely,


Lisa C. Roberts





Peter M. Rehon



cc: All Alpine Residents via email

From: Bruce D Mitchell
To: Arn Andrews
Subject: Re: Alpine Avenue Emergency Response Street Modifications
Date: Saturday, August 1, 2020 1:31:43 PM

Mr. Andrews:

A few questions for Town staff, and as appropriate, elected/appointed personnel:

-There must be alternatives to the changes proposed by the Santa Clara County Fire Chief. What are the alternatives?

-Alpine Avenue residents were notified by email and by a flyer on July 31st, just four business days before the Town Council meeting on which this item is on the Town Council agenda. The Town received the the Fire Chief's report on or about June 25. This is over a month before the Alpine Avenue residents were notified of the Fire Chief's report or that the Fire Chief's report is on the Council's August 4th meeting agenda.

Why such an unnecessarily short notice to the residents of Alpine Avenue, the people most impacted by the contents of the report?

-The Santa Clara County Fire Chief's report is on the agenda as "approve" at the August 4th Town Council meeting. Why "approve" when "review" or "consider" would be a more appropriate for a public hearing.

Connie and I, and the majority of our Alpine Avenue neighbors have many concerns including but not limited to:

-Increased speed. on Alpine Avenue. The closing of parking on the south side of Alpine Avenue will effectively add a lane which will increase the already excessive speed that many (Foster Road) drivers travel on Alpine Avenue. As evidenced by the speed bumps, installed at the request of Alpine Avenue residents, excessive speed is a problem.

-To better maintain safe speeds on Alpine Avenue the posted speed limit should be 20 miles per hour (similar to College Avenue) with routine enforcement of the posted speed limit.

-Parking on Alpine Avenue will be reduced by 50%. This will negatively impact Alpine residents ability to entertain, have house guests, and similar activities.

-The inevitable "U" turns.

Please feel free to contact Bruce at [REDACTED].

Bruce and Connie Mitchell
[REDACTED]

From: JANE BROGNA
To: Arn Andrews
Subject: Support of one-side street parking
Date: Thursday, July 30, 2020 6:34:23 PM

We are fully in support of one-side street parking on Alpine Ave. We own the property at both [REDACTED] and [REDACTED].

Jane and Sal Brogna

Sent from Xfinity Connect App



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/04/2020

ITEM NO: 17

DESK ITEM

DATE: August 4, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Approve the Santa Clara County Fire District Emergency Route Recommendation for Alpine Avenue and Remove Parking on One Side of the Street

REMARKS:

Attachment 4 contains public comments received after 11:01 a.m. Monday, August 3, 2020, and 11:00 a.m. Tuesday, August 4, 2020.

In addition, this Desk Item corrects the Addendum of August 3, 2020, which incorrectly identified the date as July 20, 2020 and Attachment 3 as Attachment 4.

Attachments previously received with the Staff Report:

1. June 2, 2020 Council Meeting Verbal Communication
2. June 25, 2020 Memorandum and Recommendation from Fire Chief Bowden

Attachment distributed with this Addendum:

3. Public Comments received 11:01 a.m. Thursday, July 30, 2020 and 11:00 a.m. Monday, August 3, 2020.

Attachment distributed with this Desk Item:

4. Public comments received after 11:01 a.m. Monday, August 3, 2020, and 11:00 a.m. Tuesday, August 4, 2020

PREPARED BY: Arn Andrews
Assistant Town manager

Reviewed by: Town Manager, Town Attorney, and Director of Parks and Public Works

From: Tim Dombrowski
To: Arn Andrews
Subject: Alpine Ave Street Modifications
Date: Monday, August 3, 2020 9:04:15 PM

Arn:

I know you've received extensive correspondence from my neighbors here on Alpine Ave and I'm writing to communicate my full endorsement of the position and opinions they have offered.

In neighborhood solidarity,
Tim & Irene Dombrowski



From: [Brent Knudsen](#)
To: [Arn Andrews](#)
Cc: [Jeff Gallinat](#); [Lisa Roberts](#); [KATHRYN KNUDSEN](#)
Subject: Alpine Avenue
Date: Monday, August 3, 2020 10:28:26 PM
Attachments: [image001.png](#)

Arn.

Our family lives at [REDACTED] in Los Gatos where we have lived for 25 years. We love our neighborhood and our neighbors. My wife and I each also have business offices in the Town of Los Gatos with one of our daughters and her family living in Los Gatos as well. We plan to attend the town meeting tomorrow evening and support the letters you have received from many of our neighbors, specifically those sent by Jeff Gallinat, which was signed by many of our neighbors, and Lisa Roberts. In short, this is an important issue for Alpine Avenue and Los Gatos which requires additional careful consideration.

With our best regards.

Brent Knudsen

--

Brent R. Knudsen, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

From: Krista Gieselman
To: Arn Andrews
Subject: Alpine Ave, Los Gatos CA
Date: Tuesday, August 4, 2020 9:50:02 AM

TO:



Arn Andrews • Assistant Town Manager

[110 East Main Street, Los Gatos CA 95030](https://www.google.com/maps/place/110+East+Main+Street,+Los+Gatos,+CA+95030)

Ph: [408.354.6836](tel:408.354.6836) • aandrews@losgatosca.gov

www.losgatosca.gov • <https://www.facebook.com/losgatosca>

FROM:

Gieselman

Dear Mayor Jensen, Vice Mayor Spector, Council Member Rob Rennie, Council Member Marico Sayoc, and Assistant Town Manager Arn Andrews;

I concur with the dated letter (August 3, 2020) from the residents of [REDACTED] Alpine Ave, Los Gatos CA to “request that the matter be continued for at least 30 days to obtain necessary input”.

Sincerely,

Krista Gieselman

From: jean ann moton
To: Arn Andrews
Subject: Alpine Avenue
Date: Tuesday, August 4, 2020 10:15:45 AM

Hello I am Jean Morton. I live at [REDACTED] and wish add my concern about restricting parking on one side of the street.

One. I would make it more difficult to back out of my driveway with cars on either side.

Two. In order to park would require all drivers coming up from Main Street to turn around - either at the head of Alpine or more likely in neighbor driveways.

Three. The traffic will increase on the Foster road extension to Johnson in order to be on the right side of the street to park. As you know that extension is basically a one lane country lane. More traffic would cause liability to nothing to say about safety.

I ask the council to delay this motion until more study can be made and more discussion with the town and fire marshal

Yours. Jean Morton

[REDACTED]

From: Phil Branon
To: Arn Andrews
Cc: [REDACTED]
Subject: RE: Emergency Response Street Modifications
Date: Monday, August 3, 2020 8:59:15 PM

Arn,

My wife and I live at [REDACTED] and support the numerous letters that have been sent to you to have the council grant a continuance on the agenda item on parking on Alpine Ave.

We respectfully ask that proper notice be granted for all parties to review the issue and to determine the best solution moving forward.

Phil Branon
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Arn Andrews <aandrews@losgatosca.gov>
Sent: Thursday, July 30, 2020 8:53 AM
To: Arn Andrews <aandrews@losgatosca.gov>
Subject: Emergency Response Street Modifications

Good Morning Alpine Avenue Residents,

You are receiving this email to inform you of proposed emergency response modifications for your street. On June 22, 2020, the Santa Clara County Fire Department staff performed an inspection of the width of Alpine Avenue as it relates to ingress/egress of emergency vehicles and residents in the event of an emergency and/or evacuation. On June 25, 2020, the Town received a recommendation from the Santa Clara County Fire Chief to limit street parking to one side (northerly side) of Alpine Avenue year-round. The recommendation is intended to ensure the safe and expeditious passage of emergency responders and residents in the event of emergency and/or evacuation. The recommendation is scheduled to be considered at the August 4th, 2020, Town Council meeting. If you are not able to attend the meeting and have questions, concerns, or comments, please contact Arn Andrews, Assistant Town Manager, at 408-354-6836, or email aandrews@losgatosca.gov.

Thank you

Arn Andrews • Assistant Town Manager
110 East Main Street, Los Gatos CA 95030
Ph: 408.354.6836 • aandrews@losgatosca.gov

From: JANE BROGNA
To: Arn Andrews
Subject: Re: Emergency Response Street Modifications
Date: Tuesday, August 4, 2020 9:03:51 AM

While we understand the need to provide a safe passage for emergency vehicles up Alpine Ave as a neighborhood we feel there are other unintended consequences that should be considered as a plan is proposed to allow emergency vehicles to pass freely up Alpine.

As a group we felt that giving us more time to discuss options with the fire marshall and town would be appropriate.

Thank you for taking our concerns into consideration before a final decision is made.

Jane and Sal Brogna
[REDACTED]

Sent from Xfinity Connect App

----- Original Message -----

From: Arn Andrews
To: Arn Andrews
Sent: July 30, 2020 at 8:53 AM
Subject: Emergency Response Street Modifications

Good Morning Alpine Avenue Residents,

You are receiving this email to inform you of proposed emergency response modifications for your street. On June 22, 2020, the Santa Clara County Fire Department staff performed an inspection of the width of Alpine Avenue as it relates to ingress/egress of emergency vehicles and residents in the event of an emergency and/or evacuation. On June 25, 2020, the Town received a recommendation from the Santa Clara County Fire Chief to limit street parking to one side (northerly side) of Alpine Avenue year-round. The recommendation is intended to ensure the safe and expeditious passage of emergency responders and residents in the event of emergency and/or evacuation. The recommendation is scheduled to be considered at the August 4th, 2020, Town Council meeting. If you are not able to attend the meeting and have questions, concerns, or comments, please contact Arn Andrews, Assistant Town Manager, at 408-354-6836, or email aandrews@losgatosca.gov.

Thank you

Arn Andrews \$B!| (B Assistant Town Manager

110 East Main Street, Los Gatos CA 95030

Ph: 408.354.6836 \$B!| (B aandrews@losgatosca.gov

www.losgatosca.gov \$B!| (B <https://www.facebook.com/losgatosca>

Civic Center Hillside Neighborhood Authorization for Oral Comments

Town Council Meeting – August 4, 2020

Agenda Item 17: Approve the Santa Clara County Fire District Emergency Route Recommendation for Alpine Avenue and Remove Parking on One Side of the Street.

The Leadership Team, Jon Witty, Mike Shields and Rob Stump, from the Civic Center Hillside Neighborhood have been authorized to offer oral comments on Agenda Item 17 on behalf of the residents listed below.

#	Last Name	First Name	Address
1	Bakke	Karl	Foster Road
	Bakke	Shelley	Foster Road
2	Bartlett	Steve	Foster Road
	Bartlett	Mary	Foster Road
3	Boyle	Amber	Foster Road
	Boyle	Dan	Foster Road
4	Brady	John	Foster Road
	Brady	Judy	Foster Road
5	Guyart	Christelle	Foster Road
	Callaud	Christophe	Foster Road
6	Coker	Scott	Foster Road
7	Cotton	Bill	Foster Road
	Cotton	Kathy	Foster Road
8	DiNapoli	Phil	Foster Road
	DiNapoli	Jennifer	Foster Road
9	Fitzhenry	Jack	Dishman Drive
	Fitzhenry	Pam	Dishman Drive
10	Freeburger	Patrick	Foster Road
	Sweet	Sue	Foster Road
11	Garneau	Tara	Foster Road
	Darveau-Garneau	Nicolas	Foster Road
12	Hansen	Eric	Foster Road
	Hansen	Alice	Foster Road
13	Hsing	Michael	Foster Road
14	Jatou	Ross	Foster Road
	Nessan	Susan	Foster Road
15	Long	Richard	Foster Road
16	Mitchell	Sandra	Foster Road
17	Morton	Dave	Foster Road
	Morton	Claudia	Foster Road
18	Pastrone	Paul	Dishman Drive
	Pastrone	Lauri	Dishman Drive
19	Reynolds	Brendan	Foster Road
20	Shields	Mike	Foster Road
	Shields	Karen	Foster Road
21	Stump	Robert	Foster Road
	Stump	Nancy	Foster Road
22	Ackerson	Peter	Foster Road
	Ackerson	Alana	Foster Road
23	Sund	Steve	Foster Road
	Sund	Cynthia	Foster Road
24	Weinstein	Jeff	Tourney Road
	Weinstein	Susan	Tourney Road
25	Wendt	Melanie	Foster Road
	Wendt	Tom	Foster Road
26	Weiner	Ronald	Foster Road
	Stanley	Deborah	Foster Road
27	Witty	Jon	Foster Road
	Noel	Amy	Foster Road
28	Zeidler	Brendon	Tourney Loop

**Written Authorizations from Civic Center Hillside Neighbors
Alpine Avenue – Town Council Meeting
August 4, 2020**

August 3, 2020

1. Please feel free to speak on my behalf to convince whomsoever you need, in order to restrict parking on Alpine Avenue so that vital emergency services can reach residents and property on Foster Rd 24/7/365!

Thank you, Tom Thorpe.

2. Hello Rob and team,

On this particular issue, I am in full support and you can certainly speak on our behalf.

Thanks, Ross Jatou and Susan Nessian

3. Please accept this email as authorization to speak on my behalf.

Keep up the good work.

Brendan Reynolds

4. Thanks for attending to this critical fire safety issue. Please be assured that Kathy and I fully support your efforts to increase our safe egress during a wildfire and open up clear access to our hillside neighborhood for fire crews and equipment. Parking only on the north side of Alpine Avenue will provide an increased level of safety and thus dramatically lower the level of wildlife risk to our hillside.

Thanks again for your efforts on our behalf.
Bill & Kathy Cotton

5. Yes, we are grateful if you speak on our behalf at the meeting!!

Jack and Pam Fitzhenry

6. Yes, we support the effort. Same with Johnson Avenue but at least it has 2 ways in for access I suppose.

Steven and Cynthia Sund

7. Hi! Please feel free to reference the Morton's. Thanks & best of luck!

Dave and Claudia Morton

**Written Authorizations from Civic Center Hillside Neighbors
Alpine Avenue – Town Council Meeting
August 4, 2020**

8. You have my authorization to speak on my behalf on this matter on Alpine Avenue

Scott Coker

9. Jennifer and I give you authority to speak our behalf at the town meeting August 4, 2020.

Phil and Jennifer DiNapoli

10. You have our permission to represent us.

Thanks – Peter and Alana Ackerson

11. Nick and I strongly support you speaking on our behalf on this important safety issue. Thank you for your continued work and leadership. We are very grateful.

Kind regards,
Tara Garneau and Nick Darveau

12. This email serves to authorize Rob Stump to speak on my behalf at the Civic Center Hillside Neighborhood meeting on August 4.

Thank you – Brendon Zeidler

13. You Have my permission to speak on our behalf in favor of this recommendation. Parking on both sides of the street creates an unusually dangerous hazard given the number of houses that exist beyond Alpine and Foster.

Thank you for doing this...Ron Weiner and Deborah Stanley

14. Pertaining to your email below, we support representatives of the Civic Center Hillside Neighbors presentation to LG Town Council on August 4.

John and Judy Brady

August 2, 2020

15. Thanks for taking leadership on the Alpine issue. All 3 of us here support making one side of Alpine no-parking, and we authorize you to speak on our behalf at the town council meeting.

Jeff and Sue Weinstein

**Written Authorizations from Civic Center Hillside Neighbors
Alpine Avenue – Town Council Meeting
August 4, 2020**

16. We are grateful that you are taking the time to represent our neighborhood and our concerns about vehicle movement to and from the Civic Center Hillside area should there be an emergency. On many occasions we have driven down Foster to Alpine Avenue and felt horror at the difficulty we often experience in getting down the street due to so many (often large, construction-related) vehicles parked on both sides of the road.

Please know that you have our full authorization to speak on our behalf and that we are in synch with your concerns as you address the Town of Los Gatos. We feel that the only way for us to be able to safely exit the neighborhood – and to have safety vehicles such as fire trucks and ambulances reach us – is to allow parking on only one side of Alpine Avenue.

Thank you for your representation – Laurie and Paul Pastrone

17. To: Los Gatos Town Council and/or any other government agency

Rob Stump has unlimited authority to speak for us on fire or any other safety issues. This has no time limit.

Eric A. Hansen MD
Alice H Hansen

18. Thanks for your help on improving the situation on Alpine Avenue. We agree 100% with your assessment that allowing parking on two sides is a significant danger to Foster Road. Please feel free to convey to the Town Council that we agree with you.

Best,
Sue Sweet & Patrick Freeburger

19. We fully support your initiative. Feel free to talk on our behalf

Thanks for all you are doing for our community

Christelle & Christophe Callaud-Guyart

20. Thanks much for continuing to fight for this important topic. You have our full authority to speak on our behalf.

Let us know if there is anything else, we can do.

Tom & Melanie Wendt

**Written Authorizations from Civic Center Hillside Neighbors
Alpine Avenue – Town Council Meeting
August 4, 2020**

21. I authorize the CCHN Leadership Team to speak on my behalf on being in favor of requiring Alpine parking to be one sided only.

Not only in case of emergency but almost every day I take my kids to school is it a total mess.

Dan and Amber Boyle

22. You have permission to speak on our behalf.

Thank you,
Shelley and Karl Bakke

August 4, 2020

23. To Town of Los Gatos Council,

Please let it be known, the Civic Center Hillside Neighborhood, (Rob Stump, Jon Witty, and Mike Shields) are representing me, (Richard Long) concerning street parking on Alpine Avenue. I have lived at 17810 Foster Road for 28 years, and have personally experienced “blocked” traffic many, many times. I can’t imagine how a fire truck could respond to a fire up the hillside.

Regards,
Richard Long

24. Sandra Mitchell provided authorization by phone on August 4, 9:00 AM. She does not use email.

25. Hi Rob, you have my support and you can speak for me. Thank you for doing this. Very much appreciated

Michael Hsing.

From: Tessa Keating
To: Arn Andrews
Cc: Jeff Gallinat; [REDACTED]
Subject: Alpine Avenue Parking
Date: Monday, August 3, 2020 10:18:51 PM
Attachments: Alpine Parking Note - Aug 2 - v3.docx

Dear Mr Andrews

This email is to express our support for the letter submitted to the Los Gatos Town Council by our neighbor Jeff Gallinat, (attached.) We support his request for a delay in the process that has been proposed in order to more fully understand the issue and the solutions.

We respectfully request that the residents of our street are given adequate time to work with the Town and the Los Gatos Fire Department to come to a workable solution that does not create unintended consequences for our community.

We will be attending the Town Council meeting tomorrow night and have asked Mr Gallinat to represent our views.

Kind regards

Tessa Keating and Stephen Rothrock

[REDACTED]

--

Tessa Keating

August 2, 2020

To: Arn Andrews and the Los Gatos Town Council

Re: Alpine Ave Parking Changes to be discussed in August 4, 2020 Town Council Meeting

We are respectfully submitting this input ahead of the council discussion on this issue.

Our request is for a 30-day delay/continuance of the implementation of the proposed changes to allow representatives of the Town, the Santa Clara County Fire Department, and the Alpine Avenue Community to fully communicate and work together to build a solution that best addresses the needs of both Los Gatos and our Alpine Avenue residents.

As you may remember, we've had a number of previous discussions over the past couple of years (and subsequent positive changes) to address the unique challenges of our street, and would like to repeat that proven process on this issue as well. We want the right solution for the 'common good' here – both us and the residents of Los Gatos. There are several reasons for our request:

- 1.** Unfortunately, we didn't get an acceptable amount of time to understand and create an informed (and possibly collective) response to this notification. We are an engaged set of neighbors, and many of us are surprised (and some frustrated) with the short notice here, given similar issues we've had in the past, and our desire to really be involved in any solution. Specifically, we've had less than 5 days since any formal notification, even the Town had the fire department recommendation for more than 5 weeks. We do understand there may be urgency to this request, but given our inability to completely discuss the recommendation, jointly assess its impact, and understand other possible solutions, ***we want a reasonable amount of time to properly engage here with the relevant parties.***
- 2.** Our fellow citizens who recently raised this issue with the town (who are not residents of our street) undoubtedly could have seen congestion on Alpine. We all have, from time to time. Recently, though, this has been largely due to a series of construction projects by our fellow residents, some of which were major and were done in areas with limited parking and access to the properties involved. Most Alpine residents let this temporary inconvenience pass, in support of our neighbors. However, if there actually was a concern within the Town about larger issues, ***the Town certainly had the ability and the obligation to address this within the current policy.*** So, this is an exceptional and temporary situation, and one we agree needs to be addressed going forward, probably by both the town and our residents, but through planning, permitting, and enforcement. ***If we actually abide by the current policies here, we believe the present parking solution will work, and represents a limited risk to the community as a whole.***

3. Although we all understand and appreciate the Town’s responsibility to manage risk and ensure public safety, the proposed solution could present other potential risks that need to be considered and fully assessed in a new traffic assessment. Today’s parking practices using both sides of the street in a “light and controlled” manner (when we are not in the “exceptional mode” we’ve been in recently). The present restrictions actually give the residents the permitted parking they need, limit overall congestion, balance the ‘load’ of each side of the street, also serve as an additional deterrent to speeding (which is the KEY issue, highlighted in the previous HS parking situation). We believe the proposed single-side parking solution would create a ‘clear lane’ for emergency traffic, but would also burden half of the residents and restrict their traffic views, and would also contribute to further speeding, which are also risks to our community and the public (and might be far more frequent ones). Alpine is unique in construction, and is often used by many town residents for many different purposes (walking, biking, etc.), and that needs to be considered as well. ***We believe additional study and discussion on this is proposal is warranted to understand and balance these risks. We need to find a solution that is truly holistic and balanced, and truly safe on a daily/ongoing basis.***

4. Finally, there has been no discussion or disclosure on any possible alternatives to provide emergency access to other homes that we are aware of. We don’t know what the alternatives are here, or if they even exist. What we DO know is that a lot of large heavy equipment already transits through our narrow street daily, and that they have done so for decades, largely to the benefit of those on Foster and other streets. ***We want to understand, explore, and assess any other alternatives for emergency access that might be available to address this concern.***

To conclude, there is no debate that we want Alpine to remain safe, and there is also no debate from any of us on the need for appropriate access for public safety vehicles to all town residents. We believe if the present regulations are actually adhered to and enforced, the solution we have already created together will work to balance all interests, and we would prefer the Town take this path first. If the Town genuinely feels there is a need to make a change here, we want the opportunity to formally exercise our rights to engage in that conversation and jointly participate in whatever solution is really the best one available.

My wife and I will be at the meeting (as will several of our neighbors who have agreed to be included in this letter, noted below). Please do take this letter under advisement, and please ensure the Council members see it before our item comes up for discussion on Tuesday.

Jeff and Julie Gallinat [REDACTED]
Tom and Ann Atkinson [REDACTED]
Steve and Linda Rice [REDACTED]
Ernie and Nancy Boitano ([REDACTED])

John Thomsen [REDACTED]
Phil and Melanie Branon [REDACTED]
Lou and Cheryl Ryan [REDACTED]
Dirk Franklin and Gwen Dawkins [REDACTED]