



**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
DECEMBER 01, 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 follow the participation instructions on page 2 of this agenda. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period, by following the participation instructions on page 2 of this agenda. 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
DECEMBER 01, 2020
7:00 PM**

IMPORTANT NOTICE REGARDING THE DECEMBER 1, 2020 TOWN 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 www.losgatosca.gov/AgendasAndVideos. **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 in real-time during the meeting, you can view the live stream of the meeting on television (Comcast Channel 15) and/or online at www.LosGatosCA.gov/TownYouTube.

If you are interested in providing oral comments real-time during the meeting, you must join the Zoom webinar:

- Join from a PC, Mac, iPad, iPhone or Android device: click this link <https://us02web.zoom.us/j/99629271648?pwd=OWdGYUhOdzFscEg2cEZUSHZrQTJ2UT09>. Password: 738122. You can also type in 99629271648 in the “Join a Meeting” page on the Zoom website at <https://zoom.us/join>.
- Join by telephone: (636) 651-0008 US Toll or (877) 336-1839 US Toll-free. Conference code: 969184.

During the meeting:

- When the Chair 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 Chair 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 PARTICIPANTS

The following Council Members are listed to allow them to appear electronically 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

COUNCIL / MANAGER MATTERS

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 November 17, 2020 Closed Session Town Council Meeting.
- [2.](#) Approve Draft Minutes of the November 17, 2020 Boards, Commissions, and Committees Interviews Town Council Meeting.
- [3.](#) Approve Draft Minutes of the November 17, 2020 Regular Town Council Meeting.
- [4.](#) Approve Draft Minutes of the November 24, 2020 Closed Session Town Council Meeting.
- [5.](#) Adopt a Resolution Declaring Certain Hazardous Vegetation Growing in the Town of Los Gatos to be a Public Nuisance, Describing Properties Where Such Nuisance Exists, and Setting a Public Hearing Date of January 19, 2021 to Consider Objections for Proposed Abatement.
- [6.](#) Authorize the Town Manager to execute an Agreement for Consultant Services with Facility Engineering Associates P.C. for Building Condition Assessment Services in an Amount Not to Exceed \$79,435 Including Contingencies.
- [7.](#) Adopt a Resolution Approving the Parcel Map for 15630 Los Gatos-Almaden Road and Accepting Dedications.
- [8.](#) Accept Fiscal Year (FY) 2019/20 Status Report on Receipt and Use of Development Impact Fees.
- [9.](#) Approve Modifications to the Town Facility Use Policy to Allow for Private Use of Locations Within Oak Meadow Park.
- [10.](#) Adopt a Resolution for the California Public Employees' Retirement System Health Plan Fixing the Employer Contribution at an Equal Amount for Employees and Annuitants.

VERBAL COMMUNICATIONS (*Members of the public are welcome to address the Town Council on any matter that is not listed on the agenda by following the Participation Instructions 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.*)

OTHER BUSINESS (*Up to three minutes may be allotted to each speaker on any of the following items by following the Participation Instructions on page 2 of this agenda.*)

- [11.](#) Accept the Ad Hoc Wildfire Committee Report and Direct Staff to Return to Council in One Year with an Action Item Progress Update.
- [12.](#) Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803):
 - a. Authorize the Town Manager to Negotiate and Execute a Measure B Funding Agreement with the Santa Clara Valley Transportation Authority (Attachment 1) to Accept a Measure B Grant in the Amount of \$2,754,990 for the Highway 17 Bicycle and Pedestrian Overcrossing Project Final Design Phase;
 - b. Authorize Revenue and Expenditure Budget Increases in the Total Amount of \$3,701,200 (\$2,754,990 in Grant Fund and \$946,210 in General Fund Appropriated Reserve) in the Fiscal Year 2020/21 – 2024/25 Capital Improvement Program (CIP) Budget for the Highway 17 Bicycle and Pedestrian Overcrossing Project to Recognize the Receipt of Grant Funds in FY 2020/21;
 - c. Authorize the Release of a Request for Proposals (Attachment 2) for the Highway 17 Bicycle and Pedestrian Overcrossing Design Project;
 - d. Authorize the Town Manager to Negotiate and Execute a Consultant Agreement with the Highest Ranked Firm in an Amount Not to Exceed \$3,000,000; and
 - e. Approve the Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan (Attachment 3).
- [13.](#) Approval of Proposed Settlement Agreement between the Town of Los Gatos and SummerHill Homes LLC to Resolve the Damage Claim filed By SummerHill Regarding the Denial of SummerHill’s Application to Remove Underground Parking from the North 40 Phase 1 Construction of the Market Hall.

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

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
November 17, 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, November 17, 2020, to hold a Closed Session at 4:30 p.m.

MEETING CALLED TO ORDER AT 4:30 P.M.

ROLL CALL

Present: Mayor Marcia Jensen, Vice Mayor Barbara Spector, Council Member Rob Rennie, Council Member Marico Sayoc. (All Participating Remotely.)

Absent: None

VERBAL COMMUNICATIONS

None.

THE TOWN WILL MOVE TO THE FOLLOWING CLOSED SESSION ITEM:

1. Conference with Legal Counsel – Significant Exposure to Litigation, pursuant to California Government Code Section 54956.9(d)(2):

Claim filed by SummerHill Homes LLC in regard to the denial of the application for modification of North 40 Architecture and Site Approval. The claim asserts that the Town violated the Housing Accountability Act, Housing Element Law, State and Federal Constitutional requirements and the Federal Civil Rights Act and seeks damages in excess of \$5,000,000 allegedly caused by denial of the application for modification. The Town Attorney's Office will update the Mayor and Town Council on the status of the matter and seek direction.

ADJOURNMENT

Closed Session adjourned at 4:53 p.m.

Attest:

Submitted by:

Jenna De Long, Deputy Clerk

Laurel Prevetti, Town Manager



**DRAFT
Minutes of the Town Council Special Meeting - Interviews
November 17, 2020**

The Town Council of the Town of Los Gatos conducted a Special Meeting on Tuesday, November 17, 2020, at 5:00 p.m. to conduct Board, Commission, and Committee interviews.

SPECIAL MEETING CALLED TO ORDER AT 5:00 P.M.

ROLL CALL

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

Absent: None

VERBAL COMMUNICATIONS

None.

BOARD/COMMISSION/COMMITTEE INTERVIEWS

Council interviewed applicants for the vacant positions on Town Boards, Commissions, and Committees.

- **Arts and Culture Commission** (3 vacancies, 6 applicants)
 - Richard Capatoso
 - Jeffrey Janoff
 - Michael Miller
 - Pamela Murphy
 - Heidi Owens
 - Ellis Weeker

- **Building Board of Appeals** (2 vacancies, 1 applicant)
 - Charles Holcomb

- **Community Health and Senior Services Commission** (2 vacancies, 1 applicant)
 - Richard Konrad

- **Complete Streets and Transportation Committee** (2 vacancies, 4 applicants)
 - Doug Brent – did not interview, withdrew application
 - Bill Ehlers
 - Cheryl Ryan - did not interview, unable to attend
 - Gillian Verga

- **General Plan Committee** (2 vacancies, 4 applicants)
 - Gerard Abraham
 - Joseph Mannina
 - Heidi Owens
 - Steve Piasecki

- **Historic Preservation Committee** (2 vacancies, 3 applicants)
 - Barry Cheskin
 - Timothy Lundell
 - Jeffrey Siegel

- **Library Board** (3 vacancies, 5 applicants)
 - Susan Buxton
 - Richard Capatosto
 - Sabiha Chunawala
 - David Read – did not interview, unable to attend
 - Cheryl Ryan – did not interview, unable to attend

- **Parks Commission** (1 vacancy, 3 applicants)
 - Adriana Alves
 - Richard Capatosto
 - Alicia Shah - did not interview, unable to attend

- **Personnel Board** (3 vacancies, 1 applicant)
 - Steven Bakota

- **Planning Commission** (1 vacancy, 4 applicants)
 - Gerard Abraham
 - Kathryn Janoff
 - Anil Patel
 - Jeffrey Siegel

SPECIAL MEETING ADJOURNED

Meeting adjourned at 6:53 p.m.

Attest:

Jenna De Long, Deputy Clerk



**DRAFT
Minutes of the Town Council Meeting
November 17, 2020**

The Town Council of the Town of Los Gatos conducted a regular meeting via Teleconference via COVID-19 Shelter in Place Guidelines on November 17, 2020, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:02 P.M.

ROLL CALL

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

Absent: None

BOARD/COMMISSION/COMMITTEE APPOINTMENTS

The Town Council appointed applicants for the vacant positions on Town Boards, Commissions, and Committees.

- **Arts and Culture Commission**
 - Richard Capatoso was not appointed.
 - Jeffrey Janoff was not appointed.
 - Michael Miller was appointed to a 3-year term.
 - Pamela Murphy was appointed to a 2-year term.
 - Heidi Owens was not appointed.
 - Ellis Weeker was re-appointed for a 3-year term.

- **Building Board of Appeals**
 - Charles Holcomb was appointed to a 4-year term.

- **Community Health and Senior Services Commission**
 - Richard Konrad was appointed to a 3-year term.

- **Complete Streets and Transportation Committee**
 - Doug Brent withdrew his application and did not interview.
 - Bill Ehlers was re-appointed to a 3-year term.
 - Cheryl Ryan did not interview and was not appointed.
 - Gillian Verga was re-appointed to a 3-year term.

Appointments - continued

- **General Plan Committee**
 - Gerard Abraham was not appointed.
 - Joseph Mannina was appointed to a 4-year term.
 - Heidi Owens was not appointed.
 - Steve Piasecki was appointed to a 3-year term.

- **Historic Preservation Committee**
 - Barry Cheskin was appointed to a 4-year term.
 - Timothy Lundell was appointed to a 2-year term.
 - Jeffrey Siegel was not appointed.

- **Library Board**
 - Susan Buxton was appointed to a 2-year term.
 - Richard Capatoso was appointed to a 3-year term.
 - Sabiha Chunawala was re-appointed to a 3-year term.
 - David Read did not interview and was not appointed.
 - Cheryl Ryan did not interview and was not appointed.

- **Parks Commission**
 - Adriana Alves was appointed for a 2-year term.
 - Richard Capatoso was not appointed.
 - Alicia Shah did not interview and was not appointed.

- **Personnel Board**
 - Steven Bakota was appointed to a 5-year term.

- **Planning Commission**
 - Gerard Abraham was not appointed.
 - Kathryn Janoff was re-appointed to a 4-year term.
 - Anil Patel was not appointed.
 - Jeffrey Siegel was not appointed.

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Council Member Rennie stated he attended Valley Transportation Authority (VTA) Governance and Audit Committee and Board meetings, Silicon Valley Clean Energy Authority (SVCEA) Board and Risk Oversight Committee meetings, Emergency Operating Area Council meeting, and the Santa Clara County Cities Association Selection Committee meeting with Council Member Sayoc.

Council Matters - continued

- Vice Mayor Spector stated she attended the West Valley Clean Water Authority (WVCWA) Board meeting, West Valley Solid Waste Authority (WVSW) Board meeting, and two meetings of the Town's Wildfire Ad Hoc Committee.
- Council Member Sayoc stated she attended the Santa Clara County Cities Association Selection Committee with Council Member Rennie and the League of California Cities (LOCC) meeting.
- Mayor Jensen stated she attended the two meetings of the Town's Wildfire Ad Hoc Committee, General Plan Advisory Committee (GPAC) meetings, and a VTA Policy Advisory Committee meeting.

Manager Matters

- Announced free COVID-19 testing will be held on Monday November 30, 2020 at the Adult Recreation Center. Walk-ins welcome and appointments are strongly encouraged.
- Announced that the tree in Plaza Park will be lit after Thanksgiving and that the Town is installing the Chamber's light exhibits for the holidays. No tree lighting ceremony will be held due to COVID-19.

CLOSED SESSION REPORT

- Robert Shultz, Town Attorney, stated Council met in closed session as duly noted on the agenda and that there is no reportable action.

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

1. Approve Draft Minutes of the November 3, 2020 Town Council Meeting.
2. Receive the First Quarter Investment Report (July through September 2020) for Fiscal Year 2020/21.)
3. Authorize the Town Manager to execute a First Amendment Agreement for Consultant Services with Walter Levison for Arborist services.
4. Authorize the Town Manager to Execute Agreements for Environmental Consultant Services with EMC Planning Group, Inc. and Raney Planning and Management, Inc.
5. Authorize the Town Manager to Execute an Agreement with Hello Housing for Administration of the Town's Below Market Price Affordable Housing Program.

Item #3 was pulled by David Weissman.

**MOTION: Motion by Council Member Sayoc to approve Consent Items 1, 2, 4, and 5.
Seconded by Council Member Rennie.**

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Alex Hult

- Thanked the Town for responding to COVID-19 with the parklet program; commented in support of prioritizing the local business community through the winter months.

Jeff Suzuki

- Commented in support of independent Police oversight, a hiring freeze of sworn officers and a freeze of additional discretionary spending of the Police Department.

Ali Miano

- Commented in support of independent Police oversight, a hiring freeze of sworn officers, a freeze of additional discretionary spending of the Police Department, and additional public transportation to the Town including Bay Area Rapid Transit (BART).

Lynel Gardner

- Read correspondence from Barak Obama, commented in support of a hiring freeze of sworn officers and a freeze of additional discretionary spending of the Police Department.

Russ

- Commented in support of BART and diversity within the Town.

Catherine Somers

- Thanked the Town for responding to COVID-19 with the parklet program and suggested the Town consider the formation of a task force to continue to address COVID-19 concerns.

Matt Hemis

- Inquired what the next steps are for Police reform; commented in support of independent oversight, a hiring freeze of sworn officers, and a freeze of additional discretionary spending of the Police Department; and requested the Town consider utilizing Police Department funding to train Officers in de-escalation techniques.

Alicia Spargo (Cinema Stereo)

- Commented in support of independent oversight, a hiring freeze of sworn officers, and a freeze of additional discretionary spending of the Police Department; and requested the Town consider utilizing Police Department funding to train Officers in de-escalation techniques and that the Town consider additional avenues to assist the business community during the winter months.

Kareem Syed

- Commented in support of additional oversight of Police funds, community engagement Officers, and a task force to continue to address COVID-19 concerns.

-

OTHER BUSINESS

3. Authorize the Town Manager to execute a First Amendment Agreement for Consultant Services with Walter Levison for Arborist services.

Joel Paulson, Community Development Director, presented the staff report.

Opened public comment.

David Weissman

- Commented in opposition of the first amendment agreement, unless staff revises the consulting arborists report guidelines with uniform standards.

Closed public comment.

Council discussed the item.

MOTION: Motion by Mayor Jensen to authorize the Town Manager to execute a first amendment agreement for consultant services with Walter Levison for arborist services for arborist services as contained in Attachment 1 of the staff report.
Seconded by Council Member Rennie.

VOTE: Motion passed 3/1. Vice Mayor Spector voting no.

6. Adopt A Resolution Designating the Use of Vehicle Miles Traveled as the Metric for Conducting Transportation Analyses Pursuant to the California Environmental Quality Act and Establishing the Thresholds of Significance to Comply with California Senate Bill 743.

RESOLUTION 2020-045

Ying Smith, Transportation and Mobility Manager, presented the staff report with Dan Rubins, Consultant.

Opened public comment.

No one spoke.

Closed public comment.

Council discussed the item.

Other Business Item #6 - continued

MOTION: Motion by Council Member Sayoc to adopt a resolution designating the use of vehicle miles traveled as the metric for conducting transportation analyses pursuant to the California Environmental Quality Act and establishing the thresholds of significance to comply with California Senate Bill 743 as contained in attachment 1, understanding future policies should be directed toward further VMT reductions.
Seconded by Vice Mayor Spector.

VOTE: Motion passed unanimously.

7. Provide Direction for the Land Use and Community Design Elements of the General Plan.

Jennifer Armer, Senior Planner, presented the staff report.

Opened public comment.

No one spoke.

Closed public comment.

Council discussed the item and provided individual comments not necessarily representing consensus on the following:

- The General Plan should encourage production of Missing Middle housing, especially when it can provide housing for middle and lower income households.
- The production of Missing Middle housing should be focused in areas that are within walking distance to commercial uses, such as the Opportunity Areas/Community Place Districts.
- The massing and design of Missing Middle housing should be compatible with existing neighborhoods.
- The General Plan should include policies that support low, very low, and extremely low income housing, possibly through increased minimum densities or smaller units.
- If the Town can plan for the number of housing units required by the Regional Housing Needs Allocation (RHNA) without increasing the allowed density in Low Density Residential areas, that would be preferred.
- If the Town can plan for the number of housing units required by RHNA without changing the downtown/central business district, that would be preferred.
- The Elements need to do a better job of telling the story of how the 2040 General Plan reflects the Preferred Alternative and the adopted vision. The existing charts and maps are not enough. What exhibits could tell this story so the reader can understand it at a glance?

PAGE 7 OF 7

SUBJECT: Draft Minutes of the Town Council Meeting of November 17, 2020

DATE: November 24, 2020

Other Business Item #7 - continued

The Town Council did express consensus on two items:

- All references to the Los Gatos Boulevard Plan and other obsolete policies should be eliminated.
- The 2040 General Plan should be forward looking as Los Gatos implements policies and actions to reduce Vehicle Miles Travelled (VMT) and facilitates housing production for all income levels in the right places. In other words, the Council is not expecting the 2040 Plan to be the same as the 2020 Plan.

ADJOURNMENT

The meeting adjourned at 9:43 p.m.

Submitted by:

Jenna De Long, Deputy Clerk



**DRAFT
Minutes of the Town Council Special Meeting - Closed Session
November 24, 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, November 24, 2020, to hold a Closed Session at 3:30 p.m.

MEETING CALLED TO ORDER AT 3:30 P.M.

ROLL CALL

Present: Mayor Marcia Jensen, Vice Mayor Barbara Spector, Council Member Rob Rennie, Council Member Marico Sayoc. (All Participating Remotely.)

Absent: None

VERBAL COMMUNICATIONS

None.

THE TOWN WILL MOVE TO THE FOLLOWING CLOSED SESSION ITEM:

1. Conference with Legal Counsel – Significant Exposure to Litigation, pursuant to California Government Code Section 54956.9(d)(2):

Claim filed by SummerHill Homes LLC in regard to the denial of the application for modification of North 40 Architecture and Site Approval. The claim asserts that the Town violated the Housing Accountability Act, Housing Element Law, State and Federal Constitutional requirements and the Federal Civil Rights Act and seeks damages in excess of \$5,000,000 allegedly caused by denial of the application for modification. The Town Attorney's Office will update the Mayor and Town Council on the status of the matter and seek direction.

ADJOURNMENT

Closed Session adjourned at 4:11 p.m.

Attest:

Submitted by:

Jenna De Long, Deputy Clerk

Laurel Prevetti, Town Manager



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 5

DATE: November 24, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution Declaring Certain Hazardous Vegetation Growing in the Town of Los Gatos to be a Public Nuisance, Describing Properties Where Such Nuisance Exists, and Setting a Public Hearing Date of January 19, 2021 to Consider Objections for Proposed Abatement

RECOMMENDATION:

Adopt a resolution (Attachment 1) declaring certain hazardous vegetation growing in the Town of Los Gatos to be a public nuisance, describing properties where such nuisance exists (Attachment 2), and setting a public hearing date of January 19, 2021 to consider objections for proposed abatement.

BACKGROUND:

Chapter 11, Article II, Section 11.20.015 of the Town of Los Gatos Municipal Code requires property owners to remove or destroy weeds on their property for fire protection.

The Town's Weed Abatement program is in place 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, Parks and Public Works, and other public agencies also submit complaints to the County's Consumer and Environmental Protection Agency - Weed Abatement Program (County).

PREPARED BY: Stefanie Hockemeyer
Executive Assistant

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 Declaring Certain Hazardous Vegetation Growing in the Town of Los Gatos to be a Public Nuisance, Describing Properties Where Such Nuisance Exists and Setting a Public Hearing Date of January 19, 2021 to Consider Objections for Proposed Abatement

DATE: November 24, 2020

BACKGROUND (continued):

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.

DISCUSSION:

The Weed Abatement program process consists of eight steps that begin in November and go through August of each year. Currently the process is at Step 2 on the list as illustrated below.

1. When properties are identified as having hazardous weeds, they are placed in the program, monitored, and must be compliant for three consecutive years in order to be removed from the program. County prepares a report of all properties that have been identified and provides a Commencement Report to the Town (Attachment 2) (November).
2. Town Council adopts resolution declaring weeds on such properties a public nuisance, sets a hearing date to consider objections for the proposed abatement (December).
3. County sends notice to property owners on the report notifying them of the hearing date, along with guidelines on the Weed Abatement Program explaining that they must remove weeds by the abatement deadline or it will be done for them and the cost of the abatement plus administrative costs will assessed by the County Tax Collector against the respective property (December).
4. Town Council holds the public hearing to consider objections for proposed abatement and adopts a resolution ordering abatement (January).
5. County sends a courtesy letter to property owners on the report notifying them again of the abatement deadline (January).
6. After the deadline, the properties are inspected by the County to verify that weeds were removed and proceeds with abatement if the inspection fails. County creates an assessment report of all costs associated with the abatement and provides that report to the Town (June-July).
7. Town notifies the property owners on the assessment report notifying them of the August public hearing date (July).

PAGE 3 OF 3

SUBJECT: Adopt a Resolution Declaring Certain Hazardous Vegetation Growing in the Town of Los Gatos to be a Public Nuisance, Describing Properties Where Such Nuisance Exists and Setting a Public Hearing Date of January 19, 2021 to Consider Objections for Proposed Abatement

DATE: November 24, 2020

DISCUSSION (continued):

8. Town Council holds a hearing, notes any disputes, and adopts a resolution confirming the assessment report, authorizing collection of the assessment charges (August).

CONCLUSION:

Adopt a resolution (Attachment 1) declaring properties (Attachment 2) as having potential fire hazards from weeds or other combustible debris and declare weeds on such properties as a public nuisance and set a hearing date of January 19, 2021 to consider objections for proposed abatement.

COORDINATION:

This program has been coordinated with the Santa Clara County Department of Agriculture and Environmental Management.

FISCAL IMPACT:

The County's Weed Abatement Program administers services for 13 local agencies under a cost recovery model, paid for by fees imposed on the parcel owners. The estimated program cost related to each agency is based on the number of parcels per agency. Funds are provided in the FY 2020/21 Operating Budget to cover the cost of publishing all required legal notices.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Resolution Declaring Properties as Having Potential Fire Hazards from Weeds or Other Combustible Debris and Declare Weeds on Such Properties as a Public Nuisance and Set a Hearing Date of January 19, 2021 to Consider Objections for Proposed Abatement.
2. 2021 Weed Abatement Program Commencement Report.

RESOLUTION 2020-

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
DECLARING CERTAIN HAZARDOUS VEGETATION GROWING IN
THE TOWN OF LOS GATOS TO BE A PUBLIC NUISANCE, DESCRIBING PROPERTIES
WHERE SUCH NUISANCE EXISTS; ORDERING ABATEMENT AND SETTING A PUBLIC
HEARING DATE OF JANUARY 19, 2021 TO CONSIDER OBJECTIONS FOR PROPOSED
ABATEMENT**

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.

ATTACHMENT 1

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 19th day of January, 2021 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 1st day of December 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: _____

**2021 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
TOWN OF LOS GATOS**

	Situs	APN			CITY/STATE		
1	831 POLLARD	406-26-011	LAM, MITCHELL	831 POLLARD RD	LOS GATOS	CA	95032-0000
2	0 CALLE	409-04-049	GUPTA, MOHIT AND APAN, PARUL	4708 GRIMSBY DR	SAN JOSE	CA	95130-2037
3	rail WEDGEWOOD	409-04-052	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747
4	0	409-08-001	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747
5	935 CASTLEWOOD	409-11-021	YAMAGUCHI, JUDY C TRUSTEE	PO BOX 3390	SARATOGA	CA	95070-1390
6	17291 WEDGEWOOD	409-14-013	SAFFARIAN, BABAK TRUSTEE & ET	48817 DEER VIEW TR	FREMONT	CA	94539
7	14316 MULBERRY	409-15-005	SAWHNEY, CHANDANDEEP AND	14316 MULBERRY DR	LOS GATOS	CA	95032-0000
8	14311 MULBERRY	409-15-038	LEE, KWANGHO AND YUNSUN	14311 MULBERRY DR	LOS GATOS	CA	95032-0000
9	16245 BURTON	424-06-115	SWENSON, C B TRUSTEE	777 1ST STN FL 5	SAN JOSE	CA	95112
10	0 BURTON	424-06-116	SWENSON, C B TRUSTEE	777 1ST STN FL 5	SAN JOSE	CA	95112
11	14823 LOS GATOS	424-07-065	14823 LGB LLC	965 PAGE MILL RD	PALO ALTO	CA	94304
12	15545 BENEDICT LN CA	424-20-008	NELSON VICTORIA S	133 WESTCHESTER ST	MORAGA	CA	94566
13	15710 WINCHESTER	424-27-013	DONNELLY, TESSA I ET AL	15710 WINCHESTER BL	LOS GATOS	CA	95030-3305
14	18481 OVERLOOK	510-40-019	ZHAN, LUCY AND ABRAHAMSSON,	461 CHAGALL ST	MOUNTAIN VIEW	CA	94041-0000
15	0 LAUREL	510-41-068	GERTRIDGE, JOHN H ET AL	1080 COLLEGE AV	MENLO PARK	CA	94025
16	110 WOOD	510-47-038	COVIA COMMUNITIES	2185 CALIFORNIA BLN STE	WALNUT CREEK	CA	94596-3508
17	138 WOOD	510-47-044	FRENKEL, LILY M AND DRAA, JUSTIN	138 WOOD RD	LOS GATOS	CA	95030-6740
18	779 BLOSSOM HILL	523-04-037	BLANTON, LOUISE C TRUSTEE	779 BLOSSOM HILL RD	LOS GATOS	CA	95032-3502
19	15931 BLOSSOM HILL	523-25-028	TERRY, NAKA K	15931 BLOSSOM HILL RD	LOS GATOS	CA	95032-4808
20	16009 STEPHENIE	523-26-006	CAPRIOLA, JOAN C TRUSTEE	1466 SUTTER CREEK DR	EL DORADO HILLS	CA	95762
21	263 PINEHURST	523-43-019	GORMAN, ROBERT L AND THERESA A	263 PINEHURST AV	LOS GATOS	CA	95032-3917
22	15941 QUAIL HILL	527-02-006	KHOSRAVI, ARVIN AND MOZAFAR,	15941 QUAIL HILL RD	LOS GATOS	CA	95032-4819
23	72 DRYSDALE	527-02-007	DIEP, JOHN AND ALLISON	5950 COUNTRY CRUZ PY	SAN JOSE	CA	95138
24	145 DRYSDALE	527-03-003	ZUKIN, MARGARET S TRUSTEE	145 DRYSDALE DR	LOS GATOS	CA	95032-4847

**2021 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
TOWN OF LOS GATOS**

Situs		APN	CITY/STATE					
25	0	GUM TREE	527-03-007	QUINT, ROBERT A TRUSTEE & ET AL	15775 GUM TREE LN	LOS GATOS	CA	95032-0000
26	15790	BLOSSOM HILL	527-07-006	TAI, CHAIN CHANG AND HOH, BAO	2941 BANNISTER AV	GILROY	CA	95020-0000
27	16200	GREENRIDGE	527-15-001	ORMANDY, ROMAN AND BIBIANA	16200 GREENRIDGE TR	LOS GATOS	CA	95032-4914
28	16084	GREENRIDGE	527-15-002	LUU, RICHARD T	952 5TH STN	SAN JOSE	CA	95112-4411
29	0	LARGA VISTA	527-16-013	GUEVARA, MARIA E TRUSTEE & ET	14975 LARGA VISTA DR	LOS GATOS	CA	95032-4917
30	14960	LARGA VISTA	527-16-016	PROUTY, PAUL ROBERT AND	14960 LARGA VISTA DR	LOS GATOS	CA	95032-4918
31	14850	BLOSSOM HILL	527-18-014	O'DEEGAN, STEVE	14850 BLOSSOM HILL RD	LOS GATOS	CA	95032-4901
32	401	SURMONT DR	527-20-002	BATE, ROSEMARY S	110 BELVALE DR	LOS GATOS	CA	95032
33	LAND	ALTA TIERRA	527-55-042	OHM VICTOR J AND VANNA J	3802 AINSLEY CT	CAMPBELL	CA	95008
34		NO SITUS	529-06-072	CROSS CREEK LOS GATOS LLC	3553 MEADOWLANDS LN	SAN JOSE	CA	95135-0000
35	615	BLOSSOM HILL RD	529-16-026	DUNN PROPERTIES LP ETAL	301 ALTA LOMA LN	SANTA CRUZ	CA	95062
36	0	BELLA VISTA	529-21-010	MASTERSON, ANTHONY D ET AL	385 BELLA VISTA AV	LOS GATOS	CA	95032-5416
37	0	BELLA VISTA	529-23-003	CHOI, HYUNG MEE AND RUNYAN,	331 BELLA VISTA AV	LOS GATOS	CA	95032-5416
38	0	BELLA VISTA AV	529-23-015	PETERS, JAKE C AND KATHERINE H	P O BOX 3486	KETCHUM	ID	83340
39	0	BELLA VISTA AV	529-23-016	ROSS, DANIEL LEE TRUSTEE	188 VILLA AV	LOS GATOS	CA	95030-0000
40	0	BELLA VISTA AV	529-23-019	HARLAN, MARILYN S TRUSTEE	4168 RIVA RIDGE	FAIR OAKS	CA	95628-6429
41	0	BELLA VISTA AV	529-23-020	SHANKER, BENJAMIN J AND SHARI	15949 CERRO VISTA CT	LOS GATOS	CA	95032-4700
42	0	RESERVOIR	529-29-066	KIDDER, VASILIKI	RESERVOIR RD	LOS GATOS	CA	95030-0000
43	148	CLELAND	529-34-043	HATTAR, MARIE C	148 CLELAND AV	LOS GATOS	CA	95030-0000
44	0	(VACANT)	529-39-047	ST WARD PROPS LP	107 FOSTER RD	LOS GATOS	CA	95030-0000
45	16336	SHADY VIEW	532-03-034	COULSON, ALLAN A AND ADRIANA C	5366 KUNKEL DR	SAN JOSE	CA	95124-6013
46	16386	HILOW	532-04-080	GOVINDASWAMY, GANAPATHY AND	16386 HILOW RD	LOS GATOS	CA	95032-4604
47	16541	ENGLEWOOD	532-07-020	DENISON, MICHAEL R	16541 ENGLEWOOD AV	LOS GATOS	CA	95032-5622
48	16666	TOPPING	532-09-018	LIN, ARTHUR W AND CHANG,	4100 MOORPARK AV STE 205	SAN JOSE	CA	95117

**2021 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
TOWN OF LOS GATOS**

Situs	APN	CITY/STATE
49 0 TWIN OAKS	532-16-006 SURREY FARMS GROUP LLC	401 CARMELINA AVN LOS ANGELES CA 90049
50 16510 KENNEDY	532-17-025 MCKENZIE, JACLYN J TRUSTEE	16510 KENNEDY RD LOS GATOS CA 95032-6431
51 16461 S KENNEDY	532-17-027 WALL, RYAN COMFORT TRUSTEE &	15650 LINDAAV LOS GATOS CA 95032-3714
52 16481 S KENNEDY	532-17-028 HAKHU, JAI K AND NALINI	7 SHORE PINE DR NEWPORT COAST CA 92657
53 248 JARED	532-34-071 PAN, SAM SHIWEI	1901 NOBILI AV SANTA CLARA CA 95051-2229
54 17511 PHILLIPS	532-39-009 UPLIFT FAMILY SERVICES	251 LLEWWLLYN AV CAMPBELL CA 95008
55 17528 TOURNEY	537-04-019 EBRAHIMI, KEVIN A	4459 WINDSOR PARK DR SAN JOSE CA 95136-2048
56 17652 TOURNEY	537-04-043 YU, MARGARET AND ROLANDI,	17652 TOURNEY RD LOS GATOS CA 95030-7166
57 15220 KENNEDY	537-15-004 IYAR, SUBRAH S TRUSTEE	15292 KENNEDYRD LOS GATOS CA 95032-0000
58 14050 SHANNON	537-17-027 LEIRER, VON OTTO AND PERZOW,	14050 SHANNON RD LOS GATOS CA 95032-0000
59 233 FORRESTER	537-21-010 JACKSON STREET EQUITIES LLC	PO BOX 27421 SAN FRANCISCO CA 94127
60 229 FORRESTER	537-22-011 SATIA, JAGAT B AND INDIRA	229 FORRESTER RD LOS GATOS CA 95032-6508
61 155 WOODED VIEW	537-23-028 OWNBEY, DOUGLAS V TRUSTEE	P.O. BOX 9277 SAN JOSE CA 95157
62 210 WOODED VIEW	537-23-046 CUNNINGHAM, JAMES F TRUSTEE	210 WOODED VIEW DR LOS GATOS CA 95032-5738
63 15876 SHANNON	537-26-009 LIVE WELL HOMES INC	409 CASSELINO DR SAN JOSE CA 95136-0000
64 15760 SHANNON	537-26-018 KELLERMANN, MARC ET AL	15760 SHANNON RD LOS GATOS CA 95032-5759
65 16060 CERRO VISTA	537-30-004 BREZOCZKY, BLASIUS TRUSTEE &	16060 CERRO VISTA DR LOS GATOS CA 95032-0000



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 6

DATE: November 25, 2020

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to execute an Agreement for Consultant Services with Facility Engineering Associates P.C. for Building Condition Assessment Services in an Amount Not to Exceed \$79,435 Including Contingencies

RECOMMENDATION:

Authorize the Town Manager to execute an Agreement for Consultant Services (Attachment 1) with Facility Engineering Associates P.C. for building condition assessment services in an amount not to exceed \$79,435 including contingencies.

BACKGROUND:

This project will assess Town Facilities to determine current condition of equipment and building systems. The assessment will identify priorities for repair versus replacements and predict capital expenditures needed each year. As part of this assessment, the consultant will develop a preventive maintenance program to achieve optimal life expectancy of equipment and building systems through maintenance procedures.

DISCUSSION:

The Town issued a request for proposals (Attachment 2) and six firms submitted proposals. Based on a review of the proposals and reference checks, staff determined that Facility Engineering Associates P.C. is the best qualified firm and had the most efficient approach to provide the requested services. Facility Engineering Associates is a well-established engineering firm and have successfully completed several similar projects.

PREPARED BY: Dan Keller
Facilities & Environmental Services Manager

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 an Agreement for Consultant Services for with Facility Engineering Associates P.C. for Building Condition Assessment Services in an Amount Not to Exceed \$79,435.20 Including Contingencies

DATE: November 25, 2020

CONCLUSION:

Approval of the recommended action will allow this project to progress.

FISCAL IMPACT:

The Adopted FY 2020/21 – FY 2024/25 Capital Improvement Program includes funding for the Facilities Assessments project in the amount of \$80,000.

Facilities Assessment Project 821-2001		
	Budget	Costs
GFAR	\$ 80,000	
Total Budget	\$ 80,000	
Facility Engineering Associates P.C.		\$ 79,435
Total Expenditures		\$ 79,435
Project Balance		\$ 565

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Agreement for Consultant Services with Exhibit A.
2. Request for Proposal for Services.

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on December 1, 2020 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") Facility Engineering Associates, P.C., ("Consultant"), whose address is 3554 Round Barn Blvd. Ste 308, Santa Rosa, CA 95403. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide Consultant Agreement services for Building Assessments of Town Facilities.
- 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 sent to the Town on October 26, 2020, 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 date of execution to June 30, 2021.
- 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 the 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.

- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$79,435.20**, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 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.

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: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

Facility Engineering Associates, P.C.
Attn: Laurie Gilmer
3554 Round Barn Blvd. Ste 308
Santa Rosa, CA 95403

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:

Printed Name and Title

Matt Morley
Director of Parks and Public Works

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk



Proposal

Building Condition
Assessment Services

Town of Los Gatos

October 26, 2020

FEA Proposal # P08.2020.000505



October 26, 2020

Dan Keller, Facilities and Environmental Services Manager
Town of Los Gatos
Department of Parks and Public Works
41 Miles Avenue
Los Gatos, CA 95030

SUBJECT: Proposal for Building Condition Assessment Services

Mr. Keller,

Facility Engineering Associates, P.C. (FEA) is honored to provide this proposal in response to the RFP for Building Condition Assessment Services and Question & Answer addenda.

FEA is a specialty consulting firm founded in 1992 to provide support to owners and managers of existing facilities. Our focus is on facility life cycle management; our purpose is to improve the way you manage facilities. Our staff of facility management, engineering, security, data analysis and financial planning personnel is equipped with knowledge, experience and key industry qualifications and certifications to ensure our clients have the support they need. Our philosophy of asset management is built on three principles:

Understanding what you have...

- FEA has been performing facility condition assessments using the Facility Condition Index (FCI) as a key metric for over 20 years.

Understanding how you use it ...

- The key to helping our clients with condition assessments is not just in collecting data, it's how we help them use the data to justify and defend capital funding needs. Our mission is to provide accurate, defensible condition data that leads to better decision making.

Planning for the future ...

- Proper facility planning requires a focus on condition, the operational environment, and the Town's program needs. Our approach considers all of these needs in balance and provides planning tools for capital funding.

If you have any questions about this proposal or would like to meet our leadership team, please contact either Conrad Kelso or Laurie Gilmer.

Respectfully,

FACILITY ENGINEERING ASSOCIATES, P.C.

Conrad Kelso, P.E., CEM
Project Manager
conrad.kelso@feapc.com

Laurie Gilmer, P.E., CFM, SFP
Vice President and COO
laurie.gilmer@feapc.com

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Relevant Experience and Expertise

About FEA

Improving the Way You Manage Facilities

FEA was founded in 1992 on the principle that there is a *better way* to manage the built environment by balancing the challenges of:

- Providing a safe, secure, and healthy environment
- Maintaining an aging infrastructure, and planning for maintenance and improvements
- Improving how the FM organization operates

We do this by helping our clients improve the way they manage, operate, maintain, and fund the built environment to enable facilities that are:

- Safer • Healthier • More Resilient
- Productive • Cost-effective



Our Approach

We help our clients with strategic facility planning, management and operational planning and implementation, facility condition and physical security assessments, security and emergency management planning, repair and restoration, and measurement and monitoring of facility performance.

Our Services

Our core services start with understanding the performance of facility assets, managing those assets with effective facility management, use of space, safety and security planning, efficient operational practices, and training and staff development.

Creating Safer and Healthier Environments

To help you create safer and healthier environments for your facilities, we offer physical security, emergency preparedness, and emergency response and business resilience services.

Maximizing the Life of Physical Assets

To productively and efficiently improve the way you manage facilities, we offer physical asset management, facility condition assessments, and engineering solutions.

Optimizing the FM Organization

To enable facilities that are resilient, safe, healthy, productive and efficient, we use a life-cycle approach to facility management, offering strategic planning, performance management, FM technology, financial analysis and workforce development services.

Office Locations

Fairfax, Virginia
Chicago, Illinois
Denver, Colorado
Cheyenne, Wyoming
Santa Rosa, California

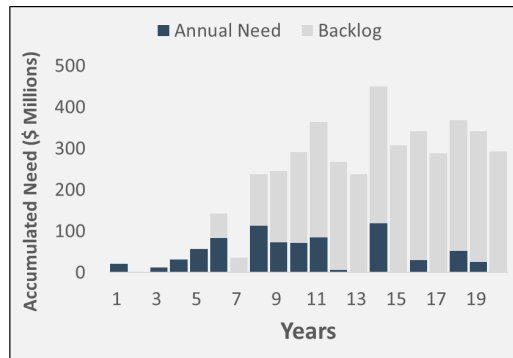


877.322.4589
www.feapc.com

Experience

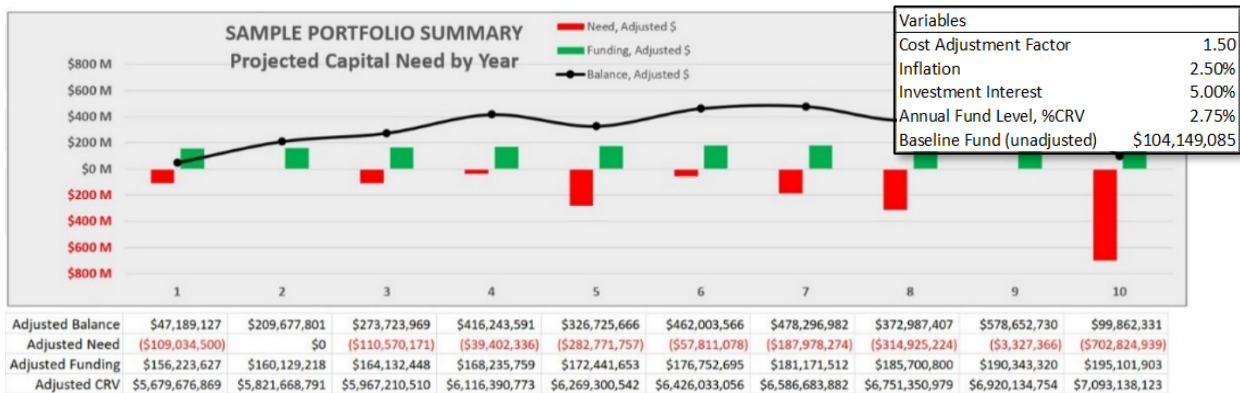
FEA offers several differentiators for performing facility condition assessments and providing a methodology for life-cycle management of facilities. Our innovative dashboard reports can be tailored to meet the Town’s needs and will serve as the basis for the prioritization of repair, replacement, and renewal funding. In addition, FEA can provide physical asset management tools that allow for capital planning, management of facility life cycle costs, and strategic funding analysis.

Management of the backlog of maintenance and repair funding is necessary to manage risk of operational disruption. Operational disruptions can occur when equipment exceeds its expected useful life and poses a potential risk of failure. Equipment failure can lead to disruptions in service level, temporary loss of use of space, negative impacts on health and safety, and increased costs.



Facility condition assessments provide the raw data for projections in funding needs. The most common metric for facility condition is the FCI (Facility Condition Index). The FCI is the ratio of deferred maintenance to the value of the facility. Using FCI data, the Town can project repair and replacement needs and match needs with funding. Capital funding

projections provide a useful tool for managing long-term risk and matching capital funding with capital needs, providing a clear view to the changing backlog of maintenance and repair over time. Projecting annual capital spending as a percent of the replacement value of facilities is a commonly accepted practice, and a practical outcome of a facility condition assessment. Collecting and synthesizing condition assessment data allows for projection of capital spending levels that maintain the overall condition of facilities at an acceptable level.



FEA brings over 28 years of experience in the assessment of facility performance and the projection of capital needs. We have performed facility condition assessments on a national and state-wide level for government clients, educational clients (PK-12 and Higher-ed), municipal, and private clients. The following pages include a summary of some of our key clients and project profiles that demonstrate our experience in meeting the Town’s needs.

FEA has conducted hundreds of building condition assessments across the United States. For states and municipalities, following is a partial list of clients for whom we have conducted condition assessments:

- City of Las Vegas (NV)
- City of New Braunfels (TX)
- City of Olathe (KS)
- City of Winston-Salem (NC)
- Mecklenburg County (NC)
- State of Minnesota (MN)
- State of Wyoming (WY)
- Travis County (TX)



Within the State of California, we have conducted condition assessments for many clients including:

- California Western School of Law
- City of San Jose
- City of Woodland
- Covance Laboratories
- Dominican Sisters of San Rafael
- Genentech, Inc.
- Los Angeles County Metropolitan Transportation Authority
- Medtronic Cardiovascular
- National Nuclear Security Administration
- San Diego Gas & Electric
- San Diego State University
- Sisters of St. Joseph of Carondelet
- United States Army Corps of Engineers (Warm Springs Dam)
- University of San Francisco



UNIVERSITY OF
SAN FRANCISCO



One of the challenges faced by our clients is the ability to obtain meaningful information from their condition assessments that allows them to prioritize needs, obtain needed funding, and articulate the impact and value of investing in their facility assets. Condition assessments need to be more than static reports. To be truly valuable, they must allow for better insight and decision making.

FEA has developed an approach to facility condition assessments that is ideal for clients like the Town of Los Gatos that have large portfolios that must be maintained. Our approach has followed industry-recognized metric for quantifying facility condition with the Facility Condition Index (FCI). Following a well-established condition assessment process for determining Deferred Maintenance (DM) and using the Current Replacement Value (CRV), both key components of the FCI, short and long-term budgetary decision-making is improved. FEA has developed data management tools that can synthesize large amounts of condition assessment data into an easy-to-see format and includes a funding projection tool that aggregates data into a portfolio-level view of funding needs.

Here are two project profiles that highlight our expertise.

City of San Jose



Scope: Condition assessment and life cycle cost analysis for facilities citywide, including pavements

- Provided lifecycle costing analysis for 36 buildings to date and associated pavements
- Performed visual analysis to determine current condition and estimated remaining useful life
- Created cost estimates for needed maintenance, repairs, and replacements



Outcome: Independent analysis enabling prioritization of funding needs across City departments and districts

Travis County (TX)



Scope: Facility condition assessments

- Comprehensive facility condition assessments of County corrections facilities and equipment
- Provided an updated building systems and equipment inventory
- Addressed needs for maintenance, future replacements, and budget planning
- Provided recommendations for preventative maintenance prioritization and schedule



Outcome: Enabled long-term capital planning and budgeting

Project Team

FEA consists of professionals, consultants, and support staff from five primary locations throughout the U.S. With credentials and certifications as professional engineers (P.E.), certified facility managers (CFM), facility management professionals (FMP), and project management professionals (PMP), FEA delivers a team of qualified professionals to meet the Town's needs.



Project Manager
Conrad Kelso, P.E., CEM

Senior Advisor
Laurie Gilmer, P.E., CFM, FMP

Assessment Team
Andrew Morse-Privett
Serena Zahrah, P.E.
Doug Yon, P.E., CEM

Conrad Kelso, P.E. will function as our **Project Manager** and main point of contact. He will coordinate FEA's efforts through the project, and he will have overall responsibility for providing updates to the Town, gathering historical information, arranging site visits and interviews, coordinating field activities and production of deliverables, final presentation of data, and managing the schedule. Conrad has experience providing cost estimating services for condition assessment projects for municipalities across the county.

Laurie Gilmer P.E., CFM, FMP will serve as **Senior Advisor** to the team. Laurie has extensive experience with large, complex condition assessment projects for clients with large portfolios and will provide her expertise throughout the project.

Our **Assessment Team** consists of field assessors, data analysts, and support personnel that have experience performing condition assessments, managing and analyzing data, and producing deliverables that allow our clients to build processes for continuous monitoring of condition and performance.

Full resumes can be found in Appendix A: Resumes.

References

County of Sonoma

Mark Abel
Project Specialist
2300 County Center Drive
Santa Rosa, CA 95403
P 707.565.1366
mark.abel@sonoma-county.org



Scope: Design, plans, and specifications for new roofing systems at the Sonoma County Airport, Sonoma Veterans Memorial Hall, and Sonoma Administration Building.

Project dates: April 2018 – Ongoing

City of San Jose

Edwin Garcia
Project Specialist
1661 Senter Road
San Jose, CA 95112
P 408.975.7247
edwin.garcia@sanjoseca.gov



Provided life-cycle cost assessments to document the current state of facilities across the City so the City could better plan its future capital needs.

Project dates: April 2017 – November 2019

Travis County Texas

Wallace Sefcik
Building Maintenance Division Manager
700 Lavaca Street, Ste 1300
Austin, TX 78701
P 512.854.9700
wallace.sefcik@traviscountytexas.gov

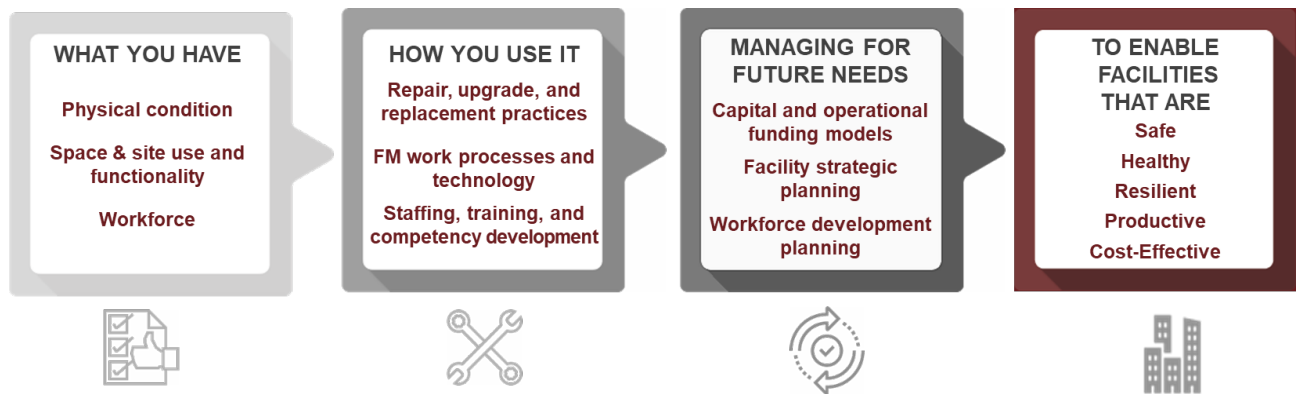


Provided comprehensive facility condition assessment services of County-owned facilities.

Project dates: November 2019 – February 2020

Project Scope and Approach

We understand that the Town requires a facility condition assessment that will help identify ongoing facilities needs and provide a reliable means of planning and budgeting. In over 28 years of serving those who operate and occupy existing facilities we have learned that for organizations such as the Town, to be most successful, a simple approach is best. We have distilled our approach down to three things that any government Town should know about its facilities: **what you have** under your care, **how you use it**, and a consistent approach to **managing for future needs**.



Project Scope

The Town has identified the following scope for this effort. The approach, articulated in the next section of this proposal, outlines how we will address the needs the Town has communicated in the project scope. The following is an excerpt from the Scope of Work identified in the RFP.

1. The consultant shall visit sites, inspect, collect and review available manufacturer information and work with Town staff to gain historic maintenance documentation to determine age and condition of buildings and equipment.
2. The Consultant shall assess the age, condition and functional life expectancy and projected replacement costs of these systems. The consultant shall visually evaluate the conditions of each of these elements and include documentation of findings with photographs and graphs.
3. The Consultant shall include deficiencies in building code compliance of equipment and ADA requirements per building code in reports.
4. The consultant shall provide a preventative maintenance program including a list of maintenance tasks with a schedule of effective intervals to achieve optimal performance and reach the maximum life of equipment.
5. The consultant shall assemble an all-inclusive comprehensive report for each Town facility, to be made available in electronic and hard copy formats.

Approach

Our approach to performing facility condition assessments (FCA) includes developing a thorough understanding of the drivers, standards, and requirements that govern the physical environment of the Town's buildings. This approach includes substantial knowledge of methodologies for developing key facility condition metrics such as the Facility Condition Index (FCI), and standards such as ASTM E 2018 (Property Condition Assessments).

The primary purpose of the assessment is to identify visually apparent deficiencies in the facility. The evaluation will include site visits to observe the building(s) and site systems, interviewing building management and maintenance personnel, and reviewing available reports or studies, maintenance records, design and construction documents and plans. Our scope of work includes:

Document and Data Review:

Prior to starting field work, we will request pertinent information about the facility included in the scope of work. We will review provided and/or available building and engineering files, preventative maintenance logs, previously prepared reports and studies, building plans and specifications, and testing reports, as they pertain to the facility. We will also review current management/facility operating procedures, maintenance contracts, CMMS data, and previous expenditures, when available.

Personnel Interviews

We will interview building management and maintenance personnel on common maintenance and repair practices, as well as on capital renewal projects that have been completed at the facility. Interviews will typically occur concurrently with the field assessment.

Condition Assessment Field Work:

We will perform visual assessments of above-ground, visible, and accessible interior and exterior components of the building(s) and site systems that support the facility. Observations will be made during daytime hours on business days. The facility condition assessment will consist of observation of the building structure and building systems. We will note the construction or system type and will comment on age, overall condition, visible deficiencies, and remaining useful life. We will require a building escort to provide access to mechanical and electrical rooms, roofs, and equipment enclosures. The following building(s) will be assessed:

We will perform a limited visual assessment of the following major components and systems:

Site Systems – We will directly observe the property's hardscapes and site systems. We anticipate that the extent of site systems will include roadways, parking lots, sidewalks, curb and gutter, fountains, plazas, patios, courtyards, etc. We will observe the current condition of these features for evidence of visible deficiencies. Our scope does not include planted areas (landscaping) or irrigation systems.

Building Exterior Elements – We will observe the current condition of the exterior wall, window, and door systems for visible evidence of deficiencies, continuity of seals, and other types of distress and report an overall condition of the systems. Our observations will be based on those conditions that can be observed from the ground, from accessible roof levels, and from operable windows, as appropriate and available.

Roof Systems – We will observe the current condition of the building’s roof systems, accessories and details. We will observe flashing and penetration details for condition and conformance with accepted practice. The evaluation will include discussion of existing warranties, replacement costs and remaining useful life. We have assumed that access to the roof will be arranged by the on-site contact (at no cost to FEA) for low-slope roofs.

Mechanical/HVAC Systems – We will observe the age and condition of the heating, ventilating, air conditioning systems, building controls and related mechanical systems and comment on their condition and visible deficiencies. Please note that the review will not include any invasive investigations or testing of equipment.

Electrical Systems – We will observe the age and condition of the electrical service entrances, grounding, electrical distribution systems, lighting, and emergency back-up systems and comment on their condition and visible deficiencies. The review will include discussions of power utilities presently serving the buildings.

Plumbing Systems – We will observe the age and condition of the water service entrances, potable water distribution systems, sewer systems, gas distribution, and other plumbing components and comment on their condition and visible deficiencies. The review will include discussions of water/sewer utilities presently serving the buildings.

Fire and Life Safety Systems – We will observe the type, size, age, and condition of the fire and life safety elements and comment on their condition and visible deficiencies. The elements to be observed will consist of structural fire protection, fire suppression systems, and fire detection/alarm systems, and means of egress. We will generally observe each location for significant violations in regards to standard building practices of fire and life safety issues.

Interior Finishes – We will observe the current condition of the interior wall, ceiling, and floor finishes and provide recommendations for cyclical maintenance projects. Refurbishing and replacement of finishes is discretionary, and the recommendations provided will be based on both the condition of the finishes observed and discussions with management and our experience with other properties.

Accessibility Issues – We will observe each building for visible evidence of compliance issues with ADA requirements. We will also observe access from parking areas to the building.

Evaluated elements will be limited to building systems and system components as noted above. Furniture, fixtures and equipment (FF&E) such as office furnishings; office fixtures, audio/visual, security, and program support equipment; and food preparation equipment is not included in the evaluation.

The evaluations are visual in nature and not intended to be destructive to property in order to gain access to hidden conditions. We do not propose to expose any system members. We will document the type and extent of visually apparent defects in the systems in order to perform the condition assessments. As this scope of services is limited to visual observations, these assessments will not identify conditions hidden by interior finishes, exterior finishes, or within any enclosed construction.

Consistent with standard condition assessment practices, FEA will not access all areas of the facilities, but will endeavor to access a sample of the areas. As such, our report will not warrant or guarantee that the conditions noted in the areas observed will not vary from other areas not observed. In addition, our findings and recommendations will not be based on a comprehensive engineering study. Our report is not intended to be a complete review of all systems or a check of design professional's computations. Our observations and resulting report will not warrant or guarantee the performance of any building system or site improvement.

Our scope of services will include only those specifically indicated. This proposal does not include any environmental services such as sampling or testing of asbestos, lead-based paint, lead-in-water, indoor air quality, PCB's, radon, mold, or any other potentially hazardous materials, air-borne toxins or issues not outlined in this scope of services. In addition, this assessment does not include identification of underground soils or identification or quantification of underground contaminants.

Reporting

FEA will prepare a written report for each town facility of our physical condition assessment in a format that will include "Description" and "Condition" statements, noting existing conditions and estimated useful remaining service life of the systems and infrastructure, and "Recommendations" statements for each of the systems reviewed. The "Recommendations" sections will include information on the deficiencies noted and recommended repairs and/or replacements, along with an opinion of cost. The report will include an executive summary that will provide a brief description of recommended repairs and replacements that may require immediate attention.

Our opinions of cost associated with replacing or repairing these components will be provided in summary form in a capital expenditure forecast spreadsheet, which will be prepared to reflect a 15-year repair/replacement period for required repairs/replacements. Cost estimates required for the facility repairs/recommendations shall be Rough Order of Magnitude (ROM) estimates to be used to allocate funding for the specific corrective action including construction and design costs. The opinion of costs will be based upon the anticipated costs as calculated in the year in which the capital expenditure is anticipated. It will not include fees or charges related to the building occupancy, tenant costs, or other lease- or ownership-related costs unknown to FEA. FEA will provide an opinion of cost for repairs for any noted deficiencies discovered as part of this project with an estimated cost of \$2,000 or higher, and will include a recommended method of repair where options are available. We will include supporting photographs of key deficiencies and/or repair items noted.

Preventative Maintenance Recommendations

For applicable equipment observed during the building assessments, FEA will provide a list of preventative maintenance tasks with recommended service intervals.

Client Responsibilities

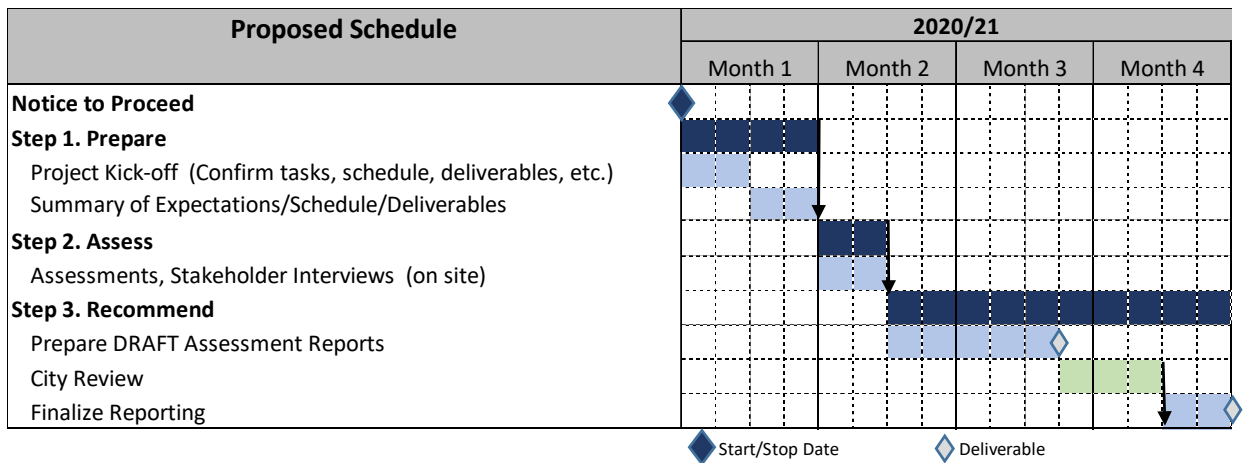
In order to provide our services, we ask the client to furnish the following information and/or services to FEA before or during the field evaluation:

- Notify the property occupant(s) of the evaluation to be performed and obtain permission for FEA to have access to all areas of the property, which would include mechanical and electrical rooms, the roofs, and representative interior office, retail, and common areas.
- Name(s) and telephone number(s) for on-site facility contact person(s).

- Arrangement for the building management/maintenance staff to be available to provide field escorts to the FEA team during the site visit.
- Assist FEA in obtaining access to all pertinent project documentation including construction documents and any modifications subsequent to the original construction, previous condition reports, investigations/studies/test documentation, maintenance records, AutoCAD drawings, etc.
- Provide or assist in obtaining any additional data or information relevant to the performance of services.

Project Schedule

We anticipate two teams of two people will conduct data gathering and field assessments during a 2-week period. The following scheduling shows key activities and durations for project completion based on a 120-day contract period following the Notice to Proceed.





Pricing

Based on the proposed Scope of Work, we will perform the work for the following not-to-exceed fee of **\$69,680**. This fee is inclusive of all labor, material and expenses to perform the project as described in our Approach. The following table includes a pricing breakdown per building:

FACILITY		COST
Section A. Primary Buildings		
Civic Center (est. 1964)	110 E. Main St.	
Town Hall	"	\$ 5,820.00
Police Department Head Quarters	"	\$ 3,650.00
New Museum & Friends of Library Bookstore	106 E. Main St.	\$ 2,200.00
Sub total		\$ 11,670
Corporation Yard – PPW Service Center (est. 1977)		
White House (moved onto site and renovated 1991)	41 Miles Ave.	
Engineering Bldg.	"	\$ 2,920.00
Maintenance Bldg. (Outback)	"	\$ 3,650.00
Equipment Bldg.	"	\$ 2,920.00
Sub total		\$ 12,410
Forbes Mill Museum (1854)	75 Church St.	\$ 5,820.00
Library	100 Villa Ave.	\$ 4,370.00
Police Operations Building (POB)	15900 Los Gatos Blvd.	\$ 4,370.00
Recreation Center (Adult) ARC	208 E. Main St.	\$ 3,650.00
Recreation Center (Youth) YRC	123 E. Main St.	\$ 3,650.00
Tait Museum	213 Tait Ave.	\$ 3,650.00
Venue	4 New York Ave.	\$ 3,650.00
Lot #4 Underground Parking Garage	Grays Lane	\$ 4,370.00
Sub total		\$ 32,800
(Section A) Total		\$ 56,880
Section B. Secondary Buildings		
Balzer Field - Restroom Building	41 Miles Ave.	\$ 2,560.00
Belgatos Park - Restroom Building (est. 1977)	330 Belgatos Rd.	\$ 2,560.00
Blossom Hill Park - Restroom Building	16300 Blossom Hill Rd.	\$ 2,560.00
Creekside Sports Park - Restroom/Snack Shack Bldg	930 University Ave.	\$ 2,560.00
Oak Meadow Park - Restroom Building	233 Blossom Hill Rd.	\$ 2,560.00
(Section B) Sub total		\$ 12,800
(Sections A & B) Total		\$ 69,680

Assumptions

Building Condition Assessment Services require Town resources in order to perform the work. The following is a list of assumptions and outline of Town-needed resources and other contractual provisions required by FEA to perform the assessment:

Scope of Services

- Access to the buildings will be provided by the Town.
- Escorts will be provided by the Town to help guide the field team. Escorts will remain with the assessors when appropriate, especially in facilities where escorts are required due to security or privacy reasons.
- Drawings, including layout and dimensioned drawings will be made available by the Town.

Pricing

- The proposed fees include all labor, materials, and expenses to perform the project as described in our Approach.
- The fees assume all onsite assessments will be performed during the same calendar weeks.
- The fees assume that the kickoff meeting and the meetings to review the draft deliverable will be a combination of onsite presence and through web or teleconference technologies.

Contract Requirements

- Indemnity – FEA will seek mutual indemnification from the Town in the final contract form.

Appendix A: Resumes



Conrad Kelso, PE, CEM

Project Manager/Office Manager

Years with FEA: 11

Total years of experience: 14

Education • Registrations • Certifications

- University of California, Davis, Bachelor of Science in Mechanical Engineering
- Registered Professional Engineer (CA)
- Certified Energy Manager

Qualifications and Experience

Conrad has led projects for facility condition assessments and energy audits for buildings across the United States. He has also provided assistance for LEED point analysis and submitting buildings for LEED certification. Conrad has performed ENERGY STAR Statement of Energy Performance Validations for several buildings, which have subsequently earned their ENERGY STAR. He is a member of International Facility Management Association (IFMA) and the Association of Energy Engineers (AEE). Conrad has previous work experience for the City of Sacramento's Development Services Department performing commercial building plan reviews. He has reviewed hundreds of building projects including tenant improvements, multi-family residential buildings and new commercial high-rises for compliance with building, mechanical, plumbing, fire and energy codes. Conrad has extensive knowledge of the Uniform and International Building, Fire, Mechanical, and Plumbing Codes and NFPA Standards 13, 14, 20 and 72.

Selected Client Experience

- City of San Jose Master Agreement for Life Cycle Cost Analysis, San Jose, CA
- City of Las Vegas Facility Condition Assessment Services, Las Vegas, NV
- City of Santa Rosa Facilities Vulnerability Assessment, Santa Rosa, CA
- City of Woodland Condition Assessment & Facilities Maintenance Plan, Woodland, CA
- County of Sonoma Data Center Commissioning, Santa Rosa, CA
- General Services Administration Heartland Region Engineering Technical Consulting Services, Iowa, Nebraska, Missouri, Kansas
- General Services Administration Inventory Quality Assurance Services, Nationwide
- MIT Lincoln Laboratory Facility Condition Assessment, Westford, MA
- National Park Service, Comprehensive Condition Assessment, Nationwide
- Stanford University, Facility Consulting Services, Stanford, CA
- Travis County Corrections Complex Facility Condition Assessments, Austin, TX
- United States Patent & Trademark Office (USPTO) Campus Energy Assessment, Alexandria, VA
- University of Maryland College Park Facilities Condition Assessment, College Park, MD
- University of San Francisco Facility Condition Assessment, San Francisco, CA
- Wyoming K-12 Security Assessment, Statewide, WY
- Wyoming School Facilities Condition Assessment, Statewide, WY



Laurie Gilmer, PE, CFM, SFP, LEED AP O&M, CxA, FMP, CDT
Vice President and COO

Years with FEA: 15
Total years of experience: 22

Education • Registrations • Certifications

- Cal Poly, San Luis Obispo, Bachelor of Science in Mechanical Engineering
- Registered Professional Engineer (CA, CO, DC, FL, IN, KS, MA, MD, MN, TX, VA, WA, WI, WY)
- Certified Commissioning Authority
- Certified Facility Manager
- Sustainability Facility Professional
- LEED Accredited Professional

Qualifications and Experience

Laurie is Vice President and COO at FEA. Laurie's primary areas of expertise include facility systems assessments, energy management, sustainability, and facility management organizational analyses. Laurie is a published author, regularly contributing to multiple Facility Management publications and co-authored the International Facility Management Association's (IFMA) second manual in the Sustainability "How-To-Guide" Series, EPA's ENERGY STAR Portfolio Manager. Laurie is currently serving a term on IFMA's Board of Directors. Laurie also serves on the Northwest Energy Efficiency Council's Building Operator Certification program advisory committee, and was the committee's first chair. Laurie is a member of the National Visiting Committee of Building Efficiency for a Sustainable Tomorrow (BEST) Center. Additionally, Laurie is an instructor for IFMA's Sustainability Facility Management (SFP), Facility Management Professional (FMP) and Certified Facility Manager (CFM) programs. She is also the past chair of IFMA's Sustainability Facility Credential scheme committee and member of IFMA's Environmental Stewardship, Utilities, and Sustainability (ESUS) Strategic Advisory group.

Selected Client Experience

- Alexandria City Public Schools Facilities Audit, Alexandria, VA
- Alexion Pharmaceuticals Facility Management, Consulting Services, New Haven, CT
- City of Olathe Facility Consulting Services, Olathe, KS
- City of San Jose Master Agreement for Life Cycle Cost Analysis, San Jose, CA
- City of Richmond Facilities Operations Plan & Benchmarking Study, Richmond, VA
- Fort Bend ISD Facilities Audit, Fort Bend, TX
- Harvard Medical School Facility Management Operations, Boston, MA
- Hillsborough County Public Schools Educational & Operational Efficiency Audit, Tampa, FL
- Johns Hopkins School of Nursing Facility Condition Assessment, Washington, DC
- Lake County Facilities Management Consulting, Lake County, CA
- University of San Francisco Facilities Condition Assessment, San Francisco, CA
- Killeen Independent School District Facilities Audit, Killeen, TX
- Pitkin County Facilities Condition Assessments, Pitkin County, CO
- Stanford University Facility Consulting Services, Stanford, CA



Andrew Morse-Privett

Project Professional

Years with FEA: 6

Total years of experience: 18

Education • Registrations • Certifications

- University of the West England, Bachelor of Science in Building Surveying (Honors)
- Member of Royal Institute of Chartered Surveyors (London)

Qualifications and Experience

Andrew's experience in repair and restoration engineering – including structural stabilization and aesthetic rehabilitation – both in the UK and USA, ranges from historic buildings such as castles and churches to modern, multimillion dollar high-rise developments. He is conversant in full condition assessments of building systems, due diligence surveys and underground utilities testing and evaluation. He has gained extensive experience in waterproofing, glass, masonry and stucco building enclosures, roofing systems, balconies, parking garages and asphalt and concrete pavements. Andrew has also been involved in a variety of construction administration and monitoring projects, working with facility managers and owners to develop short and long-term capital strategies and has extensive experience with structural and materials restoration projects and fall protection certification.

Selected Client Experience

- City of San Jose Master Agreement for Life Cycle Cost Analysis, San Jose, CA
- City of Olathe Facility Consulting Services, Olathe, KS
- City of Santa Rosa Facilities Vulnerability Assessment, Santa Rosa, CA
- Defense Health Agency (DHA) BUILDER Assessor Support, Nationwide
- General Services Administration Inventory Quality Assurance Services, Nationwide
- Inter-American Development Bank Facility Condition Assessment, Washington, DC
- Minnesota Department of Administration Site Condition Assessment, Statewide, MN
- National Park Service Comprehensive Condition Assessment, Nationwide
- Northern Virginia Community College Facilities Management Consulting, Annandale, VA
- Stanford University Facility Consulting Services, Stanford, CA
- University of Connecticut Asset Management & CMMS Optimization, Storrs, CT
- University of Maryland Facility Management Consulting, College Park, MD
- University of San Francisco Facility Condition Assessment, San Francisco, CA
- Wyoming K-12 Security Assessment, Statewide, WY
- Wyoming School Facilities Facility Condition Assessment, Statewide, WY



Serena Zahrah, P.E.

Project Manager

Years with FEA: 5

Total years of experience: 5

Education • Registrations • Certifications

- University of Virginia, Bachelor of Science, Civil Engineering
- George Mason University, Master of Science, Civil Engineering
- Registered Professional Engineer (VA)

Qualifications and Experience

Serena is a project manager for FEA. She is experienced in AutoCAD, Revit, Microstation and SAP2000. Serena previously worked as an assistant construction manager overseeing the quality of materials and methods used by contractors on a construction site. She also worked in transportation design to aid with the design of roadways and drainage systems. Serena earned a master's degree in engineering focusing on geotechnical, construction and structural engineering from George Mason University in Fairfax, Virginia.

Selected Client Experience

- Defense Health Agency (DHA) BUILDER Assessor Support, Worldwide
- General Motors WTC Emissions Building Facility Condition Assessments, Warren, MI
- Montgomery County Public Schools Facility Condition Assessment, Montgomery County, MD
- MWAA DCA Terminal A Facility Condition Assessment, Washington, DC
- National Park Service Comprehensive Condition Assessment, Nationwide
- Washington Convention Center Facility Condition Assessment, Washington, DC



Doug Yon, PE, CEP, CEM, CDSM

Project Manager

Years with FEA: 14

Total years of experience: 39

Education • Registrations • Certifications

- U.S. Coast Guard Academy, Bachelor of Science in Civil Engineering
- Registered Professional Engineer (MA) (Mechanical)
- Certified Energy Procurement Professional
- Certified Energy Manager
- Certified Demand Side Manager

Qualifications and Experience

Doug is a project manager with more than 35 years of experience in condition assessments, energy management, facilities management and construction management. He is a registered professional engineer and is certified by the Association of Energy Engineers® (AEE®) as an Energy Procurement Professional, Energy Manager and Demand Side Manager. He has performed energy and sustainability audits and evaluated energy and utility consumption profiles. As a facilities condition assessment project manager and assessor for both component based and system level evaluations, he is well versed in identifying, analyzing and determining solutions for issues associated with mechanical, electrical, plumbing and general building infrastructure.

Doug has been a part of facility condition assessment projects ranging from single-building facilities to multi-building facilities involving hundreds of buildings and millions of square feet. Clients have included local, state, and federal governments, K-12, higher education, houses of worship and research organizations. Capital plan development has covered five, 10 and up to 20 years or more. Assessments have included an equipment inventory element and analysis of operations and maintenance requirements.

Selected Client Experience

- Allegany County Public Schools Facility Utilization Study, Cumberland, MD
- Arlington Schools & Community Center Facility Condition Assessment, Arlington, VA
- General Services Administration Asset Management and FM Technology, Nationwide
- Howard County Public Schools Facility Condition Assessments, Ellicott City, MD
- John Paul II Center Condition Assessment and O&M Costs, Washington, DC
- Minnesota Department of Transportation 20-Year Strategic Facilities Assessment, Statewide
- MIT Lincoln Laboratory Facility Condition Assessment, Lexington, MA
- Montgomery County Public Schools Facility Condition Assessment, Rockville, MD
- National Park Service Comprehensive Condition Assessment, Nationwide
- University of Maryland (UMD) Facility Management Consulting
- University of San Francisco Facility Condition Assessment, San Francisco, CA
- Wyoming State School Facilities Condition Assessment, Wyoming

Appendix B: Forms

ATTACHMENT B
Proposer's Information Form

PROPOSER (please print): Laurie Gilmer

Company: Facility Engineering Associates, PC

Address: 3554 Round Barn Blvd, Suite 308

Santa Rosa, CA 95403

1st Contact person (Name): Laurie Gilmer

Title: CFO/Vice President Office Tel: 707-546-7600

Direct/Cell: 707-304-5413 Fax: 707-546-7601

Email: laurie.gilmer@feapc.com

2nd Contact person (Name): Conrad Kelso

Title: Project Manager/Office Manager Office Tel: 707-546-7600

Direct/Cell: 707-304-5414 Fax: 707-546-7601

Email: conrad.kelso@feapc.com

Proposer, if selected, intends to carry on the business as (check one):

Individual Joint Venture Partnership Corporation

Year incorporated? 1992 In what state? Virginia

When authorized to do business in California?): 8/22/2005

Other (explain): _____

ADDENDA

To assure that all Proposers have received each addendum, check the appropriate box(es) below. Failure to acknowledge receipt of an addendum/addenda may be considered an irregularity in the Proposal:

Addendum number(s) received:

1 2 3 4 5 6

_____ No Addendum/Addenda Were Received (check and initial)

PROPOSER'S SIGNATURE

No proposal shall be accepted which has not been signed in ink in the appropriate space below:

By signing below, the submission of a proposal shall be deemed a representation and certification by the Proposer that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and they have read and understand the RFP. No request for modification of the proposal shall be considered after its submission on the grounds that the Proposer was not fully informed as to any fact or condition.

**(1) If Proposer is *INDIVIDUAL*,
sign here:**

Proposer's Signature

Proposer's typed name and title

Date: _____

**(2) If Proposer is *PARTNERSHIP* or
JOINT VENTURE, at least (2) Partners
or each of the Joint Ventures
shall sign here:**

Partnership or Joint Venture Name
(type or print)

Signature

Name of Member of the Partnership or Joint Venture
(type or print)

Date: _____

Signature

Name of Member of the Partnership or Joint Venture
Name (type or print)

Date: _____

(3) If Proposer is a CORPORATION,

the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

CFO/Vice President (Title)

and Project Manager/Office Manager (Title)

of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Facility Engineering Associates

Corporation Name (type or print)



Signature

Laurie Gilmer

Name of Member of the Corporation (type or print)

Date: 10/26/2020



Signature

Conrad Kelso

Name of Member of the Corporation (type or print)

Date: 10/26/2020

TOWN OF LOS GATOS
DEPARTMENT OF PARKS AND PUBLIC WORKS
41 MILES AVENUE, LOS GATOS, CA 95030

REQUEST FOR PROPOSAL
FOR SERVICES

Building Condition Assessment Services

PROPOSAL SUBMITTAL DEADLINE:

DATE: October 26, 2020

TIME: 5:00 P.M.

Submit by email to: dkeller@losgatosca.gov



REQUEST FOR PROPOSAL

For Professional Consultant Services Building Assessments

1. INTRODUCTION

The Town of Los Gatos (Town), is soliciting a Request for Proposals (RFP) from qualified Architectural Engineering firms to provide Building Condition Assessments for each Town Facility. The selected proposer will be expected to deliver high quality services in the production of detailed reports, a preventive maintenance program and consultation with Town staff that maintain these facilities. Minimum requirements and detailed description of work is included in Attachment A “Scope of Services”.

2. ATTACHMENTS

The attachments below are included with this Request for Proposal (“RFP”). The items identified with an asterisk (*) must be completed, signed by the appropriate representative of the company, and returned with the submittal.

- Attachment A – Scope of Services
- Attachment B – Proposer’s Information Form*
- Attachment C – Sample - Agreement for Services
- Attachment D – Cost Proposal*
- Attachment E – Building Inventory

3. INSTRUCTIONS TO PROPOSERS

- 3.1 Examination of Proposal Documents.
The submission of a proposal shall be deemed a representation and certification by the Proposer that they:
 - 3.2.1 Have carefully read and fully understand the information that was provided by the Town to serve as the basis for submission of this proposal.
 - 3.2.2 Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
 - 3.2.3 Represent that all information contained in the proposal is true and correct.

- 3.2.4 Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms or conditions of this proposal.
- 3.2.5 Acknowledge that the Town has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants the Town permission to make these inquiries, and to provide any and all related documentation in a timely manner.
- 3.2 No request for modification of the proposal shall be considered after its submission on grounds that Proposer was not fully informed of any fact or condition.
- 3.3 Questions.
Any questions by the Proposer regarding this RFP or the project must be put in writing and received by the Town no later than **5:00 p.m. on Wednesday, October 21, 2020**. Correspondence shall be addressed to:

Dan Keller
Department of Parks and Public Works
41 Miles Avenue
Los Gatos, CA, 95030
Telephone: (408) 395-5310
E-mail: dkeller@losgatosca.gov (Preferred)

The Town shall not be responsible for nor be bound by any oral instructions, interpretations, or explanations issued by the Town or its representatives.

Responses from the Town to questions by any Proposer will be communicated in writing to all recipients of this RFP. Questions received after the date and time stated above will not be accepted and will be returned to sender/s without response.

- 3.4 Addenda.
Any addenda issued by Town shall be in writing, shall become a part of this RFP, and shall be acknowledged and responded to by Proposer.
- 3.5 Submission of Proposals:
All proposals shall be submitted to:

Dan Keller
Department of Parks and Public Works
41 Miles Avenue
Los Gatos, CA, 95030
Telephone: (408) 395-5310
E-mail: dkeller@losgatosca.gov (Preferred)

Proposals must be delivered no later than **5:00 pm on Monday, October 26, 2020**
All proposals received after that time will not be accepted.

3.6 Withdrawal of Proposals.

A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

4. RIGHTS OF THE TOWN OF LOS GATOS

This RFP does not commit the Town to enter into a contract, nor does it obligate the Town to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The Town reserves the right to:

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening proposals for its own convenience;
- Remedy errors in the Request for Proposals process;
- Approve or disapprove the use of particular subconsultants;
- Negotiate with any, all or none of the Proposers regarding project scope;
- Accept other than the lowest cost offer;
- Waive informalities and irregularities in the Proposals; and/or
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the Town.

An agreement shall not be binding or valid with the Town unless and until it is executed by authorized representatives of the Town and of the Proposer.

5. RFP TIMELINE

The Town intends to select a consultant prior to **Thursday, November 5, 2020**. The Town may, at its own discretion, conduct interviews and other evaluations of some, all, or none of the applicants prior to selection. The Town will select the firm that best meets the needs of the Town.

6. INFORMATION TO BE SUBMITTED

These guidelines govern the format and content of the proposal. The intent of the RFP is to encourage responses that clearly communicate the Proposer's understanding of the Town's requirements and the contractor's ability to meet those requirements.

In addition to the items included within this RFP and attachments A-E, the proposal should include the following information:

- Cover letter describing how the consultant can meet the needs of the Town.

- Relevant experience and expertise of the firm.
- Identification of the project team, including the main project contact.
- Resumes for the project team identifying relevant experience.
- Description of and three references for projects of similar size and scope.
- Other relevant information to assist the Town in its selection.

7. CONTRACT TYPE AND METHOD OF PAYMENT

It is anticipated that the agreement resulting from this RFP, if awarded, will be an Agreement for Services. The method of payment to the successful Proposer shall be for services provided based on established rates for services with a maximum “not to exceed” fee as set by the Proposer in the proposal or as negotiated between the Proposer and the Town as being the maximum cost to perform all work. This figure shall include direct costs and overhead, such as, but not limited to, materials, delivery, transportation, communications, and any subcontracted items of work.

Proposers shall be prepared to accept the terms and conditions of the Agreement, including Insurance Requirements.

The above factors will be taken into account in evaluating proposals. Proposals that take exceptions to the proposed Agreement may be determined by the Town, at its sole discretion, to be unacceptable and no longer considered for award.

8. INSURANCE REQUIREMENTS

The selected Proposer(s), at Proposer’s sole cost and expense and for the full term of the agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined.

All policies, endorsements, certificates and/or binders shall be subject to the approval of the Town of Los Gatos as to form and content. These requirements are subject to amendment or waiver, if so, approved in writing by the Town of Los Gatos. The selected Proposer agrees to provide the Town with a copy of said policies, certificates and/or endorsement upon award of Agreement.

9. PUBLIC NATURE OF PROPOSAL MATERIAL

Responses to this RFP become the exclusive property of the Town of Los Gatos. At such time as the Town awards a contract, all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as “Confidential,” “Trade Secret,” or “Proprietary.” The Town shall not in any way be liable or

responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as “Confidential,” “Trade Secret,” or “Proprietary,” or if disclosure, in the Town’s sole discretion, is required under the California Public Records Act as addressed below. Any proposal which contains language purporting to render all or significant portions of the proposal “Confidential,” “Trade Secret,” or “Proprietary” shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the Town of Los Gatos may determine, in its sole discretion that the information that a Proposer submits is not a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the Town shall provide the Proposer who submitted the information reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction, at the Proposer's sole expense.

10. COLLUSION

By submitting a proposal, each Proposer represents and warrants that its proposal is genuine and made in the interest of or on behalf of any person not named therein; that the Proposer has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

11. DISQUALIFICATION

Factors, such as, but not limited to, any of the following, may disqualify a proposal without further consideration:

- Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms or conditions of this proposal;
- Any attempt to improperly influence any member of the evaluation team;
- Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the Town;
- Evidence of incorrect information submitted as part of the proposal;
- Evidence of Proposer’s inability to successfully complete the responsibilities and obligations of the proposal; and
- Proposer’s default under any previous agreement with the Town.

12. NON-CONFORMING PROPOSAL

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the Town.

13. GRATUITIES

No person shall offer, give or agree to give any Town employee any gratuity, discount or offer of employment in connection with the award of contract by the Town. No Town employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a Town contract.

14. FIRMS OR PERSONS NOT ELIGIBLE TO SUBMIT A PROPOSAL

In order to avoid any conflict of interest or perception of a conflict of interest, Proposer(s) selected to provide contractual services under this RFP will be subject to the following requirements:

The consultant or other entity who works on the procurement will be precluded from submitting proposals or bids as a prime consultant or subconsultant.

The consultant or any other entity who participated in the procurement shall not have a financial, ownership or other interest in any potential Proposer.

15. TERM OF AGREEMENT

The initial term of this agreement is anticipated to be for one year, subject to appropriation of funds, notwithstanding any other provision in this agreement

16. 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.

ATTACHMENT A Scope of Services

Basic Services:

The Town is soliciting a Request for Proposals (RFP) from qualified architectural engineering consultants to provide building condition assessments of Town facilities. The consultant shall follow ASTM standards and manufacturer recommendations to provide complete assessments. Through inspection and evaluation, the consultant shall provide individual building assessment reports for each facility identified in attachment D, "Town of Los Gatos Facilities". The reports are intended to give a complete condition summary of each facility and should include an analysis of life expectancy and a system component replacement schedule that projects costs over the next 15 years. Assessments should include evidential photos and informational graphs. Building systems include: Architectural and building envelope, mechanical, electrical, plumbing and drainage systems and exterior hardscape. A preventive maintenance program shall be developed and presented for all facility building systems. All areas of facilities will be made accessible, including common areas, workspaces, roof, basement, mechanical and electrical rooms and facility grounds. The award of contract shall be the sole discretion of the Town. It is the intent to make one award to one Bidder for all requirements.

Building Systems:

- a. Architectural and building envelope: Roof, gutters, siding, trim, doors, windows, flooring, interior and exterior finishes.
- b. Electrical: Service, distribution, lighting, emergency generators, controls and uninterrupted power supplies (UPS).
- c. Fire Life Safety equipment: Suppression and alarm systems.
- d. Hardscape: Exterior concrete paths, patios, decks, stairs, retaining walls and pavement.
- e. Mechanical: Heating, ventilation, air conditioning (HVAC) and controls.
- f. Plumbing: Fixtures, piping, domestic water distribution, water heaters, pumps, sanitary waste, storm drainage, and special plumbing for fuel, lubrication and compressed air.

Purpose of the Request for Proposal:

The purpose of this RFP is to obtain comprehensive building condition assessments for both short and long term recommendations for corrective actions to ensure building sustainability and budget estimates for the corrective work and projected budget estimates for the next 15 years to be included in the Town's Capital Improvement Plan.

Qualifications:

The project requires detailed inspections of all Town facilities as specified herein by architectural and engineering professionals. The Consultant must have a company office within the state of California and include a professional estimator with similar work experience who is familiar with ASTM techniques.

Tasks to provide complete Assessments of each facility:

1. The consultant shall visit sites, inspect, collect and review available manufacturer information and work with Town staff to gain historic maintenance documentation to determine age and condition of buildings and equipment.
2. The Consultant shall assess the age, condition and functional life expectancy and projected replacement costs of these systems. The consultant shall visually evaluate the conditions of each of these elements and include documentation of findings with photographs and graphs.
3. The Consultant shall include deficiencies in building code compliance of equipment and ADA requirements per building code in reports.
4. The consultant shall provide a preventative maintenance program including a list of maintenance tasks with a schedule of effective intervals to achieve optimal performance and reach the maximum life of equipment.
5. The consultant shall assemble an all-inclusive comprehensive report for each Town facility, to be made available in electronic and hard copy formats.

ATTACHMENT B
Proposer's Information Form

PROPOSER (please print): _____

Company: _____

Address: _____

1st Contact person (Name): _____

Title: _____ Office Tel: _____

Direct/Cell: _____ Fax: _____

Email: _____

2nd Contact person (Name): _____

Title: _____ Office Tel: _____

Direct/Cell: _____ Fax: _____

Email: _____

Proposer, if selected, intends to carry on the business as (check one):

Individual Joint Venture Partnership Corporation

Year incorporated? _____ In what state? _____

When authorized to do business in California?): _____

Other (explain): _____

ADDENDA

To assure that all Proposers have received each addendum, check the appropriate box(es) below. Failure to acknowledge receipt of an addendum/addenda may be considered an irregularity in the Proposal:

Addendum number(s) received:

1 2 3 4 5 6

_____ No Addendum/Addenda Were Received (check and initial)

PROPOSER'S SIGNATURE

No proposal shall be accepted which has not been signed in ink in the appropriate space below:

By signing below, the submission of a proposal shall be deemed a representation and certification by the Proposer that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and they have read and understand the RFP. No request for modification of the proposal shall be considered after its submission on the grounds that the Proposer was not fully informed as to any fact or condition.

**(1) If Proposer is *INDIVIDUAL*,
sign here:**

Proposer's Signature

Proposer's typed name and title

Date: _____

**(2) If Proposer is *PARTNERSHIP* or
JOINT VENTURE, at least (2) Partners
or each of the Joint Ventures
shall sign here:**

Partnership or Joint Venture Name
(type or print)

Signature

Name of Member of the Partnership or Joint Venture
(type or print)

Date: _____

Signature

Name of Member of the Partnership or Joint Venture
Name (type or print)

Date: _____

(3) If Proposer is a CORPORATION,

the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

_____ (Title)

and _____ (Title)

of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Corporation Name (type or print)

Signature

Name of Member of the Corporation (type or print)

Date: _____

Signature

Name of Member of the Corporation (type or print)

Date: _____

ATTACHMENT C
SAMPLE - AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on (DATE) by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") Name of Consultant, ("Consultant"), whose address is (Address). This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide XXX services for XXX.
- 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 sent to the Town on (DATE), 2020, 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 date of execution to XXX.
- 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.

- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$XXX**, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 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.

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 Prevailing Wages. 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.
- 4.4.1 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.
- 4.4.2 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.

- 4.4.3 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.
- 4.4.4 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.
- 4.4.5 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.
- 4.4.6 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)].
- 4.4.7 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.
- 4.4.8 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.

4.4.9 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.

4.5 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.

4.6 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.

4.7 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

(Consultant)
(Address)

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

4.8 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.

4.9 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:

Matt Morley
Director of Parks and Public Works

Printed Name and Title

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, CMC, Town Clerk

**ATTACHMENT D
Cost Proposal**

Provide a not-to-exceed cost proposal for all work described under the “Scope of Services” broken down by project component at each location. The cost should be based on a 120 day completion of work and should include a breakdown of consultant hours per task, hourly rates for all team members. Consultants are encouraged to submit suggestions for cost savings and other ways of promoting cost efficiency and to highlight any tradeoffs inherent in the suggested alternatives. Pricing should include a breakdown for primary and secondary buildings listed in this document. Proposers should retain a detailed breakdown, by building, of all costs included in the grand total proposed.

FACILITY	ADDRESS	COST
Section A. Primary Buildings		
Civic Center (est. 1964)	110 E. Main St.	
Town Hall	“	
Police Department Head Quarters	“	
New Museum & Friends of Library Bookstore	106 E. Main St.	
	Sub total	
Corporation Yard – PPW Service Center (est. 1977)	41 Miles Ave.	
White House (moved onto site and renovated 1991)	“	
Engineering Bldg.	“	
Maintenance Bldg. (Outback)	“	
Equipment Bldg.	“	
	Sub total	
Forbes Mill Museum (1854)	75 Church St.	
Library	100 Villa Ave.	
Police Operations Building (POB)	15900 Los Gatos Blvd.	
Recreation Center (Adult) ARC	208 E. Main St.	
Recreation Center (Youth) YRC	123 E. Main St.	
Tait Museum	213 Tait Ave.	
Venue		
	(Section A) Total	
Section B. Secondary Buildings		
Lot #4 Underground Parking Garage	Grays Lane	
Balzer Field - Restroom Building	41 Miles Ave.	
Belgatos Park - Restroom Building (est. 1977)	330 Belgatos Rd.	
Blossom Hill Park - Restroom Building	16300 Blossom Hill Rd.	
Creekside Sports Park - Restroom/Snack Shack Bldg	930 University Ave.	
Oak Meadow Park - Restroom Building	233 Blossom Hill Rd.	
	(Section B) Sub total	
	(Sections A & B) Total	

ATTACHMENT E
Town of Los Gatos Facilities

The following table includes all Town of Los Gatos Facilities in need of Building Assessments.

FACILITY	ADDRESS	SQ FT
Section A. Primary Buildings		
Civic Center (1964)	110 E. Main St.	
Town Hall	"	17,815
Police Department Head Quarters	"	5,585
New Museum & Friends Bookstore	106 E. Main St.	1,2511
	total	35,911
Corporation Yard – PPW Service Center (est. 1977)		
White House (moved onto site and renovated 1991)	"	2,734
Engineering Bldg.	"	4,800
Maintenance Bldg. (Outback)	"	1,716
Equipment Bldg.	"	4,741
	total	13,991
Forbes Mill Museum (1854)	75 Church St.	2,450
Library	100 Villa Ave.	29,500
Police Operations Building (POB)	15900 Los Gatos Blvd.	12,760
Recreation Center (Adult) ARC	208 E. Main St.	12,000
Recreation Center (Youth) YRC	123 E. Main St.	6,479
Tait Museum	213 Tait Ave.	3,400
Venue	4 New York Ave	3,757
Lot #4 Underground Parking Garage	Grays Lane	57,546
Section B. Secondary Buildings		
Balzer Field - Restroom Building	41 Miles Ave.	600
Belgatos Park - Restroom Building (1977)	330 Belgatos Rd.	608
Blossom Hill Park - Restroom Building	16300 Blossom Hill Rd.	924
Creekside Sports Park - Restroom/Snack Shack Bldg	930 University Ave.	850
Oak Meadow Park - Restroom Building	233 Blossom Hill Rd.	930
	TOTAL:	187,026



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 7

DATE: November 24, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution Approving the Parcel Map for 15630 Los Gatos-Almaden Road and Accepting Dedications

RECOMMENDATION:

Adopt a resolution (Attachment 1) approving the Parcel Map for 15630 Los Gatos-Almaden Road and accepting dedications.

BACKGROUND:

On April 2, 2019, the Development Review Committee considered a proposed subdivision at 15630 Los Gatos-Almaden Road, received public comment, and approved Architecture and Site Applications S-18-035 and S-18-036 and Subdivision Application M-18-006 with conditions.

The developer, DBI Construction, has filed the Parcel Map (Attachment 2) to subdivide and create two new parcels, which identifies dedications for a street right-of-way to the Town and public service easements. The acceptance of the dedications will allow for the subdivision.

DISCUSSION:

The parcel map subdivides the existing parcel into two parcels for the construction of two new single-family residences. The developer has provided all necessary maps and drawings. The developer is required to provide the required contracts, bonds, and liability insurance to guarantee the construction of all improvements. The developer has paid the appropriate fees to fully comply with the previously imposed development conditions and Town ordinances.

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 2

SUBJECT: Adopt a Resolution Approving the Parcel Map for 15630 Los Gatos-Almaden Road and Accepting Dedications

DATE: November 24, 2020

DISCUSSION (continued):

The developer is dedicating portions of the properties as a street dedication (in-fee) and 10-foot wide public service easements along the frontages of the resulting single-family parcels. The easement dedications are all identified on the Parcel Map (Attachment 2).

CONCLUSION:

Staff recommends that Council adopt a resolution approving the Parcel Map and accepting dedications for the development of 15630 Los Gatos-Almaden Road.

COORDINATION:

This project has been coordinated with the Town Attorney and the Community Development Department.

FISCAL IMPACT:

The Town will incur undetermined ongoing maintenance costs for the public right-of-way improvements following acceptance of the project.

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act - Section 15315: Minor Land Divisions and Section 15303: New Construction or Conversion of Small Structures.

Attachments:

1. Resolution Approving the Parcel Map for 15630 Los Gatos-Almaden Road and Accepting Dedications.
2. Parcel Map for 15630 Los Gatos-Almaden Road.

RESOLUTION 2020-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
APPROVING THE PARCEL MAP FOR 15630 LOS GATOS-ALMADEN ROAD
AND ACCEPTING DEDICATIONS**

WHEREAS, on April 2, 2019, the Development Review Committee of the Town of Los Gatos approved the Architecture and Site Applications S-18-035 and S-18-036 and Subdivision Application M-18-006 with conditions for the property at 15630 Los Gatos-Almaden Road; and

WHEREAS, the developer, DBI Construction, is required to dedicate portions of the land for street right-of-way in-fee and public service easements within the properties as indicated on the Parcel Map prepared; and

WHEREAS, the developer has complied with the conditions of Architecture and Site Applications S-18-035 and S-18-036 and Subdivision Application M-18-006; and

WHEREAS, the Parcel Map has been reviewed by staff and found to be in compliance with the Subdivision Map Act and Chapter 24 of the Town of Los Gatos Municipal Code.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Los Gatos that the certain Parcel Map of 15630 Los Gatos-Almaden Road, dated November 2020 and prepared by NNR Engineering, is hereby approved; and

BE IT FURTHER RESOLVED that all dedications of land for public use identified on the Parcel Map are hereby accepted, in substantial conformance to the Conditions of Approval as set forth above and subject to the final approval by the Town Attorney.

PASSED AND ADOPTED at a regular meeting of the Town Council held on the 1st day of December 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

PARCEL MAP

CONSISTING OF TWO (2) SHEETS

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE ALL OF THE PARTIES HAVING ANY RECORD TITLE OR INTEREST IN THE SUBDIVIDED REAL PROPERTY SHOWN WITHIN THE DISTINCTIVE BORDERLINE ON THIS MAP, AND WE HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP AND ALL DEDICATIONS AND OFFERS OF DEDICATION THEREIN.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED IN FEE FOR PUBLIC PURPOSES: PUBLIC STREETS AND PORTIONS OF PUBLIC STREETS NOT PREVIOUSLY EXISTING AS SHOWN AS "PARCEL A STREET DEDICATION" ON THIS MAP AND ALL PUBLIC USES UNDER, UPON AND OVER SAID STREETS.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

EASEMENT FOR CONSTRUCTION, MAINTENANCE AND ACCESS TO ANY AND ALL PUBLIC SERVICE FACILITIES UTILITIES INCLUDING, BUT NOT LIMITED TO POLES, WIRES, CONDUITS, GAS, WATER, ELECTRIC, STORM SEWERS, SANITARY SEWERS, TV, TELEPHONE AND ALL APPURTENANCES TO THE ABOVE, UNDER, UPON, OR OVER THAT CERTAIN 10 FOOT STRIP OF LAND ACROSS A PORTION OF PARCELS 1 AND 2, AS ANNOTATED ON SHEET 2, DESIGNATED AND DELINEATED AS A "PUBLIC SERVICE EASEMENT" (P.S.E.) TO BE KEPT OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND, EXCEPT PUBLIC SERVICE STRUCTURES, IRRIGATION SYSTEMS AND APPURTENANCES, THERETO, LAWFUL FENCES AND ALL LAWFUL UNSUPPORTED ROOF OVERHANGS.

DBI CONSTRUCTION, A CALIFORNIA CORPORATION.
AS OWNER:

BY: _____ DATE: _____

NAME: _____

TITLE: _____

OWNER'S ACKNOWLEDGMENT

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 SANTA CLARA

ON _____, 2020, BEFORE ME _____ A NOTARY

PUBLIC, PERSONALLY APPEARED _____

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT THE PERSON, OR THE ENTITY UPON BEHALF OF WHICH THE PERSON 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.

SIGNATURE OF NOTARY PUBLIC: _____

PRINT NAME OF NOTARY: _____

MY COMMISSION NUMBER: _____

MY COMMISSION EXPIRES: _____

COUNTY OF PRINCIPAL PLACE OF BUSINESS: SANTA CLARA

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWN OF LOS GATOS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEING ALL OF THE PROPERTY DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED FEBRUARY 26, 2018 AS DOCUMENT No. 23874852, IN THE OFFICE OF THE RECORDER, SANTA CLARA COUNTY, STATE OF CALIFORNIA.

TOWN OF LOS GATOS
November 2020

STATE OF CALIFORNIA
CONSISTING OF TWO (2) SHEETS

NNR ENGINEERING
CIVIL ENGINEERS
535 WEYBRIDGE DRIVE
SAN JOSE, CA. 95123
(408) 348-7813

TOWN SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT IN ACCORDANCE WITH SECTION 66442 OF THE GOVERNMENT CODE (SUBDIVISION MAP ACT)

DEAN JURADO
ACTING TOWN SURVEYOR
L.S. NO.: 9032

DATE

COUNTY RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 2020, AT _____ A.M./P.M.,

IN BOOK _____ OF MAPS, AT PAGES _____ SANTA CLARA COUNTY RECORDS,

AT THE REQUEST OF CHICAGO TITLE INSURANCE COMPANY.

REGINA ALCOMENDRAS, COUNTY RECORDER
SANTA CLARA COUNTY, CALIFORNIA

BY DEPUTY: _____ FILE NO. _____

FEE: \$ _____

STATEMENT OF THE COUNCIL OF THE TOWN OF LOS GATOS

IT IS ORDERED THAT THE PARCEL MAP IS HEREBY APPROVED. THAT ALL STREETS, ROADS, EASEMENTS AND OTHER PARCELS OF LAND SHOWN UPON THIS MAP AND THEREIN OFFERED FOR DEDICATION ARE HEREBY ACCEPTED FOR THE PURPOSES FOR WHICH THEY ARE OFFERED

I HEREBY STATE THAT THE FOREGOING ORDER WAS ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOS GATOS, CALIFORNIA, AT A MEETING HELD ON THE _____ DAY OF _____, 2020

BY RESOLUTION NO. _____

TOWN CLERK
TOWN OF LOS GATOS

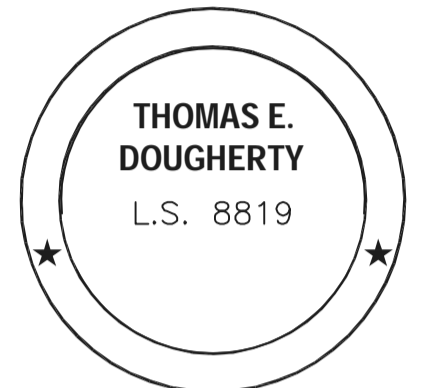
DATE

SURVEYOR'S STATEMENT

THE MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF CAMINO DEL CERRO HOLDINGS, L.L.C. IN APRIL OF 2016. ALL MONUMENTS SHOWN OF THIS MAP ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR WILL BE SET MY NOVEMBER 1, 2020. SAID MONUMENTS ARE OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP.

DATED:

THOMAS DOUGHERTY, P.L.S. 8819



TOWN ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP, THAT THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF, AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH. PURSUANT TO SECTION 66411.1 OF THE GOVERNMENT CODE, CERTAIN OFF-SITE AND ON-SITE IMPROVEMENTS ARE REQUIRED TO BE INSTALLED AS A CONDITION REVIEW WITH TOWN COUNCIL AS AN APPROPRIATE PLACE FOR THIS NOTATION OF APPROVAL OF PROCEEDING NO. M-14-002 AND S-14-010. APPROVED BY THE TOWN OF LOS GATOS REVIEW WITH TOWN COUNCIL AS AN APPROPRIATE PLACE FOR THIS NOTATION. DEVELOPMENT COMMITTEE (PLANNING COMMISSION) (TOWN COUNCIL) ON DECEMBER 13, 2016.

WOOJAE KIM, TOWN ENGINEER
R.C.E. NO.: 59532
EXPIRES 12/31/2021

DATE

SURVEYOR'S STATEMENT

A SOILS/AND OR GEOTECHNICAL REPORT ON THIS PROPERTY HAS BEEN PREPARED BY REDWOOD GEOTECHNICAL ENGINEERING INC., DATED NOVEMBER 20, 2018. A COPY OF WHICH HAS BEEN FILED WITH THE TOWN OF LOS GATOS.

EASEMENT NOTE

THE FOLLOWING EASEMENT IS UNPLOTTABLE FROM RECORD INFORMATION:
1) BOOK 175, PAGE 180, OF DEEDS

PARCEL MAP

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWN OF LOS GATOS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEING ALL OF THE PROPERTY DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED FEBRUARY 26, 2018 AS DOCUMENT No. 23874852, IN THE OFFICE OF THE RECORDER, SANTA CLARA COUNTY, STATE OF CALIFORNIA.

November 2020 SCALE: 1"=20'
CONSISTING OF TWO (2) SHEETS

NNR ENGINEERING
CIVIL ENGINEERS
535 WEYBRIDGE DRIVE
SAN JOSE, CA. 95123
(408) 348-7813

BASIS OF BEARINGS

THE BEARING N00° 20' 15"W OF THE CENTERLINE OF ESCOBAR AVENUE, AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT NO. 5067-LOS GATOS VILLAGE-UNIT 1" RECORDED IN BOOK 293 OF MAPS, AT PAGES 32 AND 33, SANTA CLARA COUNTY RECORDS, WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS MAP.

LEGEND

PARCEL LINE (DISTINCTIVE BOUNDARY)	---
ROAD CENTERLINE	---
ROAD RIGHT OF WAY	---
NEW LOT LINE	---
MONUMENTS TO BE SET - 3/4" IP PLASTIC CAP - LS8819	○
FOUND MONUMENT AS NOTED	⊙
FOUND CUT CROSS AS NOTED	✕
FOUND 3/4" IP OR 3/4" REBAR AS NOTED	●
AREA	(A)
CALCULATED	(C)
RECORD REFERENCE	(1)
CENTER LINE	CL
PUBLIC SERVICE EASEMENT	P.S.E.
SEARCHED FOR NOT FOUND	SNF
IRON PIPE	I.P.
FOUND	FD.
MAPS	M
MONUMENT	MON
SQUARE FEET	S.F.
RECORD	()

LOS GATOS - ALMADEN ROAD



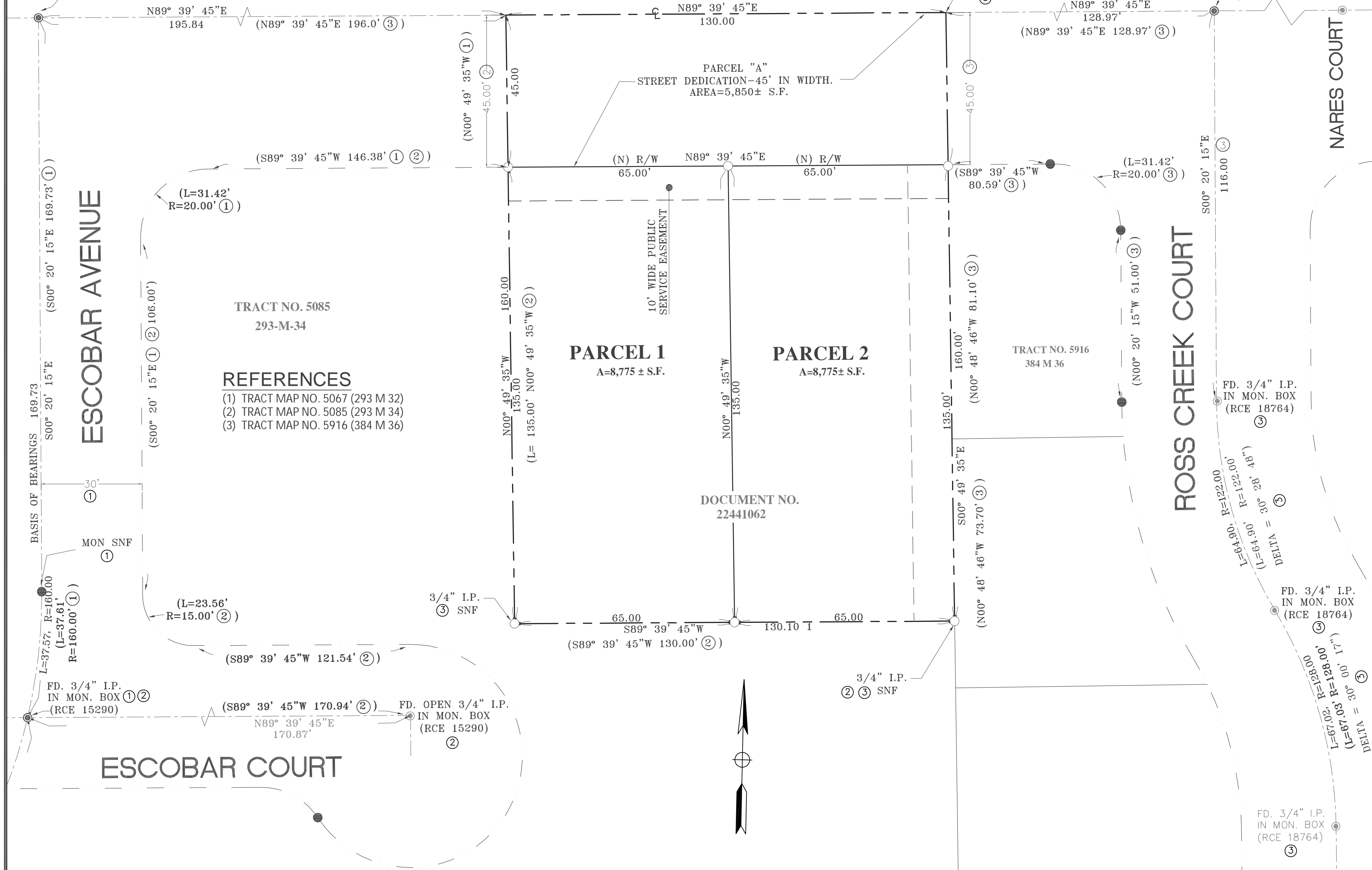
(IN FEET)

1 inch = 20 ft.

FD. 3/4" I.P. W/PLUG AND TACK
IN MON. BOX
(RCE 15290)

FD. 3/4" I.P.
IN MON. BOX
PLUG R.C.E.18764

TOTAL MON-MON 454.69 (454.97 CALCULATED PER RECORD)





**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/1/2020

ITEM NO: 8

DATE: November 17, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Accept Fiscal Year (FY) 2019/20 Status Report on Receipt and Use of Development Impact Fees

RECOMMENDATION:

Accept Fiscal Year (FY) 2019/20 Status Report on Receipt and Use of Development Impact Fees.

BACKGROUND:

To ensure that mitigation fees associated with private land use development are spent in a timely manner and on projects for which they were being collected, the State Legislature passed a bill known as AB 1600 (the Mitigation Fee Act). This bill applies to developer fees which were increased or imposed on or after January 1, 1989.

The Mitigation Fee Act (California Government Code, §66000 et seq.) requires local agencies that impose Development Impact Fees to present an annual, consolidated report showing the receipt and use of those fees. The Annual Status Report (Attachment 1) must be reviewed by Council within 180 days after the close of the fiscal year represented.

The Town collects three Development Impact Fees that meet the AB 1600 reporting requirement: the Traffic Impact Mitigation Fee, Below-Market Priced Housing Program In-Lieu Fee, and the Construction Activity Impact Fee. Separate balances exist for each of these fees either as individual accounts or in the case of Traffic Impact Mitigation Fees, separate funds. As required by AB 1600, as of June 30, 2020, all accounts or funds with unspent balances have been credited interest revenue at the Town's current interest rate earned on its total.

PREPARED BY: Stephen Conway
Finance Director

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

DISCUSSION:

AB 1600 requires that a status report be prepared annually which must include the following:

- A brief description of the fee and the fund into which the fee was deposited;
- The amount of the fee;
- The associated fund's beginning and ending balances for the fiscal year;
- The total amount of fees collected and interest earned;
- Identification of each public improvement on which impact fees were expended and amount of expenditure on each improvement, including the total percentage of the cost of the public improvement that was funded with impact fees;
- Identification of approximate date by which construction of a public improvement will begin;
- Determination that sufficient funds have been collected to complete financing on an incomplete public improvement;
- Description of each inter-fund transfer or loan made from the account or fund, including the public improvement on which the loaned funds will be expended, and in the case of an inter-fund loan, the date on which the loan will be repaid and the rate of interest that the account or fund will receive on the loan; and
- Amount of any refunds made due to inability to expend impact fees once a determination is made that sufficient impact fees have been collected to finance a public improvement, the improvement remains incomplete, and the Town has not determined an approximate date by which construction will begin.
- Whenever the funds are held beyond five-years or more, the Town must present plans or commitments to demonstrate intended future use of these funds.

This information is presented in the attached FY 2019/20 Annual Status Report on Receipt and Use of Development Impact Fees. The Report depicts balances and the intended use of balances, including decisions made after June 30, 2020 to demonstrate that the fees will be used for their respective purposes.

CONCLUSION:

Staff recommends Council accept the FY 2019/20 Annual Status Report on Receipt and Use of Development Impact Fees as required under the Mitigation Fee Act (AB 1600).

COORDINATION:

This report was coordinated with the Community Development and Park and Public Works Departments.

PAGE 3 OF 3

SUBJECT: Accept Fiscal Year (FY) 2019/20 Status Report on Receipt and Use of
Development Impact Fees

DATE: November 17, 2020

FISCAL IMPACT:

There is no fiscal impact from this action.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. FY 2019/20 Annual Status Report on Receipt and Use of Development Impact Fees.

**TOWN OF LOS GATOS
ANNUAL STATUS REPORT ON RECEIPT AND USE OF DEVELOPMENT IMPACT FEES
JUNE 30, 2020**

Traffic Impact Mitigation Fee:

The Traffic Impact Mitigation Fee assures that each new development or expansion of use pays its fair share of the transportation improvements needed to accommodate the cumulative traffic impacts. The fee, \$958 per new average daily trip generated, is paid in full to the Town Building Department prior to issuance of the building permit for new development or expansion of use. The collected fee is held in the Traffic Mitigation Fee Fund. The Traffic Mitigation Fund should be used solely to fund transportation improvement projects related to mitigating the impacts of new development. The funds cannot be used for routine repair or maintenance.

TRAFFIC IMPACT MITIGATION FEES FUND

Beginning Cash Balance (07/01/2019)	\$2,555,306
Source of Funds	
Fees Collected FY 19/20	133,741
Interest Earned FY 19/20	44,013
Total Source of Funds	\$2,733,060
Use of Funds	
Capital Outlay:	
Traffic Signal Modernization	\$75,858
Bicycle & Pedestrian Improvements	378
Highway 17 Bicycle & Pedestrian Bridge-Design	54
Traffic Mitigation (Admin Support)	16,336
Total Use of Funds	\$92,626
Expenses Occurred in FY 2018/19 , Paid in July of FY 2019/20	4,219
Expenses Occurred in FY 2019/20, Paid in July of FY 2020/21	2,864
Ending Cash Balance (6/30/2020) Pre-Final Audit	\$2,639,079
Designated Future Projects:	
Per FY 20/21 through 24/25 Capital Improvement Plan:	
Traffic Signal Modernization	\$1,004,837
Bicycle & Pedestrian Improvements	33,650
Highway 17/9 Interchange and Capacity Improvements	600,000
Highway 17 Bicycle & Pedestrian Bridge-Design	146,951
Total CIP and Operating Budget Commitments	\$1,638,487
Potential Project List (Estimates Only) per Unfunded List (Additional Unfunded Projects are Located in the Operating Budget)	
Blossom Hill Road Bicycle and Pedestrian Overcrossing (Future Project - Pending Funding)	\$1,000,000
Winchester Boulevard Complete Streets Project	750,000
Los Gatos Blvd Widening , New Sidewalks, and Bike Lanes (Future Project - Pending Funding)	2,000,000
Total Potential Project List	\$3,750,000
Total Designated and Unfunded Projects	5,388,487
Current Funding Shortfall	(\$2,749,407)

TOWN OF LOS GATOS
ANNUAL STATUS REPORT ON RECEIPT AND USE OF DEVELOPMENT IMPACT FEES
JUNE 30, 2020
(Continued)

Construction Impact Activity Fee:

Construction Impact Activity Fee is assessed on construction projects based on the square foot size of the project at a rate of \$1.17 per square foot. These fees are intended to recover the damage caused to Town streets by construction traffic. The collected fee is held in the General Fund Appropriated Reserves.

CONSTRUCTION IMPACT ACTIVITY FEE

Beginning Cash Balance (07/01/2019)	\$0
Source of Funds	
Fees Collected FY 19/20	407,340
Interest Earned FY 19/20 (Funds expended upon receipt)	-
Total Source of Funds	\$407,340
Use of Funds	
Business Services Charge	
Capital Outlay:	
Street Repair and Resurfacing Project FY 19/20	2,105,756
Total Use of Funds	2,105,756
Ending Cash Balance (6/30/2020) Pre-Final Audit	(\$1,698,416)
Designated Future Projects	
Per FY 20/21 through FY 24/25 Capital Improvement Plan:	
Street Repair and Resurfacing Project	\$15,615,769
Total Designated Future Projects	\$15,615,769
Current Funding Shortfall	(\$17,314,185)

TOWN OF LOS GATOS
ANNUAL STATUS REPORT ON RECEIPT AND USE OF DEVELOPMENT IMPACT FEES
JUNE 30, 2020
(Continued)

Below-Market Priced (BMP) Housing Program In-Lieu Fee:

BMP In-Lieu Fees are collected from residential development projects with five (5) or more units when the construction of the BMP unit is impractical or there are unusual circumstances that make the construction of the unit inconsistent with Town policy. The required in-lieu fee is to be paid to the Town prior to issuance of the certificate of occupancy. The BMP In-Lieu Fee is equal to the amount of six (6) percent of the building permit valuation for the entire project. The collected fees are held in the General Fund BMP Housing liability account and are restricted to be used solely for BMP Housing Program activities.

BELOW-MARKET PRICED HOUSING PROGRAM IN-LIEU FEES

Beginning Cash Balance (07/01/2019)	\$3,767,910
Source of Funds	
Fees Collected FY 19/20	110,175.96
Interest Earned FY 19/20	70,333
Total Source of Funds	\$3,948,418
Use of Funds	
Program Operating Expense	\$129,611
Staff Administration	23,000
Total Use of Funds	\$152,611
Ending Cash Balance (6/30/2020) Pre-Final Audit	
	\$3,795,807
Designated Future Projects:	
Affordable Housing Loans - Dittos Lane (11/3/2020 Council Meeting)	\$1,200,000
Total Designated Future Projects	\$1,200,000
Potential Future Projects	
Low and Moderate Income Housing (Future Project - Pending Funding)	\$3,000,000
Reacquisition of Distressed/Foreclosed Properties (Future Project - Pending Funding)	700,000
Hello House Program Services (Future Project - Pending Funding -5 Year Total)	600,000
Total Potential Future Projects	\$4,300,000
Current Funding Shortfall	(\$1,704,193)

Other Required Disclosures:

As required by law, no inter-fund (loans/transfers) were made during the reporting period and no refund were necessary as all fees collected have a current funding short fall status as presented in the Annual Status Report.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 9

DATE: November 24, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Approve Modifications to the Town Facility Use Policy to Allow for Private Use of Locations Within Oak Meadow Park

RECOMMENDATION:

Approve modifications to the Town Facility Use Policy (Attachment 3) to allow for private use of locations within Oak Meadow Park.

BACKGROUND:

Section F of the Town's Facility Use Policy (Attachment 1) identifies appropriate uses for Oak Meadow Park. Included within the Policy is the following language:

"...Oak Meadow Park ... shall be used as a location for free gatherings that are open to the public."

"4. Private events (outside of Town designated reservable spaces) and fee for entrance events are not allowed. "

When the Facility Use Policy was last revised, the Council identified the bandstand as a location that would remain free and open to the public.

DISCUSSION:

The Oak Meadow bandstand typically remains unprogrammed for much of the year. Although the bandstand is an iconic feature of the park, the space around the bandstand does not lend itself to programming and the language in the Facility Use Policy further limits the use.

PREPARED BY: Matt Morley
Parks and Public Works Director

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

SUBJECT: Approve Modifications to the Town Facility Use Policy to allow for Private Use of Locations Within Oak Meadow Park

DATE: November 24, 2020

DISCUSSION (continued):

In 2018, a team from the Los Gatos Community Foundation and local architect Cuschieri Horton (working pro bono), with oversight of Parks and Public Works staff, developed a plan (Attachment 2) for future improvements to the bandstand to improve the Town's ability to program the space. The plan has not been advanced due to the cost of the project, estimated at \$215,000 in 2018, and competing funding priorities.

In 2018, California voters passed Proposition 68, which allocated funds for park improvements statewide. Included in the measure were formulaic appropriations to each jurisdiction for improvements to parks focused on construction of new amenities. The Town's formulaic appropriation is \$177,952. In addition, there may be an opportunity to partner with Monte Sereno with an allocation equal to the Town's amount.

Applications for the Proposition 68 grant program are due between now and December 2021, with construction completion required by December 2023. This aligns with planning for the FY 2021/22 Capital Improvement Program (CIP) Budgeting process and coordination with the State for project eligibility.

The bandstand improvement project could create a venue for ongoing programming, including small cultural gatherings, weddings, music performances, and other events. Depending on the success of the program, this could bring additional revenue to the Town. Comparable outdoor venue rent runs between \$300 and \$1,000 for a two-hour reservation, often with discounts for residents. Staff envisions issuing simple Park Use Permits for the space in most situations. These permits would allow for rentals similar to the current process for reserving picnic spaces.

The recommended modifications of the Policy would allow for reserved use of the bandstand, memorialize other allowed reservable spaces, and allow the Parks and Public Works Director discretion in adjusting designated areas in the future (see Attachment 3).

The Parks Commission reviewed the potential bandstand project at its October 1, 2020 meeting and supported the idea.

The Policy Committee reviewed the proposed Policy concept changes at its meeting on October 27, 2020 and recommended moving the item forward to the Town Council for consideration with the issues identified by the Policy Committee addressed in the report to Council. Below is a description of the issues and the staff responses.

The Policy Committee explored several concerns regarding how a privately rented space might function in an active park. An example used was what happens if a soccer ball is kicked into a wedding ceremony. Staff believes that these concerns can be addressed through the rental agreement and park rules and regulations so that those reserving the space have a full understanding of the potential surrounding activities.

PAGE 3 OF 3

SUBJECT: Approve Modifications to the Town Facility Use Policy to allow for Private Use of Locations Within Oak Meadow Park

DATE: November 24, 2020

DISCUSSION (continued):

Another concern focused on ensuring that park space outside of the reserved area remain free and open to the public. The Town's Park Service Officer would ensure that the rules are being followed as is now done for reservations of picnic areas.

CONCLUSION:

With approval of the staff recommendation, the Facilities Use Policy would be updated, and staff would advance the proposed bandstand project in the Town's annual CIP process and pursue grant funding for the construction of this project.

FISCAL IMPACT:

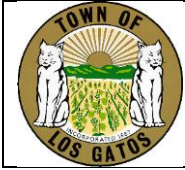
There is not a fiscal impact associated with modifying the Policy. A future Capital Improvement Project would seek grant funding. Once the improvements are made, the Town may receive net revenues from the reservations.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Facility Use Policy (existing).
2. Bandstand Improvement Project Conceptual Plan.
3. Facility Use Policy (redline).



TITLE: TOWN FACILITIES USE		POLICY NUMBER: 1-04
EFFECTIVE DATE: 8/3/2016		PAGES: 9
ENABLING ACTIONS:	REVISED DATES: 10/18/2016; 2/7/2017; 2/6/2018	
APPROVED:		

PURPOSE

To establish a policy for managing the use of the Town of Los Gatos facilities by the general public, for official Town business, and for governmental agencies, which will:

1. Preserve core Town functions.
2. Provide for public access and use of civic facilities.
3. Facilitate and coordinate multiple uses of civic facilities.

SCOPE

Guiding Principles

1. Civic facilities are intended to be used primarily for administrative operations of Town programs, and by the Town for the community. Therefore, official Town business, programs, and activities shall have priority use of all civic facilities.
2. Civic facilities are further intended to serve as a hub of civic and cultural activity and a major gathering center for community meetings and an active program of outdoor events.
3. Designated portions of the civic facilities may be used by the public for events including concerts, festivals, ceremonies, or other similar activity for the purposes of celebration, education or cultural enrichment.

TITLE: TOWN FACILITIES USE	PAGE: 2 of 8	POLICY NUMBER: 1-04
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4. It is the Town’s intent to provide spaces that are affordable and accessible for cultural, civic, and celebratory activities, without compromising security and official Town business needs.

POLICY

Policy Overview

1. The Town Council will establish the Town Facilities Use Policy. The Town Manager and his or her designee will issue permits and use agreements for events, and act as the final authority for the application of the Policy.
2. The Town Manager’s Office is responsible for the day-to-day operation of scheduling and administering facilities’ reservations.
3. The granting of permission to use any civic facility shall not in any way constitute an endorsement of the views of the persons and/or group reserving the facility.
4. Users of civic facilities for events will be required to obtain a special event permit and comply with all requirements set forth in this Town Facilities Use Policy.
5. All civic facility use reservations shall be made subject to the condition that the Town maintains the right to cancel or change any reservation if civic facilities are needed for official Town business. In no event shall the Town have any liability whatsoever for any cancellation made under the Town’s authority to do so.
6. Use of civic facilities must not interfere with the conduct of official Town business or be unduly disruptive to others present in Town Hall or to immediately adjacent properties.
7. Private parties are not allowed (such as a wedding reception).
8. Town approved non-profit fundraising activities are allowed in/on Town facilities with an appropriate permit, or license issued by the Town, or provided in an agreement or Conditional Use Permit with the Town.
9. The roping off of a portion of a civic facility to create an exclusive section is permissible with an approved special event permit as long as the majority of the facility is open and accessible to the public.

TITLE: TOWN FACILITIES USE	PAGE: 3 of 8	POLICY NUMBER: 1-04
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10. Separate Council approved use agreements may supersede this Policy. Where conflicts in terms or conditions arise, the use agreement will prevail.

Public Use – Civic Facilities

A. Civic Center Lawn, Deck, and Stairs

The Civic Center lawn, deck, and stairs are focal points for the Town of Los Gatos Civic Center. These areas shall be used as the regular location for community gatherings and events free and open to all members of the public including concerts, festivals, ceremonies, or other similar activity for the purposes of celebration, education or cultural enrichment.

1. Reservations are processed on a “first come, first served” basis. A tentative reservation may be made up to one year in advance by submitting an application for a special event permit, and Release of Liability. All required paperwork must be submitted with original signatures.
2. Scheduled events must not interfere with the conduct of official Town business or be unduly disruptive to others present in Town Hall or to immediately adjacent properties.
3. The following must be submitted and approved no later than two months prior to the scheduled event:
 - a. Special Event Permit Application or Town agreement.
 - b. Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance.
 - c. Release of Liability, Assumption of Risk and Indemnity Agreement.
 - d. Complete payment of all applicable fees and charges for use as established within the Municipal Code and are contained in the Town’s Fee Schedule. All checks are to be made payable to “The Town of Los Gatos.”

B. Civic Center West Patio

The Civic Center West Patio (located at outside of the building at 106 and 108 E. Main Street) shall be used as the regular location for community gatherings and events open to all members of the public for the purposes of celebration, education, or

TITLE: TOWN FACILITIES USE	PAGE: 4 of 8	POLICY NUMBER: 1-04
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cultural enrichment. For consistency with previous Town Council approvals, Civic Center West Patio may also be referred to as the Sculpture Garden.

1. Reservations are processed on a “first come, first served” basis. A tentative reservation may be made up to one year in advance by submitting an application for a special event permit and Release of Liability. All required paperwork must be submitted with original signatures.
2. Private events are not allowed with the exception of approved events hosted by the tenants of 106 and 108 East Main Street as stated in tenant lease agreements.
3. Scheduled events must not interfere with the conduct of official Town business or be unduly disruptive to others present in Town Hall or to immediately adjacent properties.
4. The following must be submitted and approved consistent with Town Code:
 - a. Special event permit application or Town agreement.
 - b. Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance.
 - c. Release of Liability, Assumption of Risk and Indemnity Agreement
 - d. Complete payment of all applicable fees and charges for use as established within the Municipal Code and are contained in the Town’s Fee Schedule. All checks are to be made payable to “The Town of Los Gatos.”

C. Council Chambers

The Town Council Chambers may be reserved by federal, state, county, and municipal agencies, and schools for activities that benefit Los Gatos residents and students. The Town Council Chambers may also be reserved by agencies providing government education programs. A reservation of the Chambers includes access to the Chambers Lobby.

1. The Town may grant permission to use the Town Council Chambers in the following priority order:
 - a. Town Council/Board, Commission, and Committees, including ceremonial events
 - b. Town Departments

- c. Town established Organizations and Committees (in which Town employees or Town officials participate)
 - d. Government Agencies and Officials
 - e. Non-profit organizations that are related to Town business or are hosting events that are associated with a government purpose.
 - f. Private events are not allowed with the exception of approved events hosted by the tenants of 106 and 108 East Main Street as stated in tenant lease agreements.
2. Reservations are processed on a “first come, first served” basis. A tentative reservation may be made up to six months in advance by submitting an Application, and Release of Liability. All required paperwork must be submitted with original signatures.
3. The following must be submitted and approved no later than two weeks prior to the scheduled event:
 - a. Application for Use of Room
 - b. Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance
 - c. Release of Liability, Assumption of Risk and Indemnity Agreement
4. During the evenings (after 5 p.m.), on the weekends (Saturdays and Sundays), and on Holidays, all users will be charged a Facility Use Fee and other applicable charges for Town services as set forth in the Fee Schedule, unless the meeting or event is for official Town business, and the meeting or event is planned, managed, and led by the Town Council or Town Department.
5. A Building Attendant is required for all meetings regardless of meeting time or size. The Town will schedule the Building Attendant and invoice the applicant for the actual time scheduled. The Building Attendant will be responsible for the opening and closing of the facility and overseeing that the room is returned to its original condition.
6. Use is limited to a maximum of ten hours, per event, subject to other scheduled events, or Town use.
7. Groups composed of minors must be supervised by at least one (1) adult for every ten (10) children under the age of 18 at all times while they are using the facility.

TITLE: TOWN FACILITIES USE	PAGE: 6 of 8	POLICY NUMBER: 1-04
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8. Alcohol is not permitted in the Council Chambers or Lobby.
9. Applicants are responsible for setting up before and cleaning up after each event in the Chambers. Applicants shall be responsible for removing all personal property, owned or rented, prior to vacating the facility.
 - a. Absolutely no open flames are allowed in the Chambers or Lobby.
 - b. No foreign substance may be applied to the floor, walls, or ceiling (this includes decorations).
 - c. No rice, birdseed, confetti, etc., may be thrown in or around the Town Council Chambers or Lobby.
 - d. Gambling or wagering is prohibited.
10. Pursuant to state and federal law and Town Council Resolution 2017-24, the use of the Town Council Chambers will not be restricted because of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, medical condition, religion, place of national origin, or any other basis prohibited by law or Town resolution or policy.
11. Any exceptions to the use regulations must be approved, in writing, by the Town Manager.

D. Council Chambers Lobby (as a stand alone facility)

The Council Chambers Lobby located within Town Hall shall be used for conducting Town related business only.

1. The Town may grant permission to use the Council Chambers Lobby in the following priority order:
 - a. Town Council and Town Council Committees
 - b. Planning Commission
 - c. Other Town Boards, Committees, and Commissions
 - d. Town Departments

E. Civic Facilities Conference and Meeting Rooms

Conference and Meeting Rooms located within Town Hall, the Library, the Police Operations Building, and the Parks and Public Works Corporation Yard shall be used solely for conducting official Town business.

1. The Town may grant permission to use the Meeting Rooms in the following priority order:
 - a. Town Council and Town Council Committees

TITLE: TOWN FACILITIES USE	PAGE: 7 of 8	POLICY NUMBER: 1-04
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- b. Planning Commission
- c. Other Town Boards, Committees, and Commissions
- d. Town Departments

F. Town Plaza Park and Oak Meadow Park

Town Plaza Park and Oak Meadow Park, as focal points for the Town of Los Gatos, shall be used as a location for free gatherings that are open to the public. Events allowed include concerts, festivals, ceremonies, or other similar activity for the purposes of celebration, education or cultural enrichment.

1. Reservations are processed on a “first come, first served” basis. A tentative reservation may be made up to one year in advance by submitting an application for a Park Use Permit and/or a Special Event Permit, and Release of Liability. All required paperwork must be submitted with original signatures.
2. Events are limited to one event per week.
3. No event may completely overtake the park. The park must always remain accessible to the public.
4. Private events (outside of Town designated reservable spaces) and fee for entrance events are not allowed. Incidental item sales may be allowed if they are consistent with the event activities, as approved.
5. Public entrances to the event venue must remain open during all times of the event. This includes gates, roads, sidewalks, pathways, and parking lots. If shuttle buses are approved, the parking lot may be closed with a parking attendant present. Parking spots cannot be reserved, unless to increase handicap spots.
6. Events beyond the scope of the Town’s Special Event Permit shall require a Town agreement and receive Town Council approval.
7. The following must be submitted and approved no later than six months prior to the scheduled event:
 - a. Park Use Permit, Special Event Permit Application, or Town Agreement.
 - b. Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance.

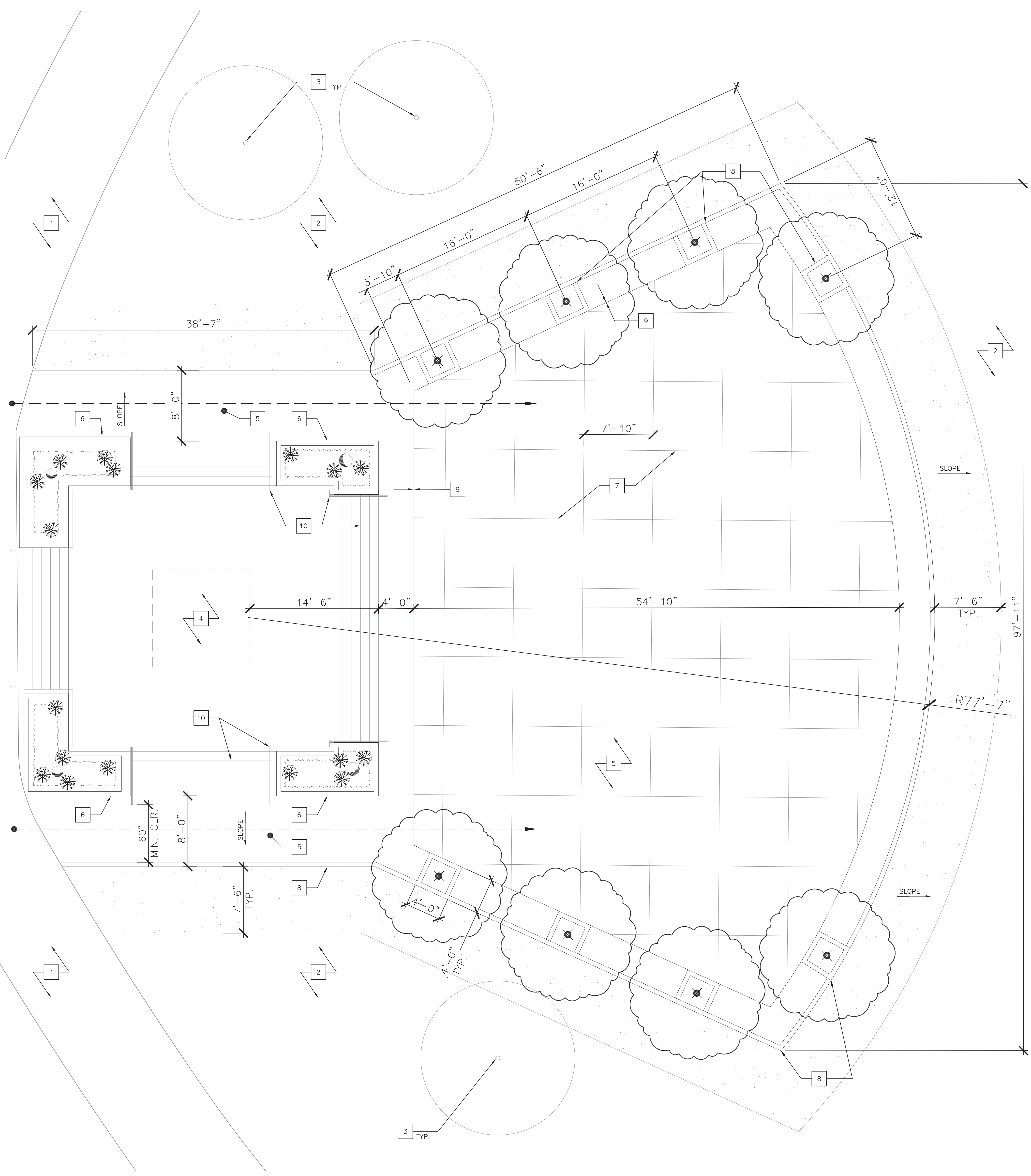
TITLE: TOWN FACILITIES USE	PAGE: 8 of 8	POLICY NUMBER: 1-04
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- c. Release of Liability, Assumption of Risk and Indemnity Agreement.
- d. Complete payment of all applicable fees, deposits, and charges for use as established within the Municipal Code, Park Use Fees, and as contained in the Town's Fee Schedule. All checks are to be made payable to "The Town of Los Gatos."

APPROVED AS TO FORM:

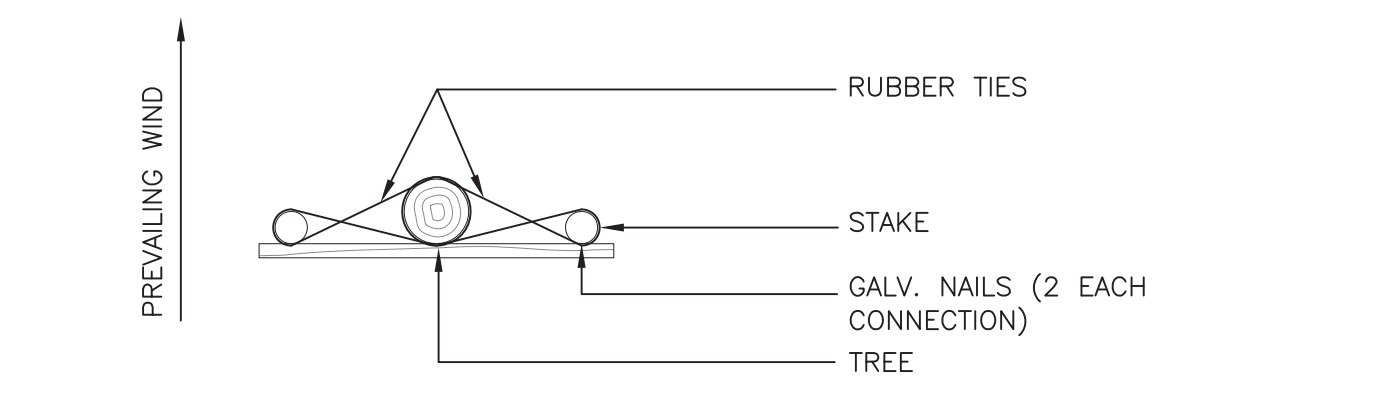
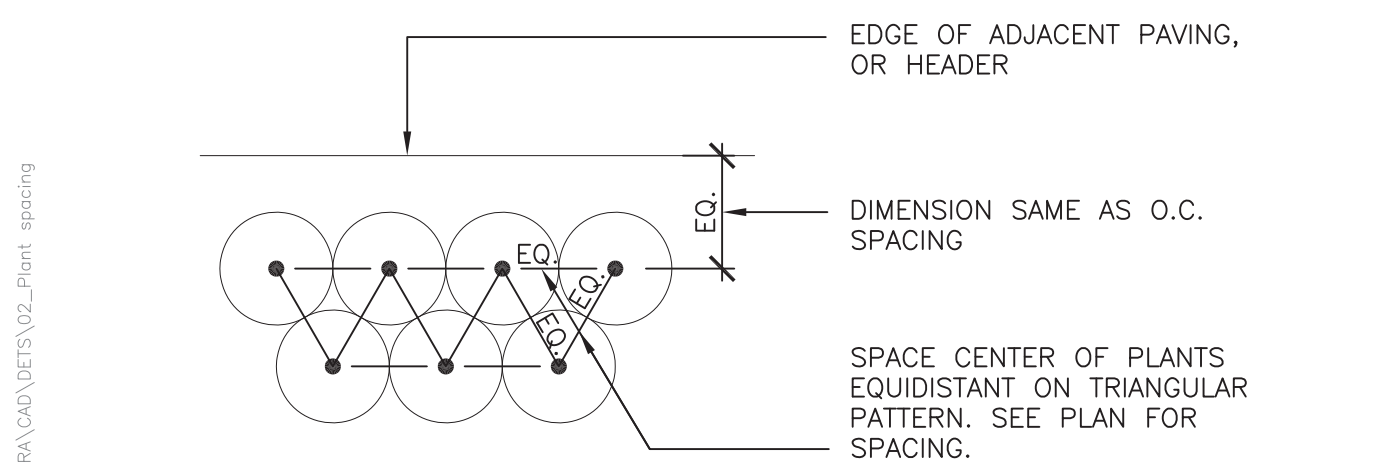
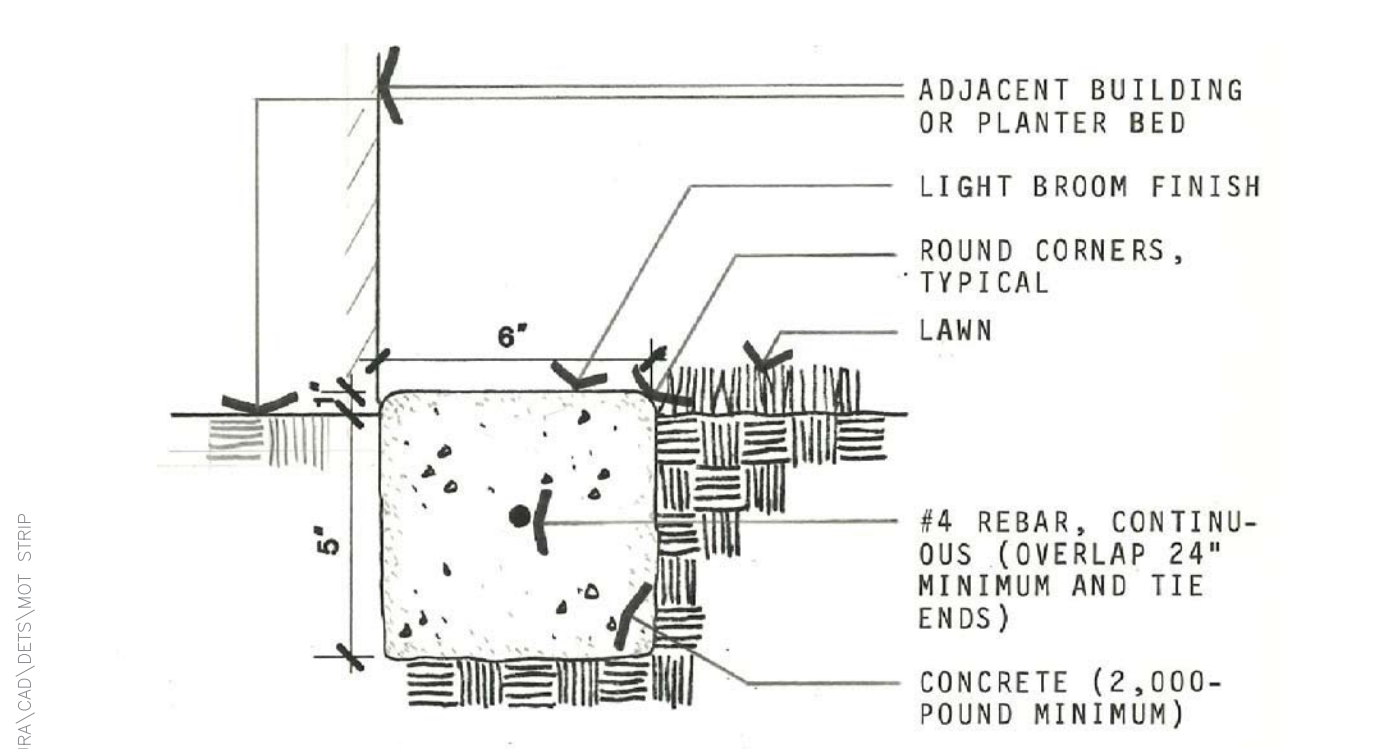
Robert Schultz, Town Attorney

Attachment 2



SPECIFIC NOTES

- (E) WALKWAY TO REMAIN
- (E) GRASS TO REMAIN, TYPICAL
- (E) TREE TO REMAIN, TYPICAL
- (E) BANDSTAND TO REMAIN
- NEW NON-POROUS PERMEABLE CONCRETE WITH COLORED AND TEXTURED OPTIONS. SEE SPECIFICATIONS FOR TYPE AND MANUFACTURER. MAXIMUM 2% SLOPE IN ANY DIRECTION, IF NOT PERMEABLE, SLOPE TO GRASS.
- NEW 6" RAISED CONCRETE CURB SEE DETAIL 6/LA2.0, TYPICAL.
- NEW CONTROL JOINTS, IF CONCRETE IS NOT PERMEABLE UNLESS FOR AESTHETIC REASONS.
- NEW 6" MOW STRIP SEE DETAIL 5/-, TYPICAL
- NEW JOINT TO SEPARATE OPTION OF COLOR AND/OR TEXTURED BETWEEN SURFACES
- (E) STAIR WITH HANDRAIL TO REMAIN, TYPICAL



PLANTING GENERAL NOTES

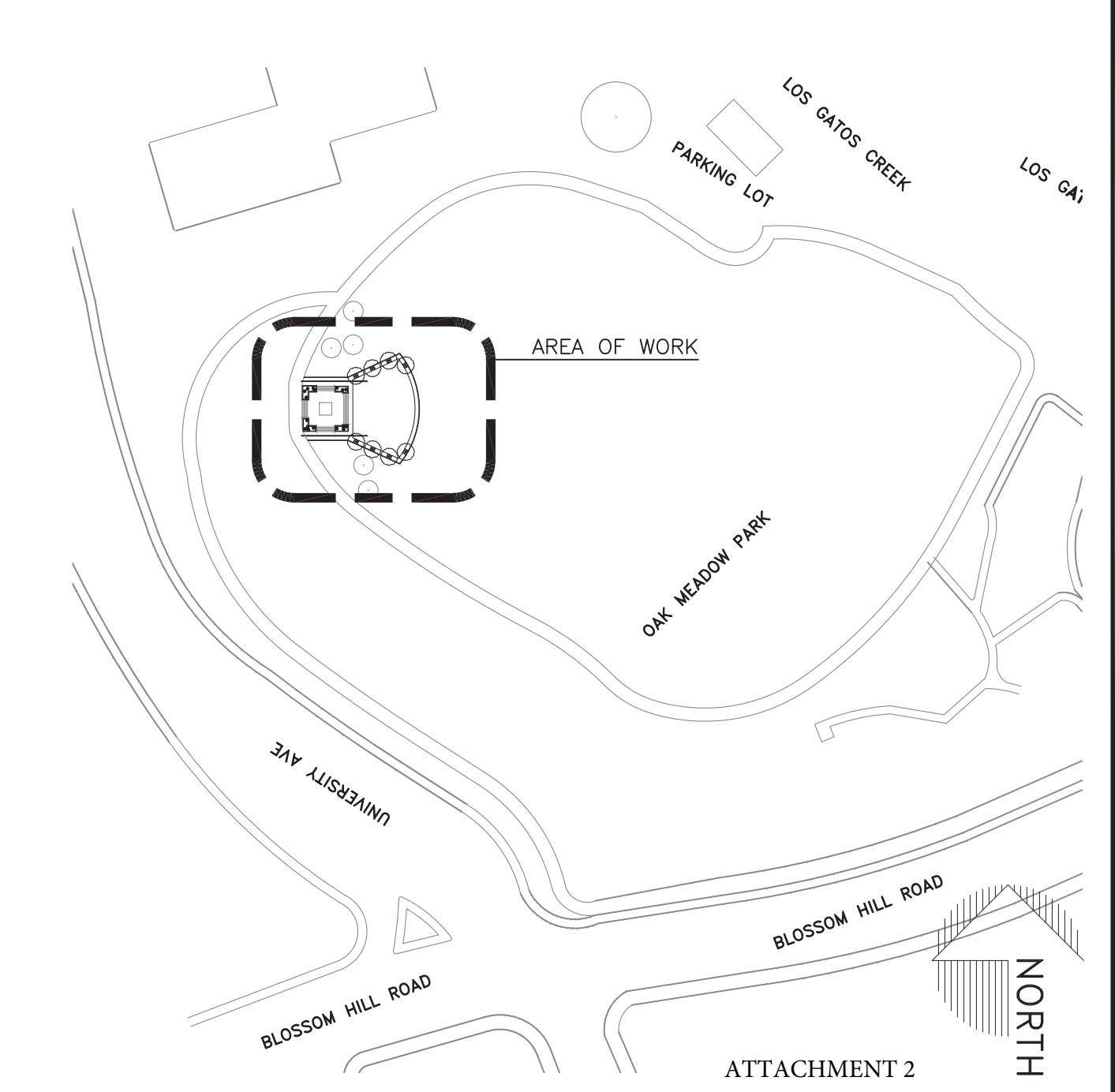
- ### A. GENERAL PLANTING INFORMATION
- THESE NOTES ARE FOR GENERAL REFERENCE IN CONJUNCTION WITH, AND AS A SUPPLEMENT TO, THE WRITTEN SPECIFICATIONS ASSOCIATED WITH THE CONTRACT DOCUMENTS.
 - CONTRACTOR SHALL COORDINATE ALL WORK OF THE VARIOUS TRADES (I.E. IRRIGATION, CIVIL, ETC.)
 - PRIOR TO PLANT MATERIAL INSTALLATION, LOCATIONS SHALL BE COORDINATED WITH LAYOUT OF UNDERGROUND UTILITIES. THE CONTRACTOR SHALL BE FAMILIAR WITH THE LOCATIONS OF EXISTING AND FUTURE UNDERGROUND SERVICES AND IMPROVEMENTS WHICH MAY CONFLICT WITH THE WORK TO BE DONE. CONTRACTOR IS RESPONSIBLE TO VERIFY ALL LOCATIONS OF UNDERGROUND UTILITIES PRIOR TO THE START OF WORK.
 - REFER TO DETAILS THE CONTRACTOR IS RESPONSIBLE TO MAINTAIN THE SITE IN A SAFE AND CLEAN CONDITION. AT THE END OF EACH DAY THE SITE SHALL BE CLEANED UP AND LEFT IN A CONDITION THAT IS SAFE.
 - CONTRACTOR IS TO OBTAIN AND PAY FOR ALL REQUIRED PERMITS RELATED TO LANDSCAPE PLANTING AND IRRIGATION WORK.
 - SEE DETAIL 6/- FOR PLANT SPACING.
 - SEE LANDSCAPE IRRIGATION PLAN LA2.0, FOR MORE INFORMATION.
- ### B. SOIL PREPARATION
- IMPORTED TOPSOIL SHALL CONSIST OF FERTILE, FRIABLE SOIL OF LOAMY CHARACTER, AND SHALL CONTAIN AN AMOUNT OF ORGANIC MATTER NORMAL TO THE REGION. IT SHALL BE OBTAINED FROM WELL-DRAINED ARABLE LAND AND SHALL BE REASONABLY FREE FROM SUBSOIL, REFUSE, ROOTS, HEAVY OR STIFF CLAY, STONES LARGER THAN ONE INCH IN SIZE, COARSE SAND, NOXIOUS SEEDS, STICKS, BRUSH, LITTER, AND OTHER DELETERIOUS SUBSTANCES. IMPORTED TOPSOIL SHALL BE CAPABLE OF SUSTAINING HEALTHY PLANT LIFE.
 - THE CONTRACTOR IS TO FINE GRADE THE SITE TO ALLOW FOR GOOD SOIL DRAINAGE. IF THERE ARE PUDDLES OR WATER STANDING IN PLANTING PITS FOR MORE THAN 2 HOURS, NOTIFY OWNER'S REP. IMMEDIATELY.
 - FINE GRADING AND IRRIGATION LAYOUT SHALL BE APPROVED BY OWNER'S REP. PRIOR TO PLANTING OPERATIONS.
 - PLANTING AREAS SHALL RECEIVE A WEED CONTROL PRE-EMERGENT PRIOR TO PLANTING.
- ### C. PLANTING OPERATIONS
- PLANTING OPERATIONS SHALL BE COMPLETED IN STRICT ACCORDANCE WITH SPECIFICATIONS AND DETAILS.
 - PLANT COUNTS ARE FOR REFERENCE ONLY. CONTRACTOR SHALL SUPPLY ALL PLANTS AS SHOWN IN SYMBOLS AND CALLOUTS ON THIS PLAN.
 - CONTRACTOR SHALL SUPPLY PLANTS OF THE SIZE SPECIFIED. IF CONTRACTOR IS UNABLE TO LOCATE PLANT MATERIAL, CONTACT THE OWNER'S REP. FOR INSTRUCTIONS.
 - CONTRACTOR SHALL PLACE PLANT MATERIAL SO THEY DO NOT INTERFERE WITH ANY IRRIGATION SYSTEM. PLANT LOCATIONS MAY BE ADJUSTED AS LONG AS CONCEPTUAL INTENT IS NOT VIOLATED. IF A CONFLICT OCCURS, CONTRACTOR SHALL NOTIFY OWNER'S REP. FOR APPROVAL OF ANY MAJOR MODIFICATIONS.
 - PLANT LOCATIONS ARE DIAGRAMMATIC AND MAY BE ADJUSTED IN THE FIELD AT THE OWNER'S REP. DIRECTION PRIOR TO INSTALLATION. CARE SHALL BE TAKEN TO SPOT PLANT MATERIALS EVENLY, TO PROVIDE OPTIMUM GROWTH CONDITIONS AND MAXIMUM AESTHETICS. PLANT MATERIAL SHALL NOT BE INSTALLED IN AN AREA WHICH WILL CAUSE HARM TO ADJACENT STRUCTURES OR IMPROVEMENTS, LANDSCAPE DRAINAGE OR OBSTRUCT IRRIGATION SPRAY PATTERNS. NOTIFY THE OWNER'S REP. SHOULD CONFLICT OCCUR.
 - TREES ARE TO BE PLANTED PLUMB AND FACED TO GIVE THE BEST APPEARANCE OR RELATIONSHIP TO ADJACENT FEATURES, STRUCTURES AND VIEW.
 - PLANT MATERIAL PLACEMENT SHALL BE SUBJECT TO THE OWNER'S REP. APPROVAL PRIOR TO INSTALLATION. CONTRACTOR SHALL LAYOUT TREES AND SHRUBS WHILE IN THEIR CONTAINERS, AS SHOWN ON THE PLAN AND THEN OBTAIN APPROVAL FROM THE OWNER'S REP.
 - A 2" LAYER OF DECORATIVE MULCH SHALL BE INSTALLED CONTINUOUS IN ALL PLANTING AREAS. (CONTRACTOR TO SUBMIT A SAMPLE OF MULCH FOR APPROVAL PRIOR TO INSTALLATION)

THIS PROJECT HAS BEEN PREPARED BY CUSCHIERI HORTON ARCHITECTS AND PHOENIX DESIGN GROUP. THESE SERVICES FOLLOW THE CONDITIONS SET FORTH IN A FULLY EXECUTED AIA B106-2010 AGREEMENT, DATE FEBRUARY 21, 2018.

LEGEND

- ACCESSIBLE PATH OF TRAVEL, MAX 5% SLOPE IN DIRECTION OF TRAVEL AND 2% MAX CROSS SLOPE.
- MAHONIA AQUIFOLIUM COMPACTA, DWARF OREGON GRAPE, 5 GALLON
- 1ST OPTION: PLATANUS ACERIFOLIA, THE LONDON PLANE, 24" BOX (MATCHED SPECIMENS)
- 2ND OPTION: GLEDITSIA TRIACANTHOS MORANIE
- 3RD OPTION: QUERCUS PALUSTRIS (NOT TO SCALE), SEE 8/- FOR PLANNING DETAILS
- BOULDER, TO BE DETERMINED. 3' TO 4'
- NEW SOD - DWARF FESCUE AS GROWN BY GRASS FARM, OR APPROVED EQUAL
- VINCA MINOR / DWARF PERIWINKLE, FROM FLATS, PLANT @ 12" O.C.

KEYPLAN



Cuschieri Horton Architects

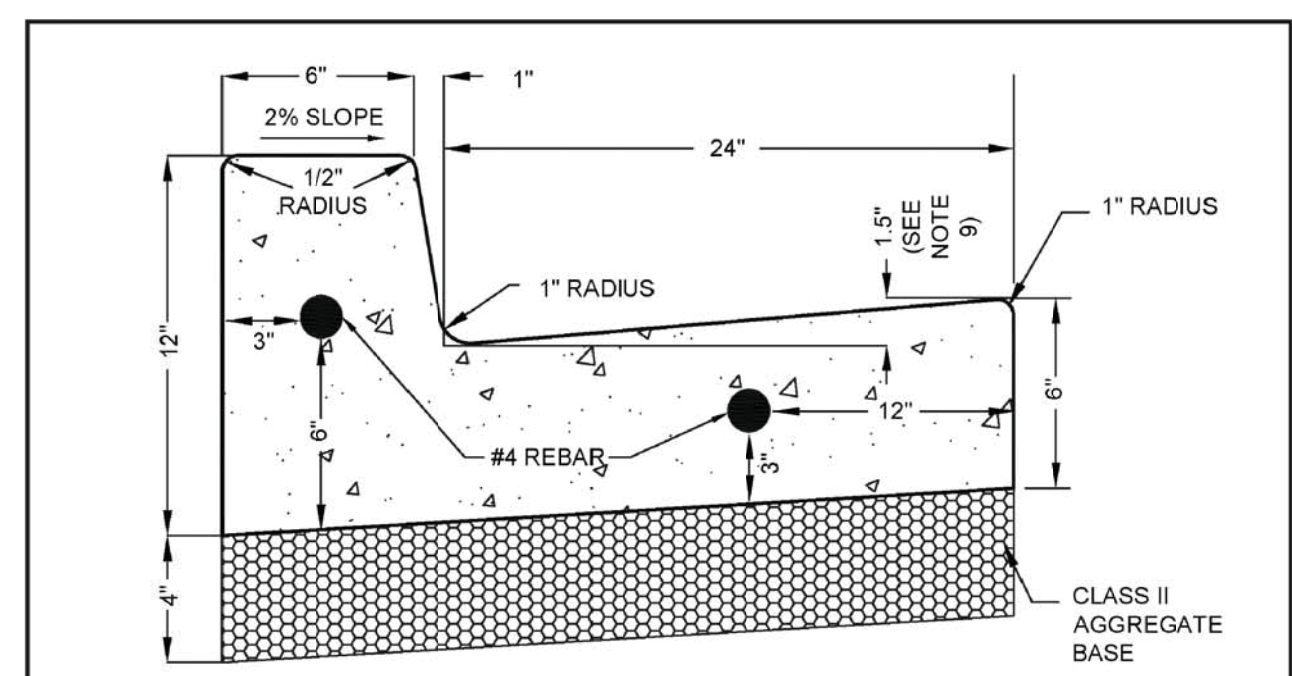
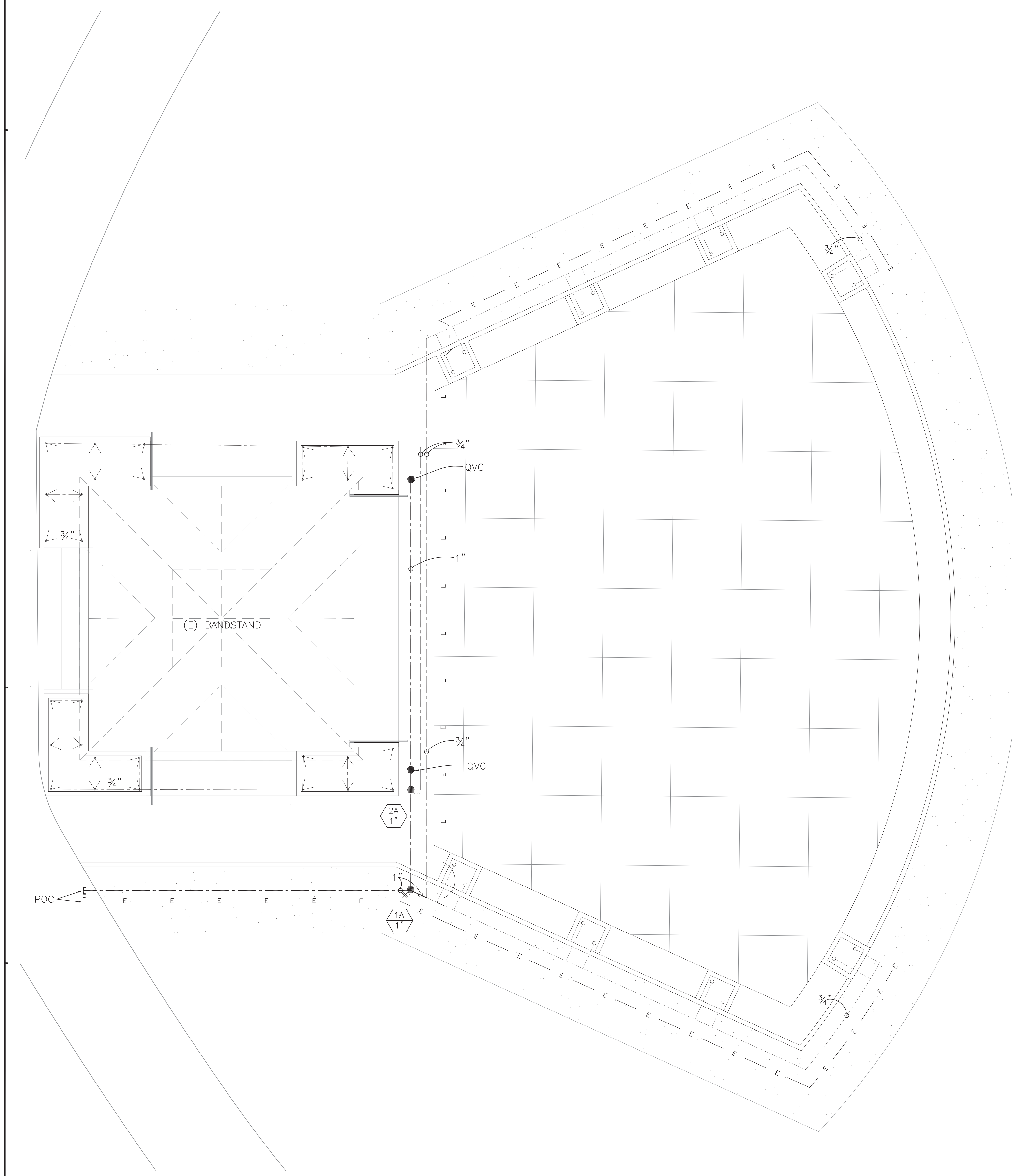
1475 S. Bascom Ave, Suite 204
Campbell, California 95008
408.371.8200 Fx 408.371.8201

Phoenix Design Group

Landscape Architect
195 Scheller Ave.
Morgan Hill, CA 95037
(408) 380-0777

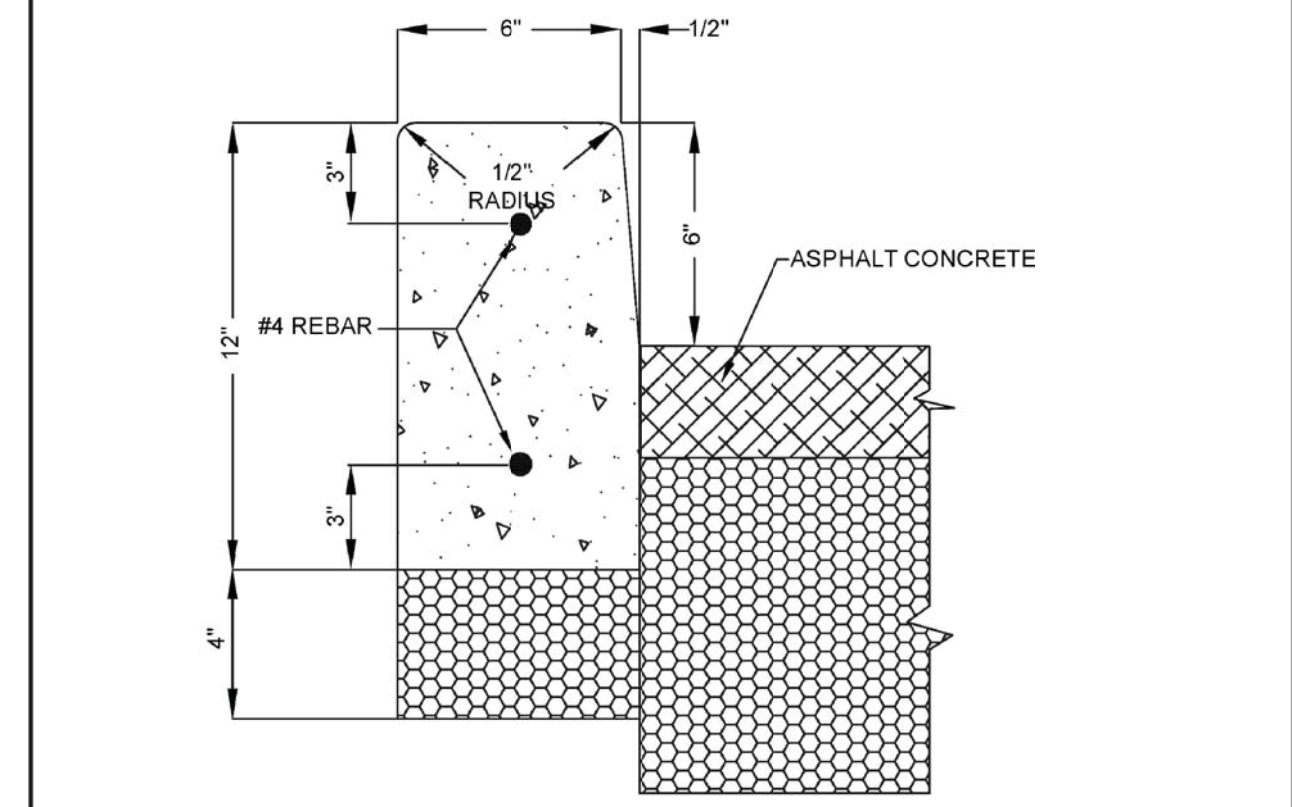


NEW LANDSCAPE PLANTING AND HARDSCAPE PLAN
OAK MEADOW PARK BANDSTAND
233 BLOSSOM HILL RD,
LOS GATOS, CA 95032



- NOTES:**
- ALL RADI LESS THAN 100' SHALL USE FLEXIBLE WOOD OR METAL FORMS TO ELIMINATE ANGULAR POINTS AT 10' SECTION POINTS.
 - SAWCUT AND REMOVE 20 IN. (MIN) STREET SECTION FOR CURB AND GUTTER INSTALLATION ON EXISTING STREETS.
 - 3/4" EXPANSION JOINTS TO BE PLACED AT DRIVEWAY SECTIONS, CURB RETURNS, CURB RAMPS & GOLF JOINTS OR A MAX. OF 30' C/C. EXPANSION JOINTS SHALL PROTRUDE 1" BELOW THE BOTTOM OF GUTTER.
 - THRU JOINTS SHALL BE PLACED ADJACENT TO CATCH BASINS, INLETS AT POINTS OF TANGENCY ON STREETS, AND AT ALLEY AND DRIVEWAY RETURNS. MAXIMUM SPACING SHALL BE 10' PRE-MOLDED JOINT FILLER, SHALL BE 12" WIDE AND CONFORM TO AASHTO DESIGN M213. DUMMY JOINTS SHALL BE PLACED EVERY 10'.
 - FINISHED WORK SHALL NOT VARY MORE THAN 1/8" IN GRADE AND 1/4" IN ALIGNMENT.
 - THE FINISHED CURB SHALL IMMEDIATELY BE SPRAYED WITH A TRANSPARENT CURING COMPOUND. CURB SHALL BE COVERED BY WATERPROOF PAPER OR PLASTIC MEMBRANE IN THE EVENT OF RAIN OR OTHER UNSUITABLE WEATHER. CURING TIME SHALL BE A MINIMUM OF 72 HOURS.
 - ALL CURB AND GUTTER SHALL BE PLACED ON A MIN. OF 4" AGGREGATE BASE CLASS II 95% MAX. COMPACTION ASTM D1557
 - #4 REBAR SHALL BE EXTENDED ALONG LENGTH OF THE CURB AND GUTTER
 - GUTTER PAN SLOPE SHALL NOT EXCEED 5% SLOPE AT PEDESTRIAN CURB RAMP ENTRY LOCATIONS. CONTRACTOR SHALL USE 1.2" (MAX) BETWEEN LIP OF GUTTER AND FLOWLINE AT THESE LOCATIONS.
 - ALL CONCRETE SHALL INCLUDE ONE (1) POUND OF LAMP BLACK PER CUBIC YARD OF CONCRETE.
 - ALL CURB AND GUTTER SHALL HAVE 2 #4 REBARS THE ENTIRE LENGTH AND EMBEDDED ON BOTH ENDS USING DOWELS (ONE DOWEL IN THE CENTER OF THE GUTTER, ONE DOWEL IN THE CENTER OF THE CURB).

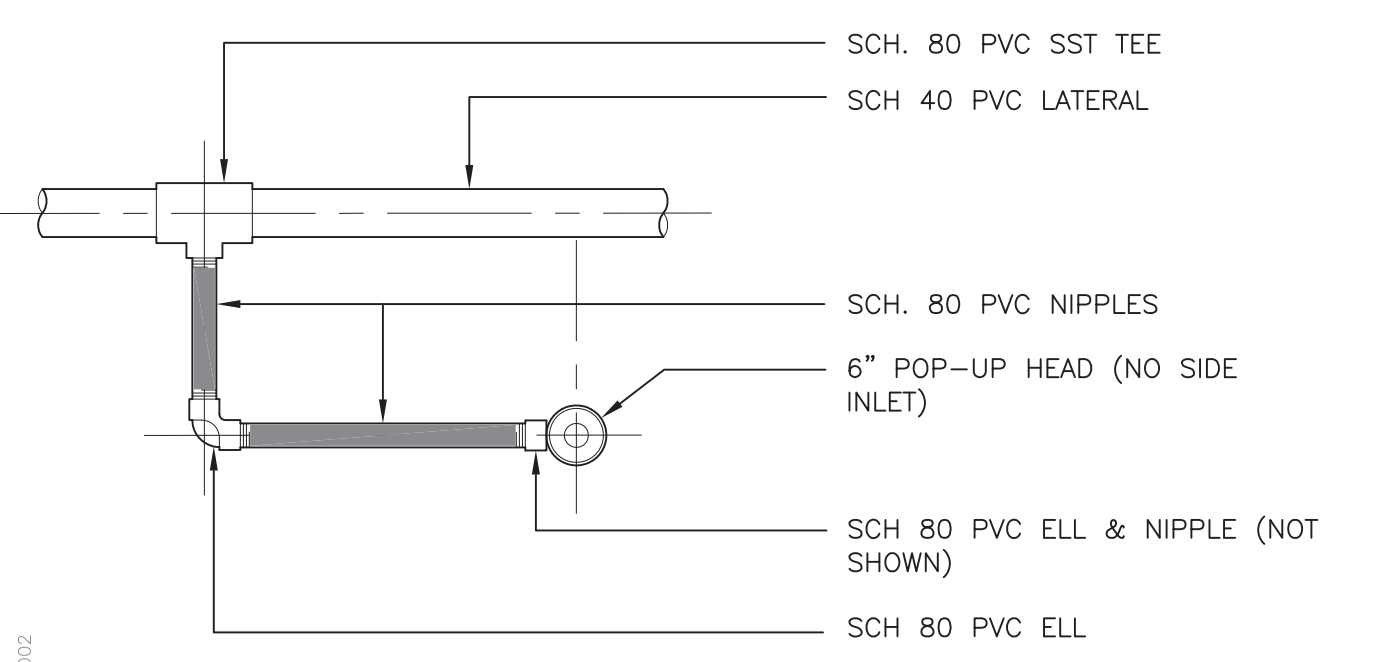
APPROVED BY	DATE	NOT TO SCALE	STD. PLAN NO.
<i>[Signature]</i>	NOVEMBER 2010	CONCRETE CURB AND GUTTER	ST-210
TOWN ENGINEER			



- NOTES:**
- THE CONSTRUCTION NOTES OF STD. PLAN 210 APPLY TO CONCRETE VERTICAL CURB.

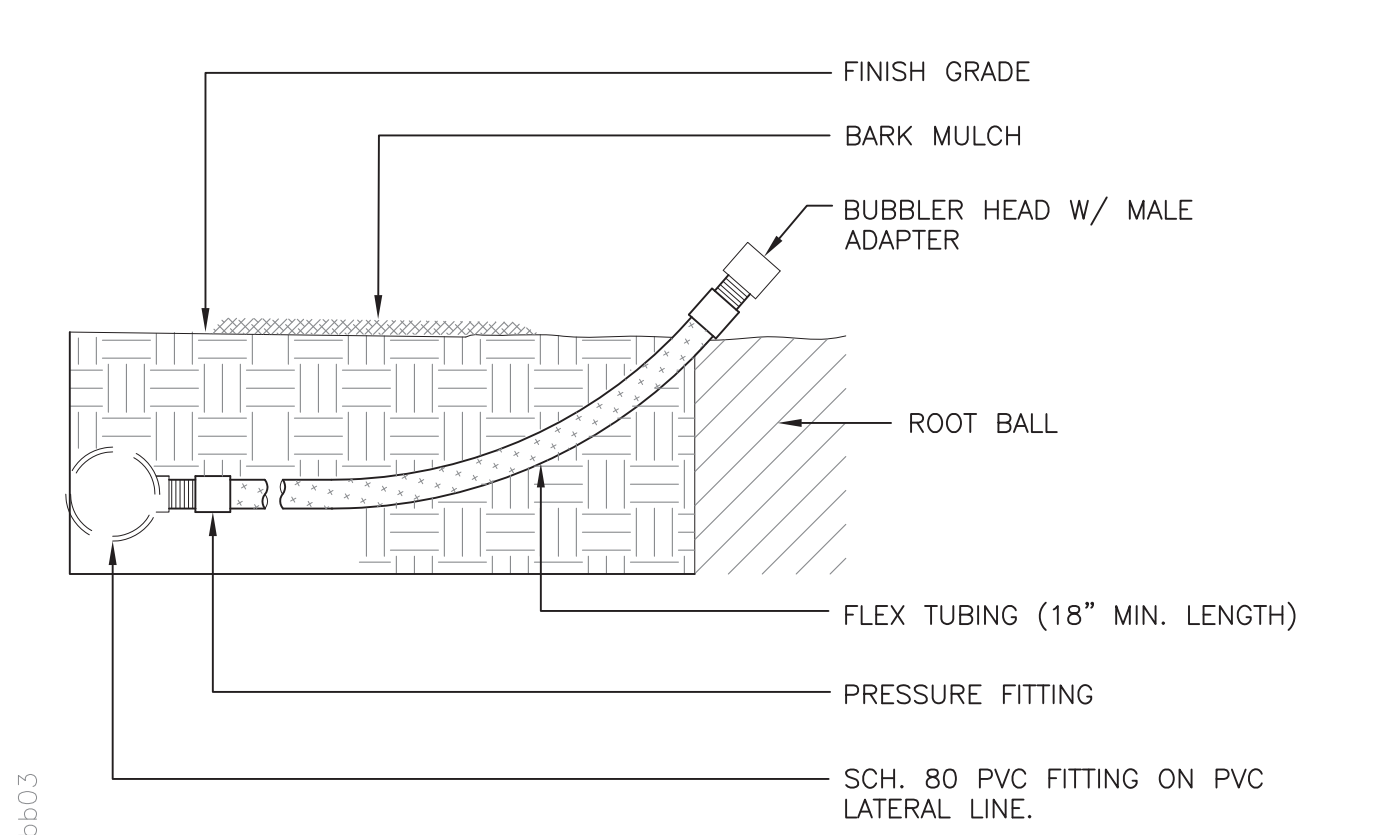
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<i>[Signature]</i>	NOVEMBER 2010	CONCRETE VERTICAL CURB	ST-211
TOWN ENGINEER			

6 CONCRETE CURB DETAILS N.T.S.



- NOTES:**
- ALL ELEMENTS OF RISER ASSEMBLY SHALL BE THE SAME DIAMETER AS THE CONNECTION POINT OF THE POP-UP BODY.
 - USE TEFLON PASTE THREAD SEALANT ON THREAD CONNECTIONS.
 - DO NOT TIGHTEN FITTINGS BEYOND THEIR ABILITY TO MOVE.

7 POP-UP SWING JOINT RISER DETAIL N.T.S.



8 BUBBLER HEAD DETAIL N.T.S.

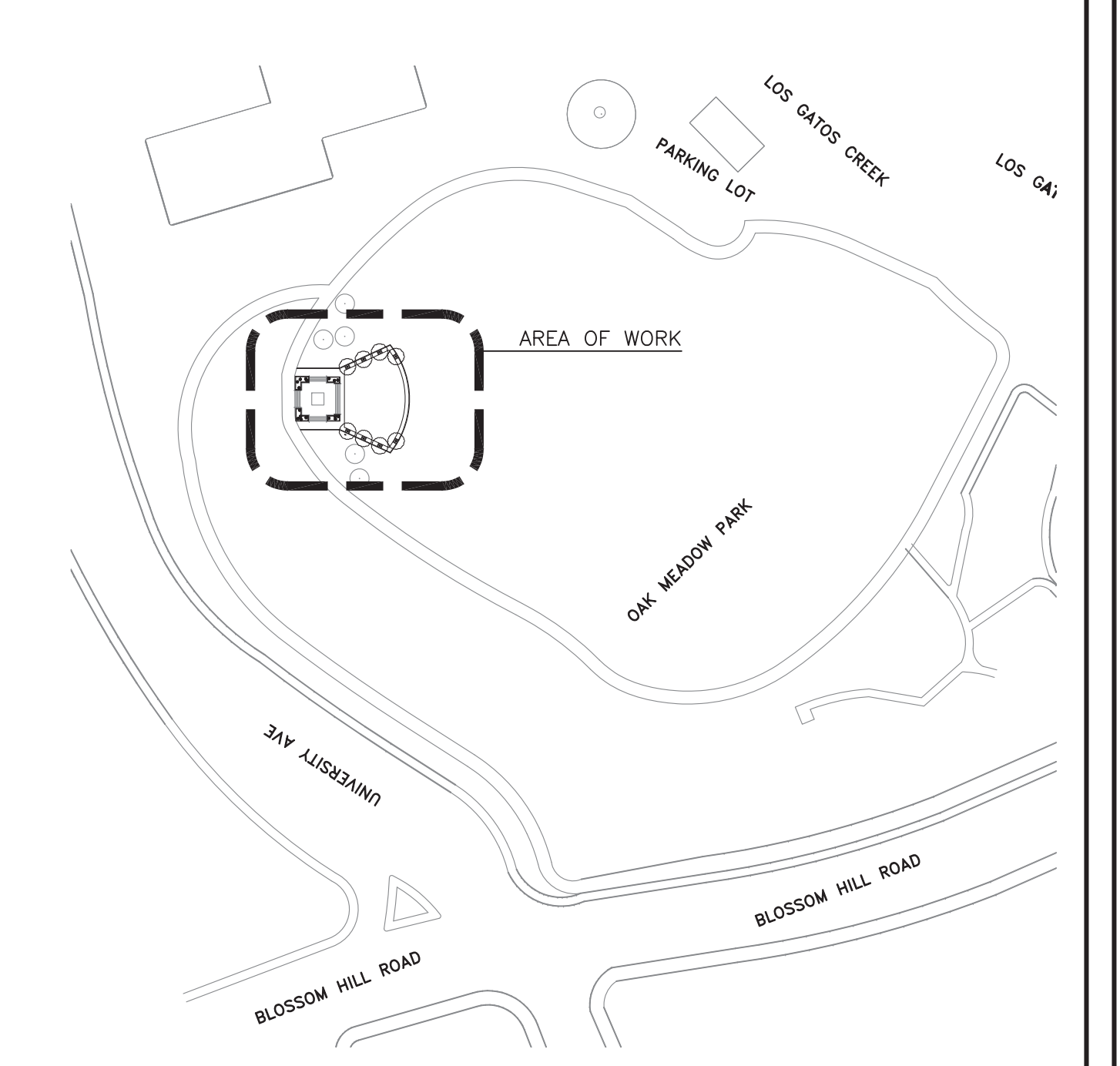
IRRIGATION GENERAL NOTES

- CONTRACTOR TO CONFIRM IF (E) CONTROLLER HAS CAPACITY FOR ADDITIONAL (N) VALVES. OTHERWISE CONTRACTOR TO COORDINATE WITH DEPT OF PUBLIC WORKS TO UPGRADE/REPLACE CONTROLLER TO ACCOMMODATE NEW WORK.
- CONTRACTOR TO INSTALL LOW VOLTAGE WIRES FROM (E) CONTROLLER (NOTE 1) TO (N) REMOTE CONTROL VALVE. INSTALL LOW VOLTAGE WIRING @ A MIN. OF 18" BELOW GRADE W/ STANDARD SOIL COMPACTION
- THIS IRRIGATION DESIGN IS DIAGRAMMATIC. ALL PIPING, VALVES, ETC. ARE SHOWN FOR DESIGN CLARIFICATION ONLY AND SHALL BE INSTALLED TO AVOID CONFLICTS BETWEEN THE SPRINKLER SYSTEM, PLANTING AND ARCHITECTURAL FEATURES DUE TO SCALE OF DRAWINGS. IT IS NOT POSSIBLE TO INDICATE SLEEVES, ETC., WHICH MAY BE REQUIRED. THE IRRIGATION CONTRACTOR SHALL CAREFULLY INVESTIGATE THE STRUCTURAL AND FINISHED CONDITIONS AFFECTING ALL OF HIS WORK AND PLAN HIS WORK ACCORDINGLY. FURNISH SUCH FITTINGS, ETC. AS MAY BE REQUIRED TO MEET SUCH CONDITIONS.
- THE IRRIGATION CONTRACTOR SHALL NOT WILLFULLY INSTALL THE SPRINKLER SYSTEM AS SHOWN ON THE DRAWINGS WHEN IT IS OBVIOUS IN THE FIELD THAT OBSTRUCTIONS, GRADE DIFFERENCE OR DIFFERENCES IN THE AREA DIMENSIONS EXIST THAT MIGHT NOT HAVE BEEN CONSIDERED IN THE ENGINEERING. SUCH OBSTRUCTIONS OR DIFFERENCES SHOULD BE BROUGHT TO THE ATTENTION OF THE OWNER'S DESIGNATED REPRESENTATIVE. IN THE EVENT THIS NOTIFICATION IS NOT PERFORMED, THE IRRIGATION CONTRACTOR SHALL ASSUME FULL RESPONSIBILITY FOR THE NECESSARY REVISIONS.
- IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO FAMILIARIZE HIMSELF WITH ALL GRADE DIFFERENCES, LOCATION OF CURBS, UTILITY BOXES, ETC. HE SHALL COORDINATE HIS WORK FOR THE LOCATION AND THE INSTALLATION OF PIPE SLEEVES UNDER ROADWAYS, PAVING, STRUCTURES, ETC.
- CONTROL WIRES SHALL BE 14 GAUGE (RED). SEPARATE WIRES SHALL RUN FROM THE CONTROLLER TO EACH VALVE. COMMON GROUND WIRES SHALL BE 12 GAUGE (WHITE). ALL CONTROL WIRES LEADING FROM VALVES TO CONTROLLER SHALL BE LOOPED-UP A MINIMUM OF THREE FEET (3') INTO EVERY VALVE BOX INTERCEPTED ON THE WAY TO THE CONTROLLER.
- SPLICING OF 24 VOLT WIRES WILL NOT BE PERMITTED EXCEPT IN VALVE BOXES. LEAVE A 24" COIL OF EXCESS WIRE IN BUNDLES 10" ON CENTER. TO TAPING PERMITTED INSIDE SLEEVES.
- SPLICES IN THE FIELD SHALL BE MADE EXCLUSIVELY WITH RAIN BIRD "SNAP-TITE" CONNECTORS, GLOBAL SPAN PRODUCTS INC. "SP-LICE-KOTE", OR APPROVED EQUAL IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS.
- ALL PLASTIC FITTINGS SHALL BE A MINIMUM OF 18" APART TO FACILITATE REMOVAL AND REPLACEMENT OF INDIVIDUAL FITTINGS.
- THE SPRINKLER SYSTEM DESIGN IS BASED UPON A MINIMUM 30 PSI OPERATING PRESSURE. THE IRRIGATION CONTRACTOR SHALL VERIFY WATER PRESSURE AND ALL EXISTING CONDITIONS. NOTIFY THE OWNER'S DESIGNATED REPRESENTATIVE IMMEDIATELY IN WRITING FOR A DECISION BEFORE PROCEEDING WITH THE INSTALLATION.
- INSTALL IRRIGATION SYSTEM IN ACCORDANCE WITH ALL LOCAL AND STATE CODES AND ORDINANCES.
- ALL IRRIGATION WORK SHALL CONFORM TO THE DETAILS SHOWN ON THESE PLANS.
- ALL MAINS, LATERALS AND IRRIGATION CONTROLLER WIRES SHALL BE INSTALLED IN CLASS 315 P.V.C. SLEEVES UNDER ALL A.C. AND P.C.C. PAVEMENT.
- POC FOR WATER AND ELECTRICAL LINES IS TO BE PROVIDED BY THE OWNER (VERIFY)
- SEE LANDSCAPE PLANTING AND HARDSCAPE PLAN LA1.0 FOR MORE INFO.

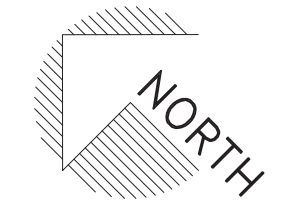
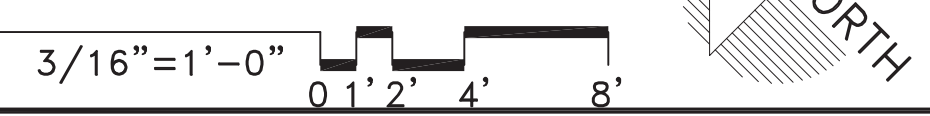
LEGEND

- POINT OF CONNECTION (FOR WATER AND FUTURE ELECTRICAL)
- PVC MAIN LINE. 5CH.40 (1")
- PVC LATERAL LINE. 5CH.40 (3/4")
- ELECTRICAL SLEEVE, BRING SLEEVE TO INSIDE OF PLANTER BOX PER FUTURE ACCESS/LIGHTS.
- TWO PRECISION SPRAY HEADS 5H (0.106PM @ 30 PSI)
- TORO 500 SERIES BUBBLER (0.50 GPM @ 30 PSI)
- REMOTE CONTROL VALVE (TORO P-220 SERIES 1") IN VALVE BOX (SEE GENERAL IRRIGATION NOTE A + B)
- QUICK COUPLER VALVE (TORO 075-SLSC SERIES 3/4") IN VALVE BOX
- VALVE NUMBER
- VALVE SIZE

KEYPLAN



20 NEW LANDSCAPE IRRIGATION PLAN



Cuschieri Horton Architects

1475 S. Bascom Ave, Suite 204
Campbell, California 95008
408.371.8200 Fx 408.371.8201

Phoenix Design Group

Landscape Architect
195 Scheller Ave.
Morgan Hill, CA 95037
(408) 380-0777

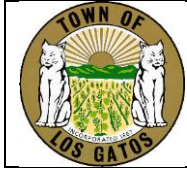


NEW LANDSCAPE IRRIGATION PLAN
OAK MEADOW PARK BANDSTAND
233 BLOSSOM HILL RD,
LOS GATOS, CA 95032

DRAWN BY: SG
CHECKED BY: DC, RG
JOB NO: 1803
DATE: 04/26/2018

SHEET NO.
LA2.0

THIS SHEET IS SIZED FOR 30x42



TITLE: TOWN FACILITIES USE		POLICY NUMBER: 1-04
EFFECTIVE DATE: 8/3/2016		PAGES: 9
ENABLING ACTIONS:	REVISED DATES: 10/18/2016; 2/7/2017; 2/6/2018; <u>12/1/20</u>	
APPROVED:		

PURPOSE

To establish a policy for managing the use of the Town of Los Gatos facilities by the general public, for official Town business, and for governmental agencies, which will:

1. Preserve core Town functions.
2. Provide for public access and use of civic facilities.
3. Facilitate and coordinate multiple uses of civic facilities.

SCOPE

Guiding Principles

1. Civic facilities are intended to be used primarily for administrative operations of Town programs, and by the Town for the community. Therefore, official Town business, programs, and activities shall have priority use of all civic facilities.
2. Civic facilities are further intended to serve as a hub of civic and cultural activity and a major gathering center for community meetings and an active program of outdoor events.
3. Designated portions of the civic facilities may be used by the public for events including concerts, festivals, ceremonies, or other similar activity for the purposes of celebration, education or cultural enrichment.

TITLE: TOWN FACILITIES USE	PAGE: 2 of 8	POLICY NUMBER: 1-04
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4. It is the Town's intent to provide spaces that are affordable and accessible for cultural, civic, and celebratory activities, without compromising security and official Town business needs.

POLICY

Policy Overview

1. The Town Council will establish the Town Facilities Use Policy. The Town Manager and his or her designee will issue permits and use agreements for events, and act as the final authority for the application of the Policy.
2. The Town Manager's Office is responsible for the day-to-day operation of scheduling and administering facilities' reservations.
3. The granting of permission to use any civic facility shall not in any way constitute an endorsement of the views of the persons and/or group reserving the facility.
4. Users of civic facilities for events will be required to obtain a special event permit and comply with all requirements set forth in this Town Facilities Use Policy.
5. All civic facility use reservations shall be made subject to the condition that the Town maintains the right to cancel or change any reservation if civic facilities are needed for official Town business. In no event shall the Town have any liability whatsoever for any cancellation made under the Town's authority to do so.
6. Use of civic facilities must not interfere with the conduct of official Town business or be unduly disruptive to others present in Town Hall or to immediately adjacent properties.
7. Private parties are not allowed (such as a wedding reception).
8. Town approved non-profit fundraising activities are allowed in/on Town facilities with an appropriate permit, or license issued by the Town, or provided in an agreement or Conditional Use Permit with the Town.
9. The roping off of a portion of a civic facility to create an exclusive section is permissible with an approved special event permit as long as the majority of the facility is open and accessible to the public.

TITLE: TOWN FACILITIES USE	PAGE: 3 of 8	POLICY NUMBER: 1-04
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10. Separate Council approved use agreements may supersede this Policy. Where conflicts in terms or conditions arise, the use agreement will prevail.

Public Use – Civic Facilities

A. Civic Center Lawn, Deck, and Stairs

The Civic Center lawn, deck, and stairs are focal points for the Town of Los Gatos Civic Center. These areas shall be used as the regular location for community gatherings and events free and open to all members of the public including concerts, festivals, ceremonies, or other similar activity for the purposes of celebration, education or cultural enrichment.

1. Reservations are processed on a “first come, first served” basis. A tentative reservation may be made up to one year in advance by submitting an application for a special event permit, and Release of Liability. All required paperwork must be submitted with original signatures.
2. Scheduled events must not interfere with the conduct of official Town business or be unduly disruptive to others present in Town Hall or to immediately adjacent properties.
3. The following must be submitted and approved no later than two months prior to the scheduled event:
 - a. Special Event Permit Application or Town agreement.
 - b. Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance.
 - c. Release of Liability, Assumption of Risk and Indemnity Agreement.
 - d. Complete payment of all applicable fees and charges for use as established within the Municipal Code and are contained in the Town’s Fee Schedule. All checks are to be made payable to “The Town of Los Gatos.”

B. Civic Center West Patio

The Civic Center West Patio (located at outside of the building at 106 and 108 E. Main Street) shall be used as the regular location for community gatherings and events open to all members of the public for the purposes of celebration, education, or

TITLE: TOWN FACILITIES USE	PAGE: 4 of 8	POLICY NUMBER: 1-04
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cultural enrichment. For consistency with previous Town Council approvals, Civic Center West Patio may also be referred to as the Sculpture Garden.

1. Reservations are processed on a “first come, first served” basis. A tentative reservation may be made up to one year in advance by submitting an application for a special event permit and Release of Liability. All required paperwork must be submitted with original signatures.
2. Private events are not allowed with the exception of approved events hosted by the tenants of 106 and 108 East Main Street as stated in tenant lease agreements.
3. Scheduled events must not interfere with the conduct of official Town business or be unduly disruptive to others present in Town Hall or to immediately adjacent properties.
4. The following must be submitted and approved consistent with Town Code:
 - a. Special event permit application or Town agreement.
 - b. Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance.
 - c. Release of Liability, Assumption of Risk and Indemnity Agreement
 - d. Complete payment of all applicable fees and charges for use as established within the Municipal Code and are contained in the Town’s Fee Schedule. All checks are to be made payable to “The Town of Los Gatos.”

C. Council Chambers

The Town Council Chambers may be reserved by federal, state, county, and municipal agencies, and schools for activities that benefit Los Gatos residents and students. The Town Council Chambers may also be reserved by agencies providing government education programs. A reservation of the Chambers includes access to the Chambers Lobby.

1. The Town may grant permission to use the Town Council Chambers in the following priority order:
 - a. Town Council/Board, Commission, and Committees, including ceremonial events
 - b. Town Departments

- c. Town established Organizations and Committees (in which Town employees or Town officials participate)
 - d. Government Agencies and Officials
 - e. Non-profit organizations that are related to Town business or are hosting events that are associated with a government purpose.
 - f. Private events are not allowed with the exception of approved events hosted by the tenants of 106 and 108 East Main Street as stated in tenant lease agreements.
2. Reservations are processed on a “first come, first served” basis. A tentative reservation may be made up to six months in advance by submitting an Application, and Release of Liability. All required paperwork must be submitted with original signatures.
3. The following must be submitted and approved no later than two weeks prior to the scheduled event:
 - a. Application for Use of Room
 - b. Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance
 - c. Release of Liability, Assumption of Risk and Indemnity Agreement
4. During the evenings (after 5 p.m.), on the weekends (Saturdays and Sundays), and on Holidays, all users will be charged a Facility Use Fee and other applicable charges for Town services as set forth in the Fee Schedule, unless the meeting or event is for official Town business, and the meeting or event is planned, managed, and led by the Town Council or Town Department.
5. A Building Attendant is required for all meetings regardless of meeting time or size. The Town will schedule the Building Attendant and invoice the applicant for the actual time scheduled. The Building Attendant will be responsible for the opening and closing of the facility and overseeing that the room is returned to its original condition.
6. Use is limited to a maximum of ten hours, per event, subject to other scheduled events, or Town use.
7. Groups composed of minors must be supervised by at least one (1) adult for every ten (10) children under the age of 18 at all times while they are using the facility.

TITLE: TOWN FACILITIES USE	PAGE: 6 of 8	POLICY NUMBER: 1-04
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8. Alcohol is not permitted in the Council Chambers or Lobby.
9. Applicants are responsible for setting up before and cleaning up after each event in the Chambers. Applicants shall be responsible for removing all personal property, owned or rented, prior to vacating the facility.
 - a. Absolutely no open flames are allowed in the Chambers or Lobby.
 - b. No foreign substance may be applied to the floor, walls, or ceiling (this includes decorations).
 - c. No rice, birdseed, confetti, etc., may be thrown in or around the Town Council Chambers or Lobby.
 - d. Gambling or wagering is prohibited.
10. Pursuant to state and federal law and Town Council Resolution 2017-24, the use of the Town Council Chambers will not be restricted because of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, medical condition, religion, place of national origin, or any other basis prohibited by law or Town resolution or policy.
11. Any exceptions to the use regulations must be approved, in writing, by the Town Manager.

D. Council Chambers Lobby (as a stand alone facility)

The Council Chambers Lobby located within Town Hall shall be used for conducting Town related business only.

1. The Town may grant permission to use the Council Chambers Lobby in the following priority order:
 - a. Town Council and Town Council Committees
 - b. Planning Commission
 - c. Other Town Boards, Committees, and Commissions
 - d. Town Departments

E. Civic Facilities Conference and Meeting Rooms

Conference and Meeting Rooms located within Town Hall, the Library, the Police Operations Building, and the Parks and Public Works Corporation Yard shall be used solely for conducting official Town business.

1. The Town may grant permission to use the Meeting Rooms in the following priority order:
 - a. Town Council and Town Council Committees

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- b. Planning Commission
- c. Other Town Boards, Committees, and Commissions
- d. Town Departments

F. Town Plaza Park and Oak Meadow Park

Town Plaza Park and Oak Meadow Park, as focal points for the Town of Los Gatos, shall be predominantly used as a location for free gatherings that are open to the public. Events allowed include concerts, festivals, ceremonies, or other similar activity for the purposes of celebration, education or cultural enrichment.

1. Reservations are processed on a “first come, first served” basis. A tentative reservation may be made up to one year in advance by submitting an application for a Park Use Permit and/or a Special Event Permit, and Release of Liability. All required paperwork must be submitted with original signatures.
2. Events are limited to one event per week.
3. No event may completely overtake the park. The park must always remain accessible to the public.
4. Private events (outside of Town designated reservable spaces as identified below) and fee for entrance events are not allowed. Incidental item sales may be allowed if they are consistent with the event activities, as approved.
- 4.5. Reservable spaces may include the Oak Meadow Bandstand, Oak Meadow picnic areas, Oak Meadow horseshoe pits, and other similar areas as designated by the Director of Parks and Public Works.
- 5.6. Public entrances to the event venue must remain open during all times of the event. This includes gates, roads, sidewalks, pathways, and parking lots. If shuttle buses are approved, the parking lot may be closed with a parking attendant present. Parking spots cannot be reserved, unless to increase handicap spots.
- 6.7. Events beyond the scope of the Town’s Special Event Permit shall require a Town agreement and receive Town Council approval.
- 7.8. The following must be submitted and approved no later than six months prior to the scheduled event:

TITLE: TOWN FACILITIES USE	PAGE: 8 of 8	POLICY NUMBER: 1-04
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- a. Park Use Permit, Special Event Permit Application, or Town Agreement.
- b. Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance.
- c. Release of Liability, Assumption of Risk and Indemnity Agreement.
- d. Complete payment of all applicable fees, deposits, and charges for use as established within the Municipal Code, Park Use Fees, and as contained in the Town's Fee Schedule. All checks are to be made payable to "The Town of Los Gatos."

APPROVED AS TO FORM:

Robert Schultz, Town Attorney



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 10

DATE: November 23, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution for the California Public Employees' Retirement System Health Plan Fixing the Employer Contribution at an Equal Amount for Employees and Annuitants

RECOMMENDATION:

Adopt a resolution (Attachment 1) for the California Public Employees' Retirement System health plan fixing the employer contribution at an equal amount for employees and annuitants.

BACKGROUND:

The Town has an existing agreement with the California Public Employees' Retirement System (CalPERS) to provide its health program to active Town employees and retired annuitants. The CalPERS health program is governed by the Public Employees Medical and Hospital Care Act (PEMHCA), and the California Code of Regulations (CCR) of the California Public Employees Retirement Law (PERL). PEMHCA contains all the rules and regulations that a contracting agency must adhere to. PEMHCA is the health contract and the resolution is the method by which an agency elects to become subject to PEMHCA. The resolution also defines an agency's contribution amount toward the cost of health premiums for active employees and retired annuitants.

DISCUSSION:

Until 2018, the Town contribution method toward the cost of health premiums for active employees and retired annuitants was 100% of Kaiser Region 1 rates for employee only coverage and 90% for dependent coverage. During labor negotiations in 2018, agreements were executed to reduce the Town retired annuitant health contribution amount to the lower required employer PEMHCA contribution amount only for Town employees hired after varying dates in 2018 that complete (5) years of continuous Town service prior to retiring from the

PREPARED BY: Lisa Velasco
Human Resources Director

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

DISCUSSION (continued):

Town. The contribution change is anticipated to reduce future Other Post-Employment Benefits (OPEB) actuarial liabilities. Although the reduction to the future retired annuitant health contribution amount is already approved in the Town's existing labor agreements, CalPERS requires that the contribution change is also formalized by executing a new PEMHCA resolution approved by the Town's governing body.

The resolution will not change the contribution amount for current employees. However, due to CalPERS system constraints resulting in the lack of ability to maintain different tiers of retired annuitant employer health contribution amounts, all retired annuitants will notice a reduction in the Town's contribution amount as it is adjusted to the PEMHCA rate. To ensure prior benefit agreements with retired annuitants are not impacted by the new resolution, the Town will directly reimburse affected retired annuitants monthly the difference between the PEMHCA rate and the previously agreed 100% or 90% of the Kaiser Region 1 rates.

CONCLUSION:

Staff recommends that the revised CalPERS resolution is adopted to formalize the retired annuitant employer health contribution change for employees that were hired after varying dates in 2018 so that the Town's health premium cost is correctly calculated by CalPERS for these future retirees.

FISCAL IMPACT:

The revised resolution is an administrative change, therefore, there is no fiscal impact.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. CalPERS Health Resolution

RESOLUTION NO. Number
FIXING THE EMPLOYER CONTRIBUTION
UNDER THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT
AT AN EQUAL AMOUNT FOR EMPLOYEES AND ANNUITANTS

- WHEREAS, (1) Town of Los Gatos is a contracting agency under Government Code Section 22920 and subject to the Public Employees' Medical and Hospital Care Act (the "Act"); and
- WHEREAS, (2) Government Code Section 22892(a) provides that a contracting agency subject to Act shall fix the amount of the employer contribution by resolution; and
- WHEREAS, (3) Government Code Section 22892(b) provides that the employer contribution shall be an equal amount for both employees and annuitants, but may not be less than the amount prescribed by Section 22892(b) of the Act; now, therefore be it
- RESOLVED, (a) That the employer contribution for each employee or annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of family members, in a health benefits plan up to a maximum of the PEMHCA Minimum per month, plus administrative fees and Contingency Reserve Fund assessments; and be it further
- RESOLVED, (b) Town of Los Gatos has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above; and be it further
- RESOLVED, (c) That the participation of the employees and annuitants of Town of Los Gatos shall be subject to determination of its status as an "agency or instrumentality of the state or political subdivision of a State" that is eligible to participate in a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code, upon publication of final Regulations pursuant to such Section. If it is determined that Town of Los Gatos would not qualify as an agency or instrumentality of the state or political subdivision of a State under such final Regulations, CalPERS may be obligated, and reserves the right to terminate the health coverage of all participants of the employer; and be it further
- RESOLVED, (d) That the executive body appoint and direct, and it does hereby appoint and direct, the Town Manager to file with the Board a verified copy of this resolution, and to perform on behalf of Town of Los Gatos all functions required of it under the Act; and be it further
- RESOLVED, (e) That coverage under the Act be effective on March 1, 2021.

Adopted at a regular meeting of the Town Council at Los Gatos, CA, this 1st day of December, 2020.

Signed: _____
Marcia Jensen, Mayor

Attest: _____
Shelley Neis, Town Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 11

DATE: November 20, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Accept the Ad Hoc Wildfire Committee Report and Direct Staff to Return to Council in One Year with an Action Item Progress Update

RECOMMENDATION:

Accept the Ad Hoc Wildfire Committee Report and direct staff to return to Council in one year with an action item progress report.

BACKGROUND:

On October 6, 2020, the Town Council approved the creation of a Town Council Ad Hoc Committee to study wildfire mitigation in the Wildland Urban Interface (WUI). The Council confirmed that the Committee should study a broad variety of wildfire mitigation policy and project options to improve the Town's wildfire resiliency and return to Council with a report of their findings. The Committee examined best practices of similar WUI communities, lessons learned from recent fires, and other relevant areas of wildfire science. The Committee was directed to complete the report in time for Council consideration on December 1, 2020 to align with the annual Strategic Priority and budget development process.

The Committee was comprised of the following members:

- Mayor Marcia Jensen
- Vice Mayor Barbara Spector
- Assistant Town Manager Arn Andrews
- Director of Parks and Public Works Matt Morley
- Assistant Santa Clara County Fire Chief Brian Glass
- Resident member Rob Stump
- Resident member Brad Gordon

PREPARED BY: Arn Andrews
Assistant Town Manager

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

BACKGROUND (Continued):

The Ad Hoc Committee met on October 21, 2020, October 29, 2020, November 9, 2020, and November 16, 2020. The elements and findings of the report are described in the Discussion section below.

DISCUSSION:

The Ad Hoc Wildfire Committee Report (Attachment 1) is the culmination of peer reviewed best practices, lessons learned from recent statewide fires, mitigation characteristics unique to Los Gatos, and significant input from the Santa Clara County Assistant Fire Chief. The Committee Report is structured around five primary strategic goals accompanied by relevant action items. The identified goals in the report appear sequentially in their order of initial priority focus. Goal sequencing is not intended to reflect attainment of one goal prior to initiating another but rather a function of prioritizing protection of life followed by property and the environment. It should be noted that goals and many action items are anticipated to often be addressed concurrently. Following are the identified goals of the Committee:

- Emergency Communication
- Emergency Evacuation
- Roadside Fuel Reduction
- Open Space and Residential Land Management
- Emergency Partnerships

In addition to the sequencing of goals, action items have been individually ranked into either Priority 1 (within 2 years) or Priority 2 (within 3 to 5 years). The priority ranking of action items is a byproduct of establishing reasonable and attainable actions as opposed to signifying certain action items are less important than others. The report also establishes quantifiable metrics for each goal to measure progress of goal/action item attainment.

And lastly, the report identifies additional action items for consideration which include potential for legislative engagement and potential mitigation funding strategies.

CONCLUSION:

The Ad Hoc Wildfire Committee Report establishes a roadmap for concrete action items that mitigate the risks associated with wildfire in the WUI and the community consequences associated with those risks.

PAGE 3 OF 3

SUBJECT: Ad Hoc Wildfire Committee Report

DATE: November 19, 2020

COORDINATION:

This staff report was coordinated with the Town Manager, Town Attorney, and Director of Parks and Public Works.

FISCAL IMPACT:

No fiscal impact with acceptance of report

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Ad Hoc Wildfire Committee Report

Town of Los Gatos Ad Hoc Wildfire Committee Report

December 1, 2020



Town of Los Gatos
110 East Main Street
Los Gatos, CA 95030

Prepared by
Ad Hoc Wildfire Committee

Coordinated with
Santa Clara County Fire Department

ATTACHMENT 1

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Committee Introduction and Goals

Los Gatos is listed as a Community at Risk from wildfires on the Federal and the California Fire Alliance list of Communities at Risk in Santa Clara County. Wildfires occur in the vicinity of Los Gatos and present a significant danger to people and property within the Town. The Town of Los Gatos considers wildfire mitigation to be a top tier priority for the safety of its citizens and an economic imperative.

Recognizing this significant risk, the Los Gatos Town Council convened an Ad Hoc Wildfire Committee to study a broad variety of wildfire mitigation policy and project options to improve the Town's wildfire resiliency. The Committee consisted of Mayor Marcia Jensen, Vice Mayor Barbara Spector, Assistant Fire Chief Brian Glass, Community Member Rob Stump, Community Member Brad Gordon, Assistant Town Manager Arn Andrews, and Parks and Public Works Director Matt Morley. Mr. Stump chaired the Committee.

The Committee's goal was to identify a variety of mitigation strategies that could be implemented within the next two years and three to five-year timeframes, and collectively identify strategies that may assist in reducing wildfire risk while improving community preparedness in response to wildfire. The Committee examined best practices of similar communities within the Wildland Urban Interface (WUI), lessons learned from recent fires, and other relevant areas of wildfire science. The following report identifies areas for emphasis of future Council wildfire mitigation efforts.

This report describes the Los Gatos WUI and then identifies specific mitigation topics. For each topic, goals, action items, and metrics are identified.

Key Terms

Defensible Space An area around the perimeter of structures in which vegetation, debris, and other types of combustible fuels are treated, cleared, or reduced to slow the rate and intensity of potentially approaching wildfire or fire escaping from structures.

Hillside Collector Streets A low-to-moderate-capacity road which serves to move traffic from local streets to arterial roads. Unlike arterials, collector streets are designed to provide access to residential properties.

Home Ignition Zone (HIZ) A concept of the home ignition zone was developed by a retired USDA Forest Service fire scientist in the late 1990s, following some breakthrough experimental research into how homes ignite due to the effects of radiant heat. The HIZ is divided into three zones; immediate (0 to 5 feet), intermediate zone (5 to 30 feet), extended zone (30 to 100 feet).

Temporary Refuge Areas (TRAs) Pre-identified area(s) where firefighters and members of the public can immediately take refuge for temporary shelter and short-term relief in the event that access to an established safety zone is compromised.

Very High Fire Hazard Severity Zone (VHFHSZ) State law requires that all local jurisdictions identify Very High Fire Hazard Severity Zones within their jurisdictions. Inclusion within these zones is based on vegetation density, slope severity and other relevant factors that contribute to fire severity.

Wildland Fire Specialist Conducts inspections for residents living in the high fire hazard areas, providing information, advice, and assistance to property owners. Initiates defensible space surveys and develops and maintains a positive and productive dialog with the community. Identifies and coordinates hazard abatement projects to mitigate the effects of wildfire within the District.

Los Gatos Wildland Urban Interface (WUI)

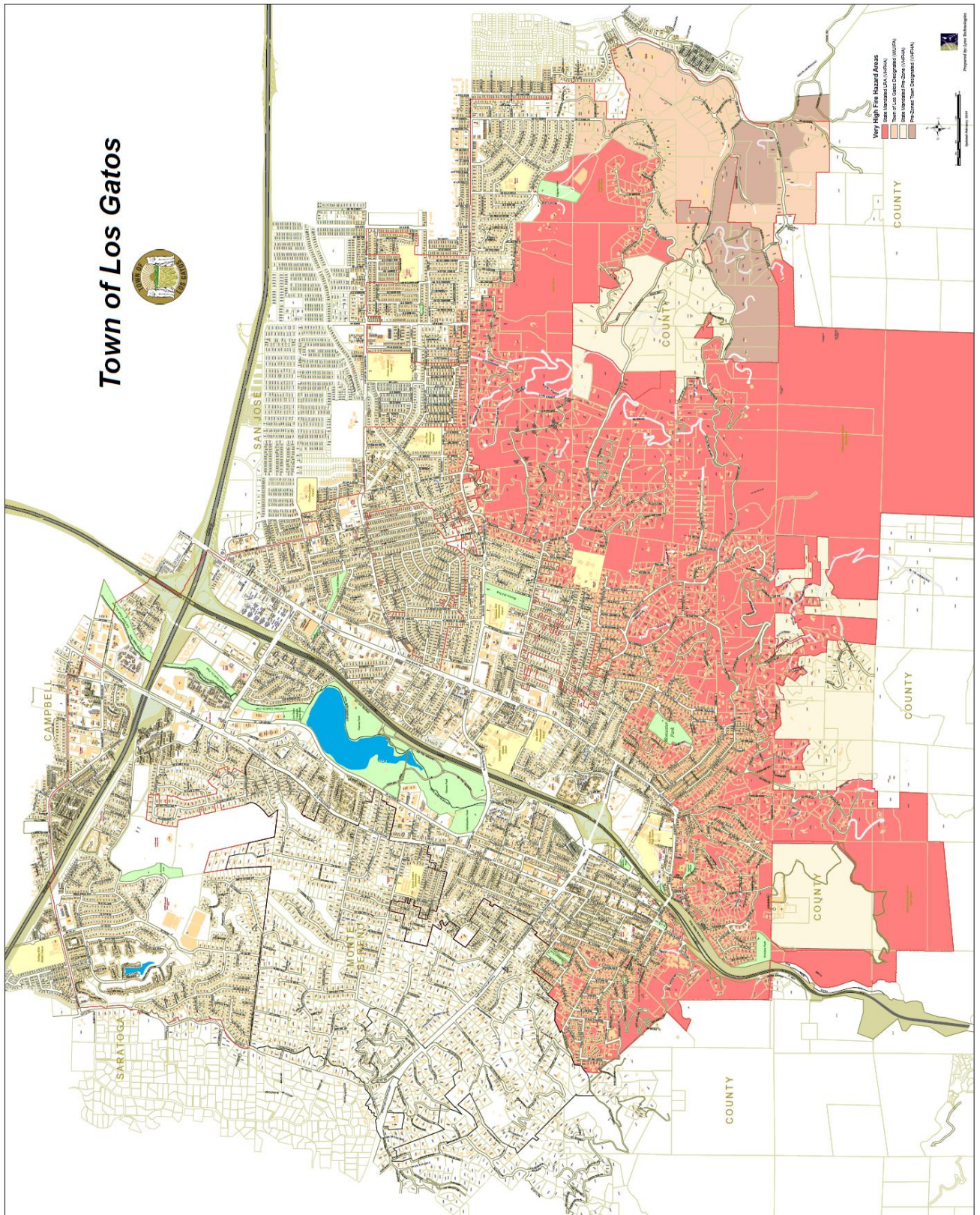
The Wildland Urban Interface (WUI) area is best described as an area that transitions from a natural condition (wildland) to a developed area (urban). Homes and other development in the WUI are at risk of catastrophic wildfire due to the presence of vegetation that could fuel a wildfire. The WUI creates an environment in which fire can move readily between structural and vegetative fuels, increasing the potential for wildland fire ignitions and the corresponding potential loss of life and property.

The Los Gatos WUI planning area includes primarily Very High Fire Hazard Severity Zone areas on the southern side of Los Gatos. The areas shaded in red in Figure 1 illustrate the extent of WUI lands within the Town. Approximately a quarter of the Town's total residences are located within the WUI. Of an estimated 2018 Town total of 13,299 residences, the WUI contains approximately 3,091. In addition, at an estimated 2.2 residents per household the WUI is home to approximately 6,800 residents among a Town total of 30,250.

The majority of the northern perimeter of the WUI tends to be flatter terrain with higher concentrations of residences. To illustrate this residential concentration, 1,784 of the 3,091 residences in the WUI are located within a quarter mile of the northern boundary.

Town currently utilizes preestablished areas for the maintenance and execution of its Community Emergency Response Team (CERT) program. The CERT maps contained in the Appendix also provide a detailed mapping of the Town WUI area, as well as routes of ingress/egress within CERT boundaries.

Figure 1



Emergency Communication

In the event of an emergency, it is an inherent responsibility of local government organizations to keep the public informed about natural, human-caused, and technological disasters. Studies show that people rarely act on a single warning message alone. To be effective, warnings should be delivered in various formats across multiple media platforms. The use of multiple platforms helps to increase the reliability of warning delivery, while also providing a sense of corroboration that will encourage recipients to take protective actions. In addition, many emergency subscription platforms are opt-in systems which leave non-adopters out of the information loop. In Los Gatos approximately only 23% of residents (6,942) have opted into the cell notification systems of Alert SCC and Nixle.

As illustrated below many notification systems are dependent on functioning internet and cell service. As evidenced by conditions created by recent fires, neither cell service nor internet service may be relied upon during large scale events, particularly when such an event coincides with a planned Public Safety Power Shutoff (PSPS).

Mass Notification Landscape



GOAL:

All residents should receive emergency communications in a timely manner.

ACTION ITEMS	PRIORITY TIMEFRAME
Maximize the use of Nixle/AlertSCC and ensure that existing communication systems are fully utilized.	Priority 1 – within 2 years

Increase resident adoption of Town social media platforms and SCCFD Twitter feed	Priority 1 – within 2 years
Explore additional non-cell/internet reliant emergency communication systems e.g. siren system.	Priority 1 – within 2 years
Increase SCCFD Ready, Set, Go Programs in Town	Priority 1 – within 2 years
Explore adding electronic message boards in front of fire stations and possibly police station	Priority 1 – within 2 years

METRICS
<ul style="list-style-type: none"> • Percentage of residents opting into Alert SCC and Nixle • Percentage of residents signing up for Town/SCCFD social media platforms • Number of Alert SCC/Nixle promotions per year • Percentage of residents with secondary means of receiving communications • Number of residents receiving Ready, Set, Go trainings in Town per year

Emergency Evacuation

The majority of the Town’s WUI neighborhoods are served by Hillside Collector Streets which serve properties located in hillside areas, carrying traffic to arterial streets and additional neighborhood collectors. Many of these roadways are designed as one-way routes. During emergency events, both emergency responders and evacuees will be attempting to use the same roadways, thereby hindering access for both groups. Due to the critical importance of providing ingress for emergency vehicles and equipment to the fire area while simultaneously allowing egress to residents attempting to evacuate, the Town will evaluate the existing width, grade, and turning radius on these critical routes in order to improve access.

GOAL:

To the greatest extent feasible, create and maintain conditions necessary for efficient and effective evacuations.

ACTION ITEMS	PRIORITY TIMEFRAME
Identify and explore the development of roadside and other Temporary Refuge Areas (TRAs) throughout the WUI.	Priority 1 – within 2 years

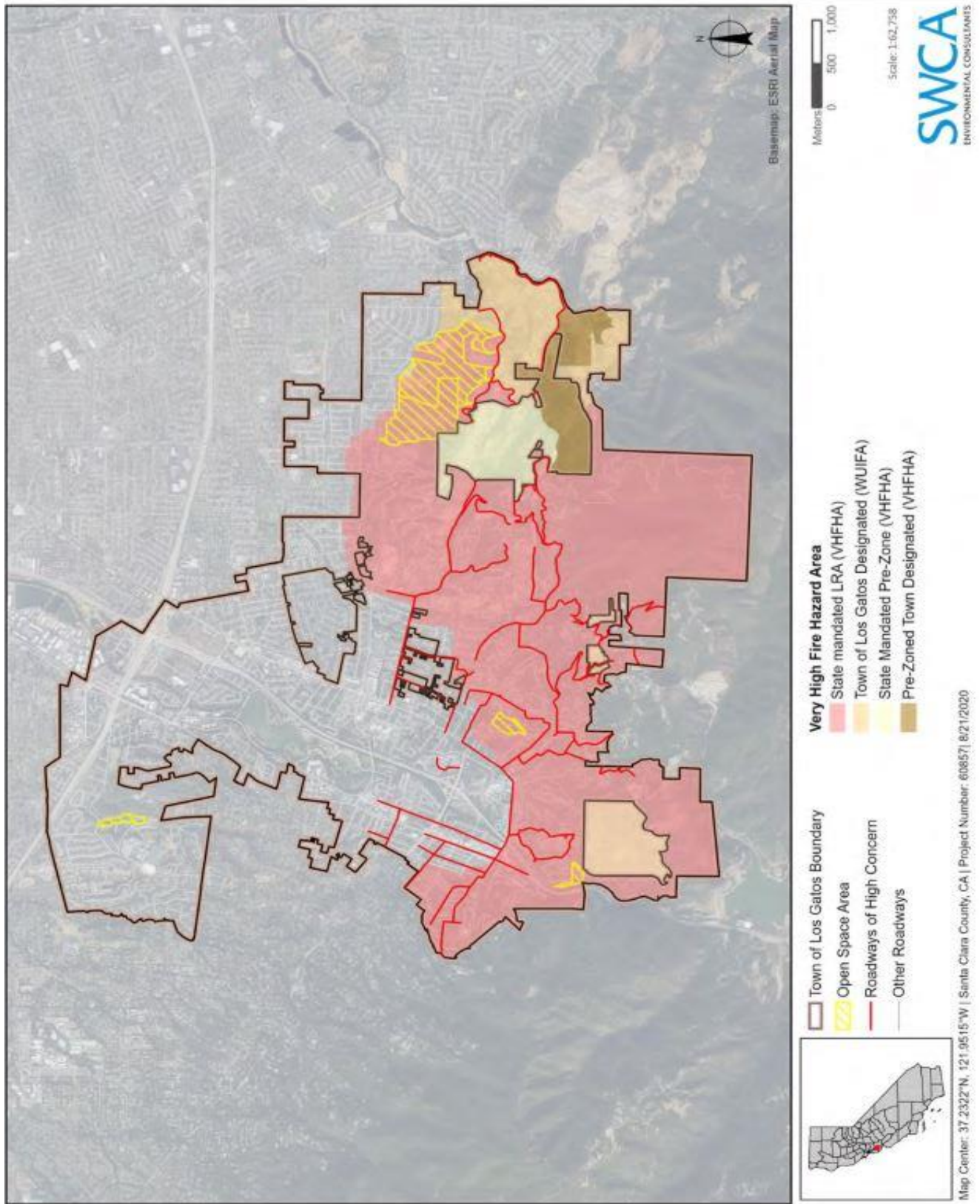
Assess and address evacuation feeder routes leading out of the WUI throughout Los Gatos.	Priority 1 – within 2 years
Examine elimination of on-street parking where appropriate	Priority 2 – within 3 to 5 years
Implement reflective home address signage throughout the WUI.	Priority 2 – within 3 to 5 years
Study/identify and develop alternate evacuation routes throughout the WUI.	Priority 2 – within 3 to 5 years
Identify potential road widening, turnout projects throughout the WUI. Develop a multi-year project to implement needed improvements.	Priority 2 – within 3 to 5 years
Develop plan to practice annually simulated evacuations in WUI neighborhoods.	Priority 2 – within 3 to 5 years
Leverage SCCFD Zone Haven GIS platform for the planning/implementation of evacuations.	Priority 2 – within 3 to 5 years

METRICS
<ul style="list-style-type: none"> • TRAs developed within each of the 7 CERT zones in the WUI • Percentage of WUI roadways with 20 ft of clear width • Percentage of identified WUI roadway improvement projects completed • Number of reflective home signs deployed per year • Number of residents participating in simulated evacuations per year

Roadside Fuel Reduction

Generally, roads are maintained to serve the transportation needs of the public; however, because roadsides are frequently the site of ignition for wildfires and evacuees may need to use the roadways to leave the area even if the vegetation on both sides of the road is on fire. Routes may also be blocked due to consequences associated with an incident including; fallen trees, spot fires, smoke, intense heat, long flame lengths, downed power lines, or vehicle accidents. The following map illustrates 31.09 miles of roadways of highest concern (colored red) for vegetation management.

Figure 2



GOAL:

Vegetation along primary hillside roadways should be maintained to achieve a clearance of 20 feet horizontally and 13 feet six inches vertically above roadways, as well as clearance of non-fire-resistant vegetation within 10 feet of the roads.

ACTION ITEMS	PRIORITY TIMEFRAME
Complete current 11-mile Fuel Reduction project by February 28, 2021.	Priority 1 – within 2 years
Develop a plan to ensure that the 31.09 miles of highest roadway concern identified in Exhibit 2 achieve a 6-year management cycle (5 miles per year).	Priority 1 – within 2 years
Identify/map all private roadways in the WUI.	Priority 1 – within 2 years
Work with residents to educate and implement vegetation management practices for these private properties.	Priority 2 – within 3 to 5 years

METRICS
<ul style="list-style-type: none"> • Number of miles of new vegetation management performed per year • Number of continuous miles of vegetation management maintenance per year • Percentage of private roadways mapped • Percentage of private roadway residents contacted per year • Percentage of private roadway residents implementing vegetation management

Open Space and Residential Land Management

California Public Resources Code (PRC) Section 4291 mandates 100 feet of defensible space around structures in high fire severity zones, within which vegetation, debris, and other types of combustible fuels are treated, cleared, or reduced to slow the rate and intensity of potentially approaching wildfire or fire escaping from structures.

The creation of reasonable and adequate Defensible Space focuses on measures to modify and break up hazards created by continuity of available fire fuels, both horizontal (across the ground) and vertical (from the ground up into the crowns of brush and trees). Fuels that exhibit a large degree of both vertical and horizontal continuity are the most hazardous; in particular, when they are on slopes. Thus, mitigation of these fuel sources through clearing and treatment, while simultaneously addressing environmental concerns such as protection of native habitats and the potential for erosion, is

particularly important. In addition to the Defensible Space requirements around structures in the WUI, the Town and other public/private agencies are stewards of large open spaces and undeveloped parkland.

GOAL:

Ensure that all public and private property owners are maintaining the mandated defensible spaces.

ACTION ITEMS	PRIORITY TIMEFRAME
<p>Conduct annual defensible space inspections and enforce compliance with state and local fire codes.</p> <ul style="list-style-type: none"> • Develop strong neighborhood relationships to educate all property owners of their defensible space obligation. • Partner on a pilot Wildland Fire Specialist program to develop relationships with VHFHZ homeowners and drive compliance through education and inspection. • Educate residents about Home Ignition Zone (HIZ) inspection program. • Explore region partnership with SCCFD fuels crews (once developed) and defensible space inspectors. 	<p>Priority 1 – within 2 years</p> <p>Priority 1 – within 2 years</p> <p>Priority 1 – within 2 years</p> <p>Priority 2 – within 3 to 5 years</p>
<p>Explore SCCFD performing defensible space citation function.</p>	<p>Priority 2 – within 3 to 5 years</p>
<p>Develop private driveway fuel reduction initiative</p>	<p>Priority 2 – within 3 to 5 years</p>
<p>Develop Eucalyptus eradication plan for Town property within the WUI.</p>	<p>Priority 1 – within 2 years</p>
<p>Develop incentive program (cost share) for residential Eucalyptus removal possibly utilizing tree replacement fund.</p>	<p>Priority 2 – within 3 to 5 years</p>
<p>Develop policy for prohibition of highly flammable plants for new construction within the WUI.</p>	<p>Priority 1 – within 2 years</p>
<p>Develop Community chipping program</p>	<p>Priority 2 – within 3 to 5 years</p>

METRICS

- Number of residential contacts performed by WFS per year
- Number of residential defensible space inspections coordinated by WFS per year
- Percentage of vegetation on Town owned Open Space maintained
- Percentage of WUI residents participating in HIZ trainings per year
- Number of SCCFD fuel crews (once developed) deployed in LG per year
- Number of SCCFD defensible space inspections conducted in LG per year
- Number of private driveways implementing vegetation management per year
- Number of Town Eucalyptus trees removed per year
- Number of residential eucalyptus trees removed per year
- Dollar amount of residential eucalyptus grants per year
- Number of tons community chipping removed per year

Emergency Partnerships

The nature of wildfire spread requires a regional approach to wildfire mitigation. A partial list of governmental and private entities with vegetation management responsibilities appears below. Additional regional partners which provide educational and other assistance in creating community resilience to wildfire are also listed.

Santa Clara County Fire District (SCCFD): Santa Clara County Fire Department is an all-risk fire department and provides fire suppression inclusive of structure and vegetation/wildland fire mitigation, technical rescue operations, emergency medical services (EMS), hazardous materials (HazMat) mitigation, fire prevention, community education and risk reduction services (CERRS), disaster preparedness, community emergency preparedness and service responses.

Pacific Gas & Electric (PG&E): PG&E provides electricity to the Town of Los Gatos, and controls rights-of-way necessary to maintain overhead transmission and distribution lines, many of which run through the WUI areas. The Town collaborates with PG&E to treat vegetation in the WUI along PG&E's electric transmission line right-of-way to increase power reliability and reduce ignition potential and resulting wildland fire hazard.

Santa Clara County Firesafe Council: The Town of Los Gatos supports and collaborates with the Santa Clara Firesafe Council. The Firesafe Council is a non-profit organization that provides resources to coordinate public and private landowners in Santa Clara County to reduce the threat of wildfire.

Santa Clara County Parks: Periodically, the Parks Department makes use of prescribed burns to manage non-native vegetation, reduce fuel loading, promote

biodiversity and native vegetation. The Department also provides training in conducting managed burns and in wildfire fighting techniques and principles.

West Valley Cities: The West Valley cities of Monte Sereno and Saratoga share with Los Gatos a large number of Very High Fire Severity Zones within their borders (see appendices). Because wildfire extends across community borders, an incident in one jurisdiction can be expected to spread to neighboring jurisdictions. Communication between West Valley cities and coordination of wildfire prevention strategies is therefore critical to the prevention of wildfire.

Mid-Peninsula Open Space District (Midpen): Midpen is an independent Special District that manages 26 Open Space Preserves, containing nearly 65,000 acres of public land. In Los Gatos, Midpen manages and maintains significant land holdings along the Town’s southern border (see Appendix). Wildland fire prevention, preparedness, and response are all critical components of Midpen’s ongoing land stewardship which is largely accomplished through the management of vegetation within its preserves in order to reduce the risk and severity of wildfire, with a focus on ecological health and wildland fire resilience.

County Roads, Valley Water, and CalTrans: These regional governmental partners each have properties and rights-of-way within and/or adjacent to the Town of Los Gatos. These agencies must meet a shared specification for roadside fuel reduction and support safety in general.

San Jose Water Company (SJW): San Jose Water is an investor-owned public utility, and is one of the largest urban water systems in the United States, serving over 1 million people in the greater San Jose metropolitan area. It maintains critical infrastructure in Town essential to fire suppression and manages watershed lands near Los Gatos.

GOAL:
Ensure all regional partners are implementing consistent land management practices to reduce wildfire risk on their properties and right-of ways.

ACTION ITEMS	PRIORITY TIMEFRAME
Work with neighboring cities of Monte Sereno and Saratoga to coordinate mitigation efforts and jointly advocate for the continuation and increased vegetation management among Town partners.	Priority 1 – within 2 years
Ensure timely communications between the Town and these entities regarding activities that may affect another partner’s land management.	Priority 1 – within 2 years

Explore regional projects outlined in CWPP for possible grant funding.	Priority 2 – within 3 to 5 years
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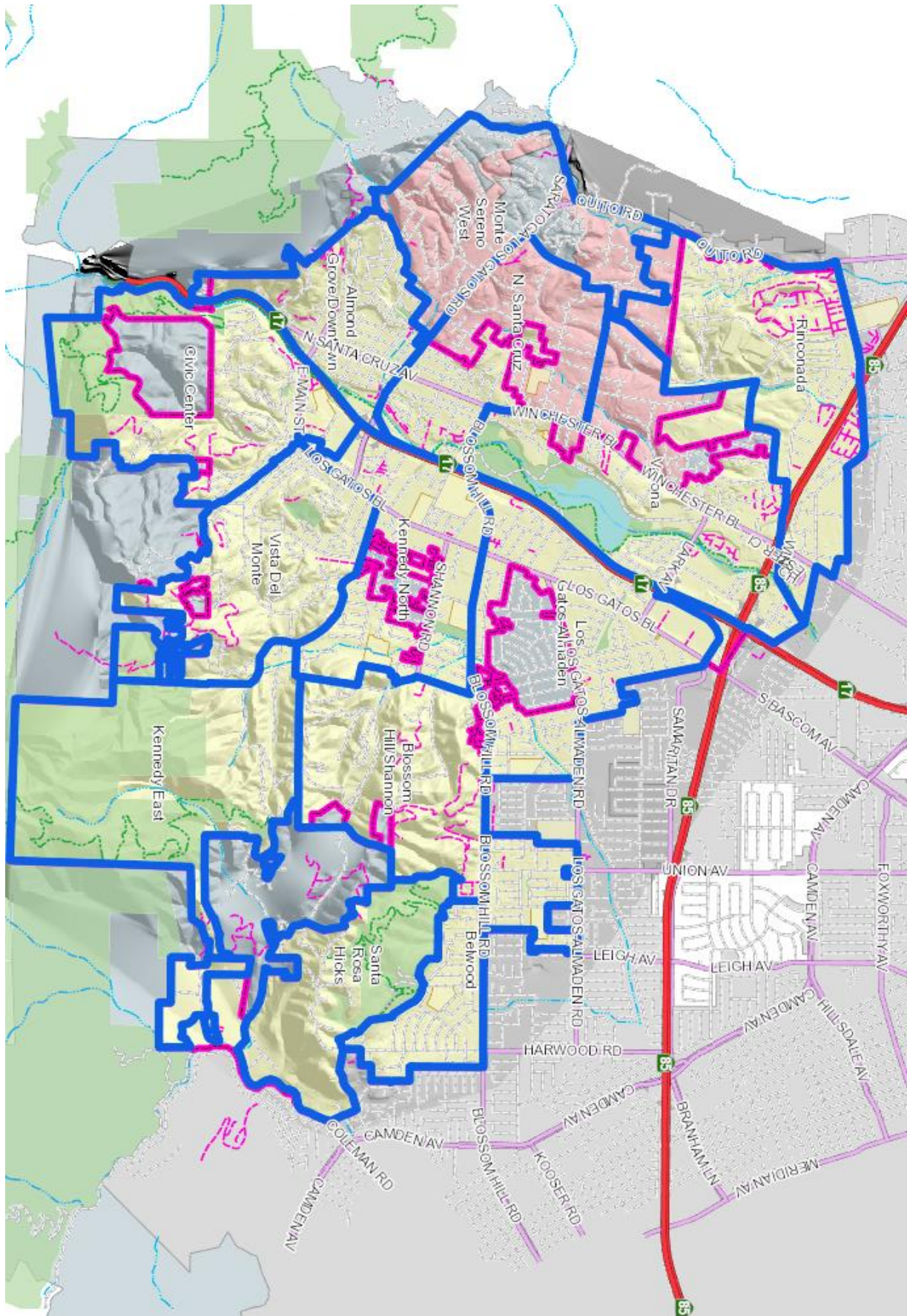
METRICS
<ul style="list-style-type: none"> • Number of coordination meetings per year • \$ amount of grants issued/received • Number of veg mgt miles performed by partner organizations per year

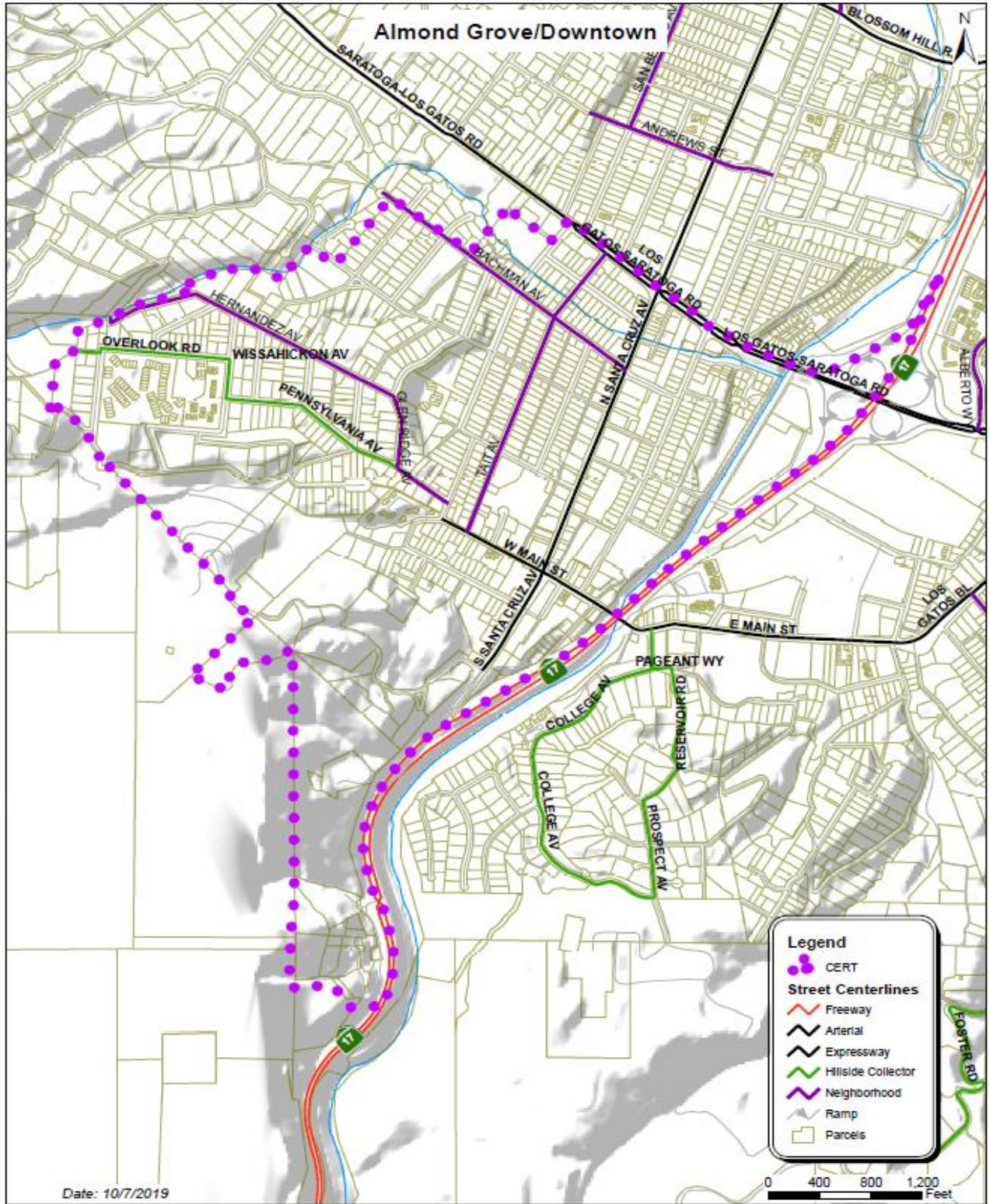
Additional Action Items

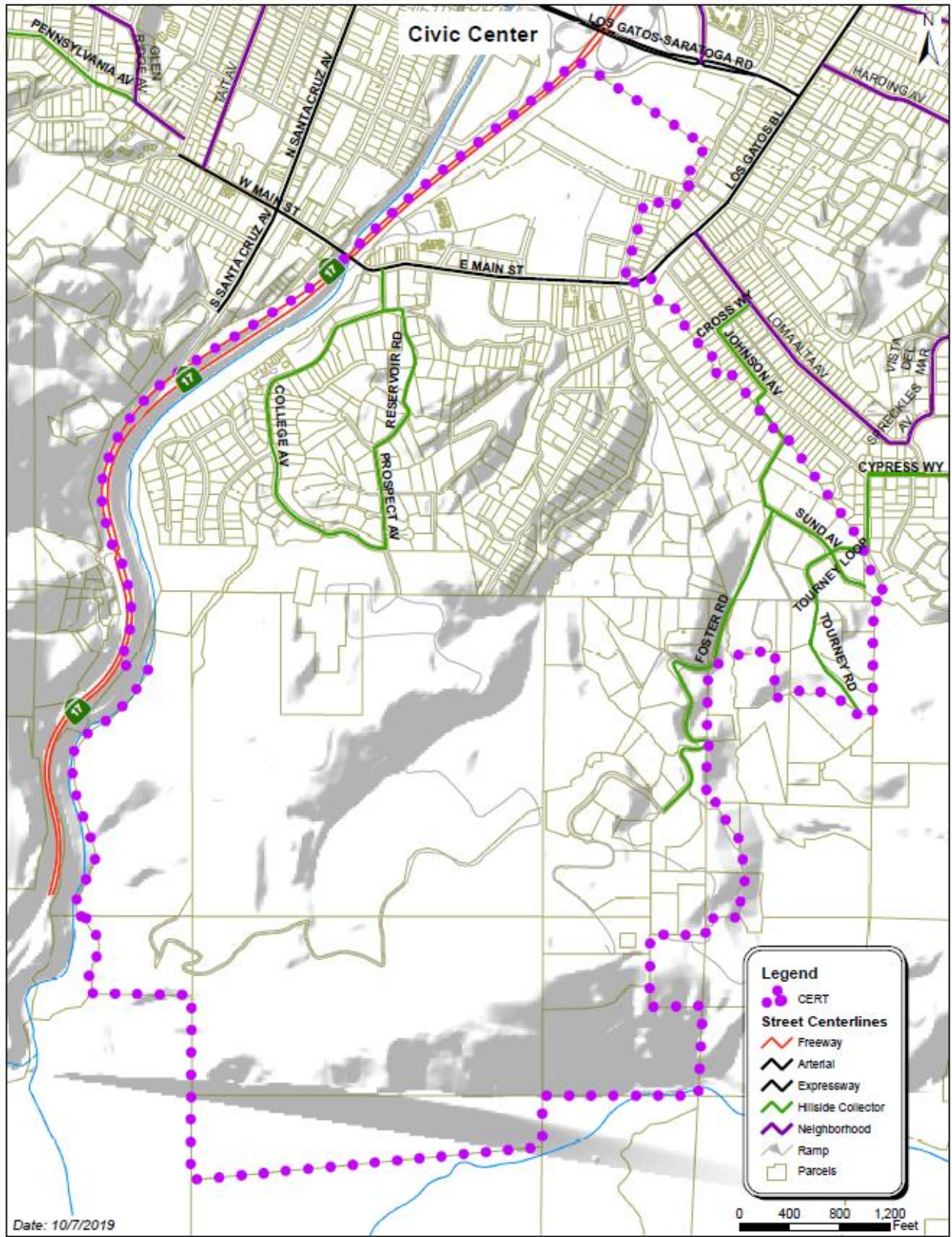
ACTION ITEMS	Priority Timeframe
Homeowners Insurance Availability <ul style="list-style-type: none"> • Advocate for legislative efforts toward the continuation of homeowner’s insurance in the WUI. • Pursue Firewise Community status for WUI hillside neighborhoods to satisfy homeowners Insurance requirements. 	Priority 1 – within 2 years Priority 1 – within 2 years
Address areas within the hillside that do not have public fire hydrant systems.	Priority 2 – within 3 to 5 years
Explore additional funding sources <ul style="list-style-type: none"> • Parcel Tax • Assessment Districts 	Priority 2 – within 3 to 5 years Priority 2 – within 3 to 5 years

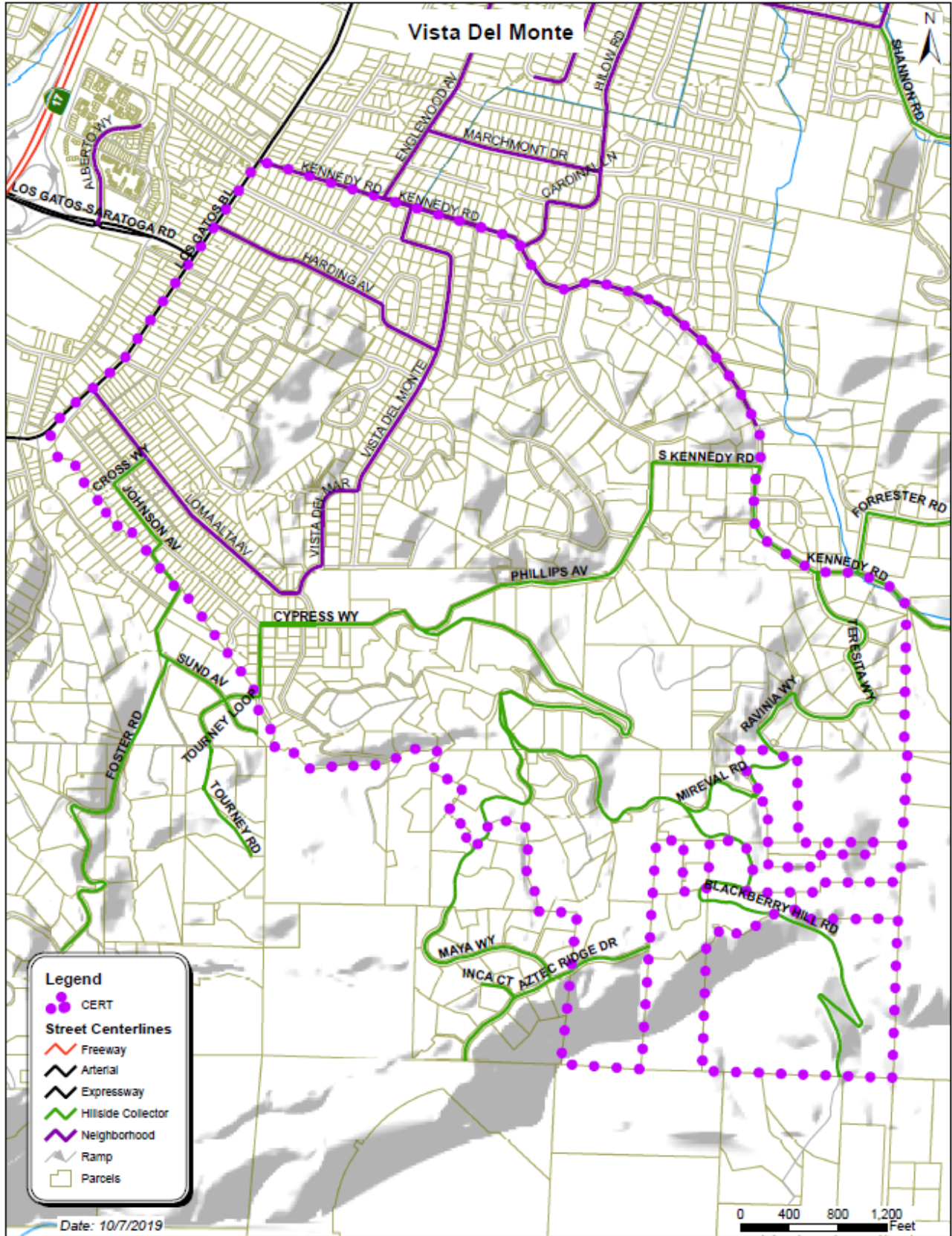
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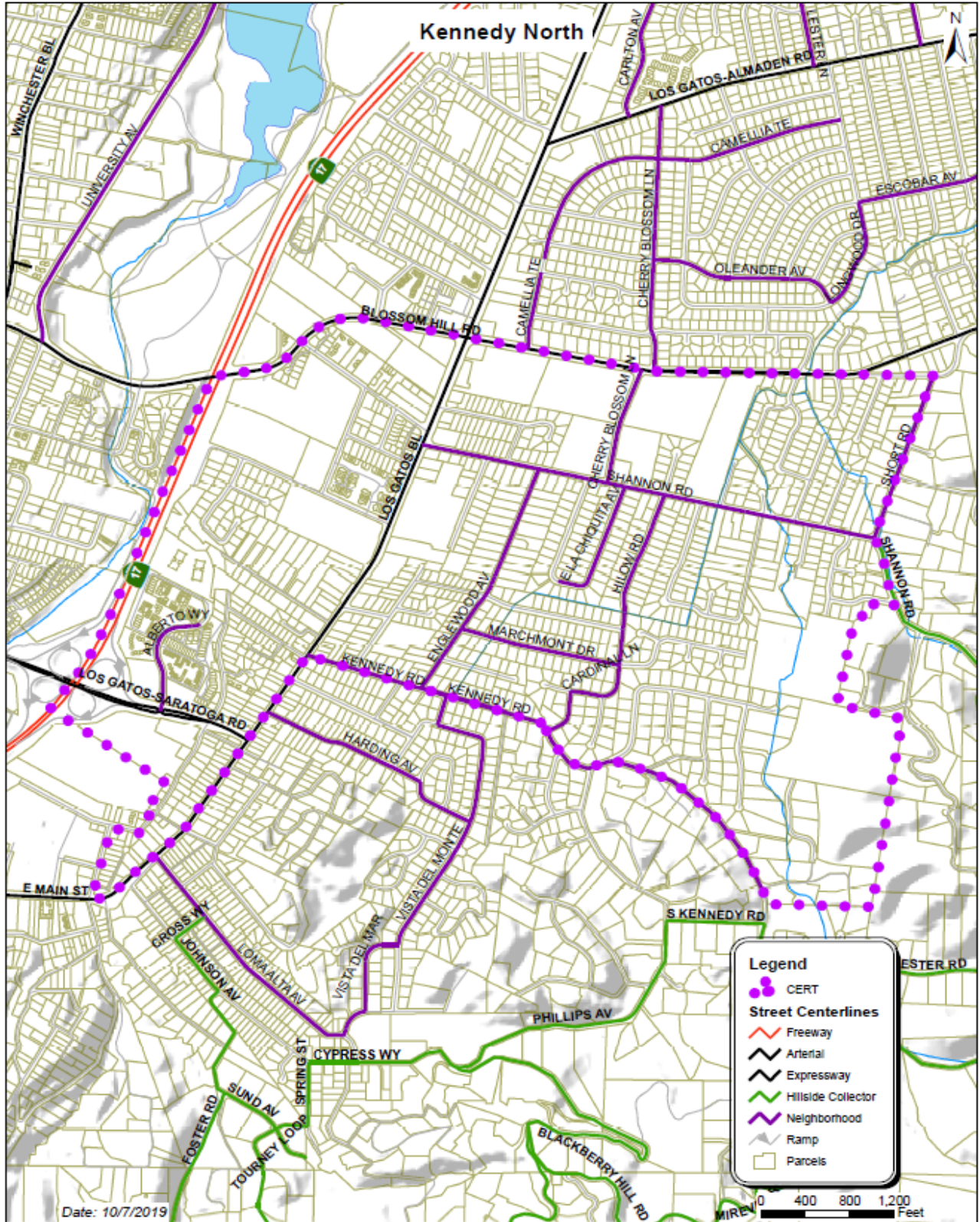
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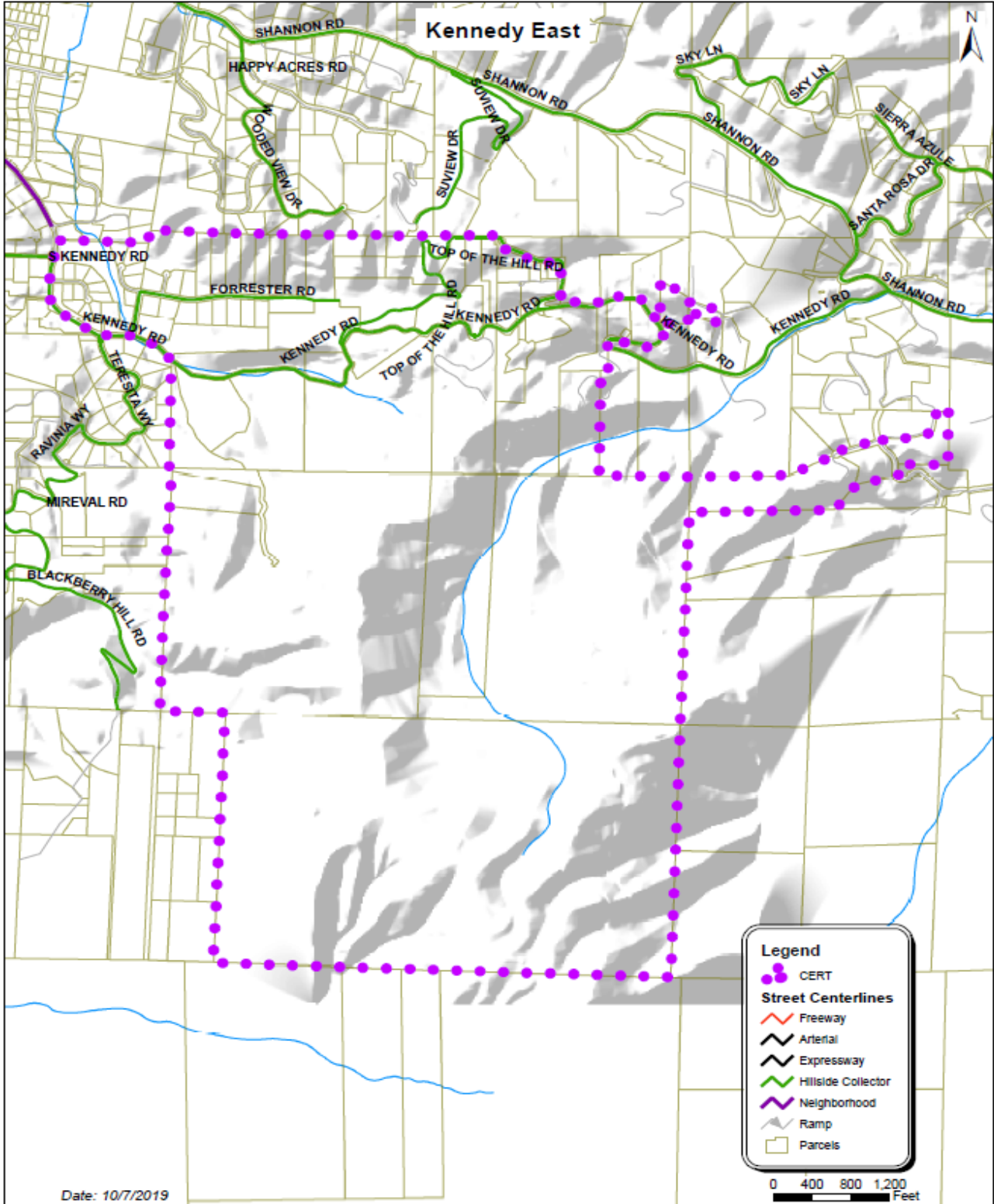


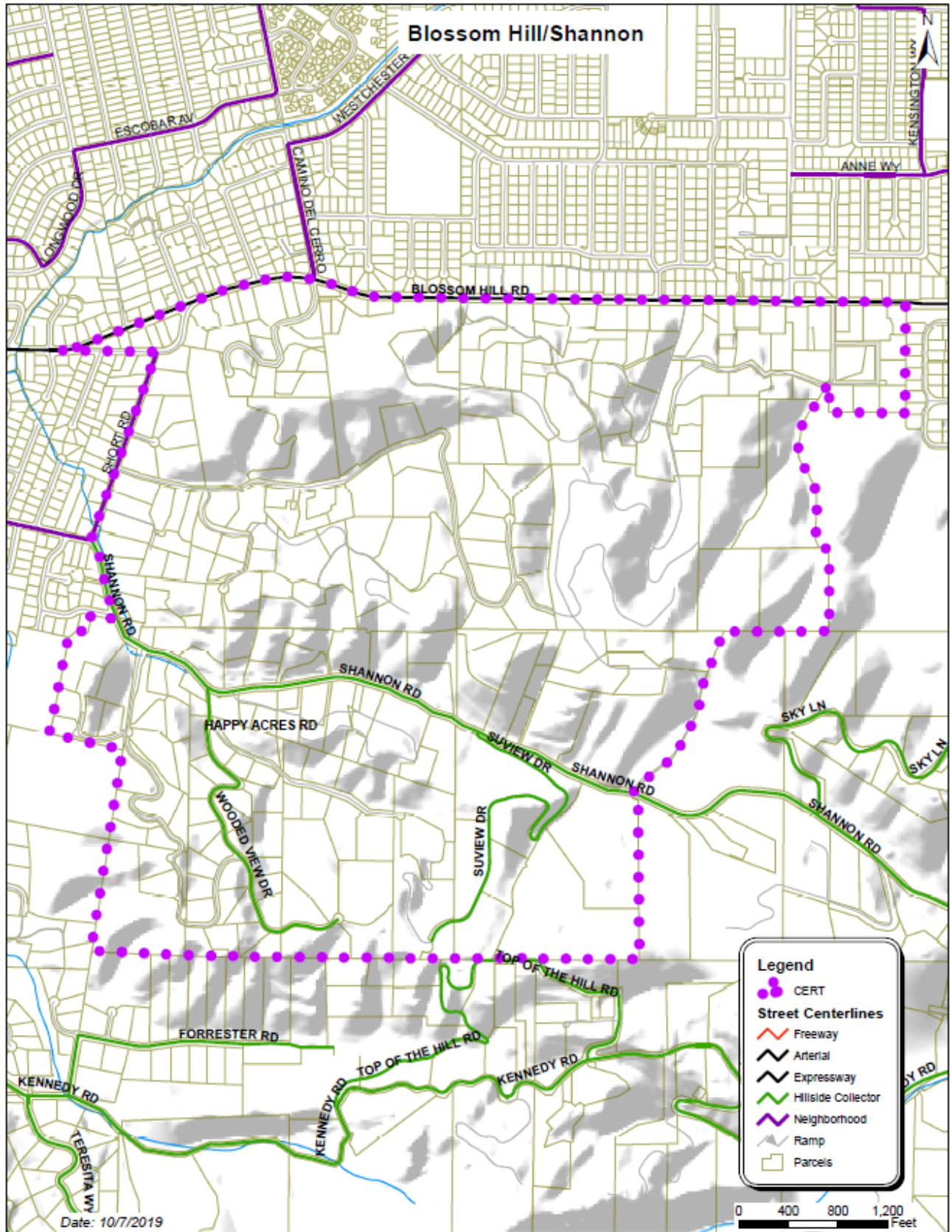


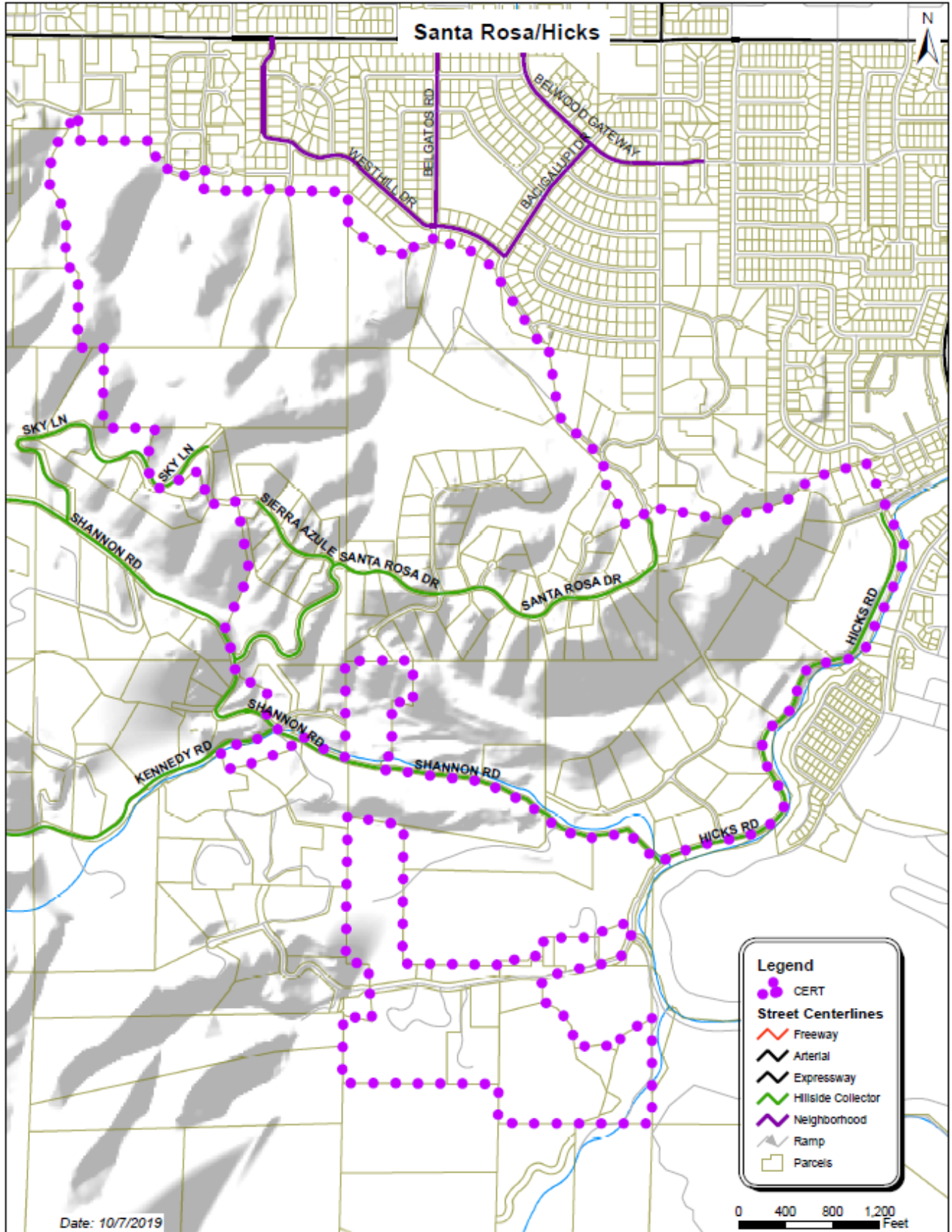








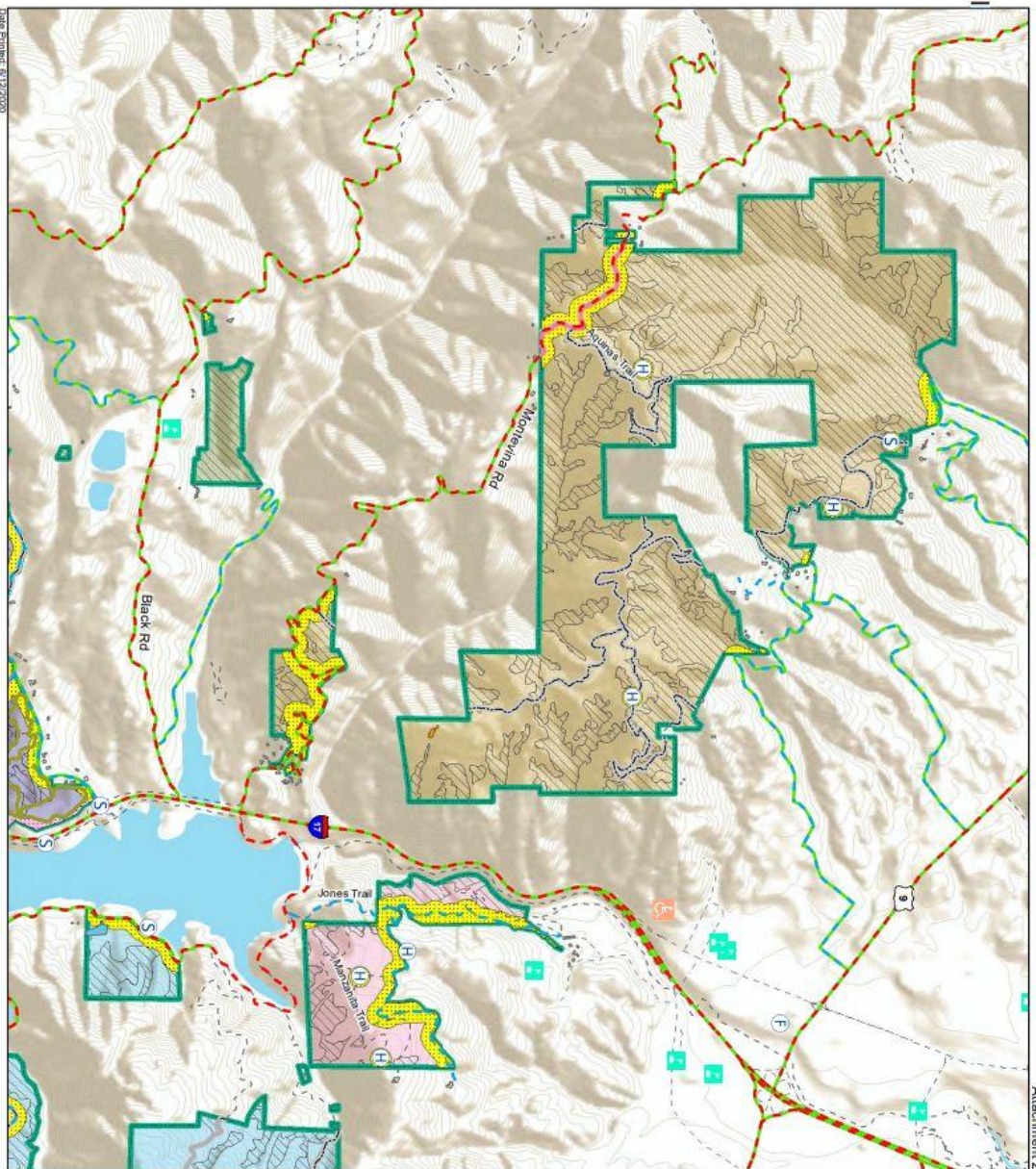
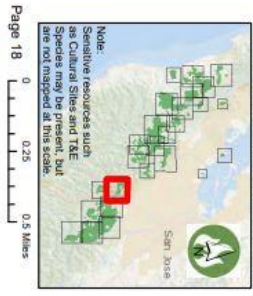




Existing and Potential Treatments EI Sereno/Felton Station/St. Joseph's Hill

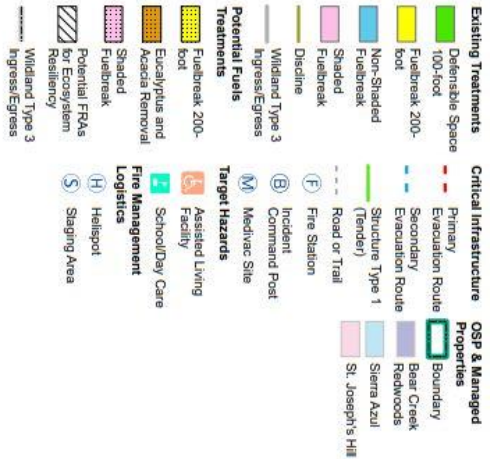
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|---|--------------------------------|-------------------------------------|
| Existing Treatments | Critical Infrastructure | OSP & Managed Properties |
| Fuelbreak 200-foot | Primary Evacuation Route | Boundary |
| Non-Shaded Fuelbreak | Secondary Evacuation Route | Bear Creek Redwoods |
| Shaded Fuelbreak | Structure Type 1 (Tender) | EI Sereno |
| Discline | Road or Trail | Felton Station |
| Wildland Type 3 Ingress/Egress | Fire Station | Sierra Azul |
| Potential Fuels Treatments | Target Hazards | St. Joseph's Hill |
| Fuelbreak 200-foot | Assisted Living Facility | |
| Eucalyptus and Acacia Removal | School/Day Care | |
| Shaded Fuelbreak | Fire Management Logistics | |
| Potential FRAs for Ecosystem Resiliency | Helipod | |
| Wildland Type 3 Ingress/Egress | Sleeping Area | |

* See Table of Contents page for additional symbology.
 ** Fuel break widths are maximums. Fuelbreaks may be constructed at any width up to the maximum width.

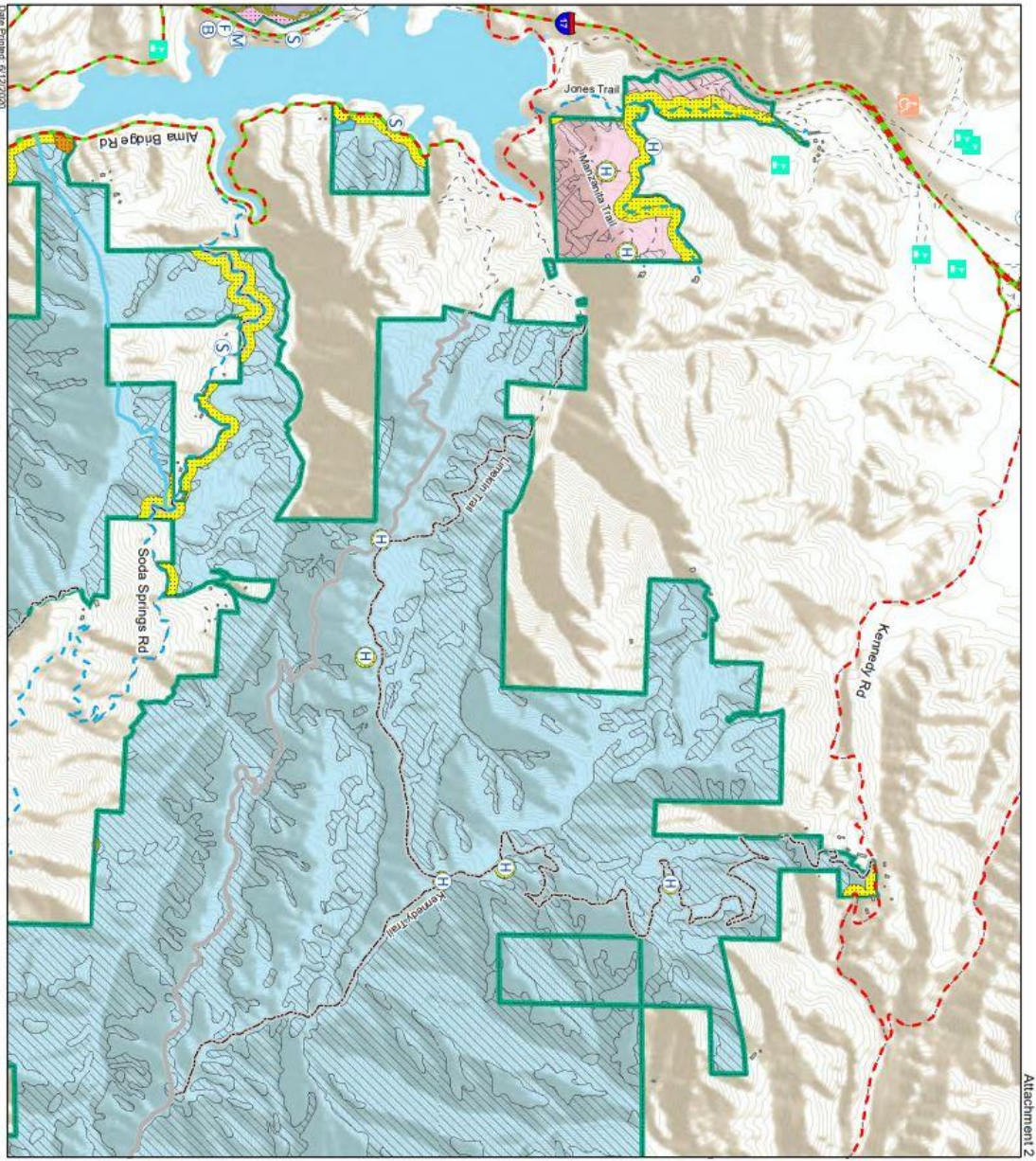
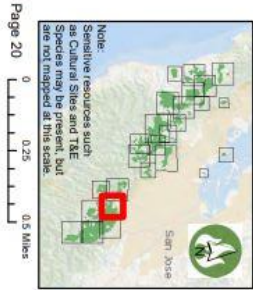


Attachment 2

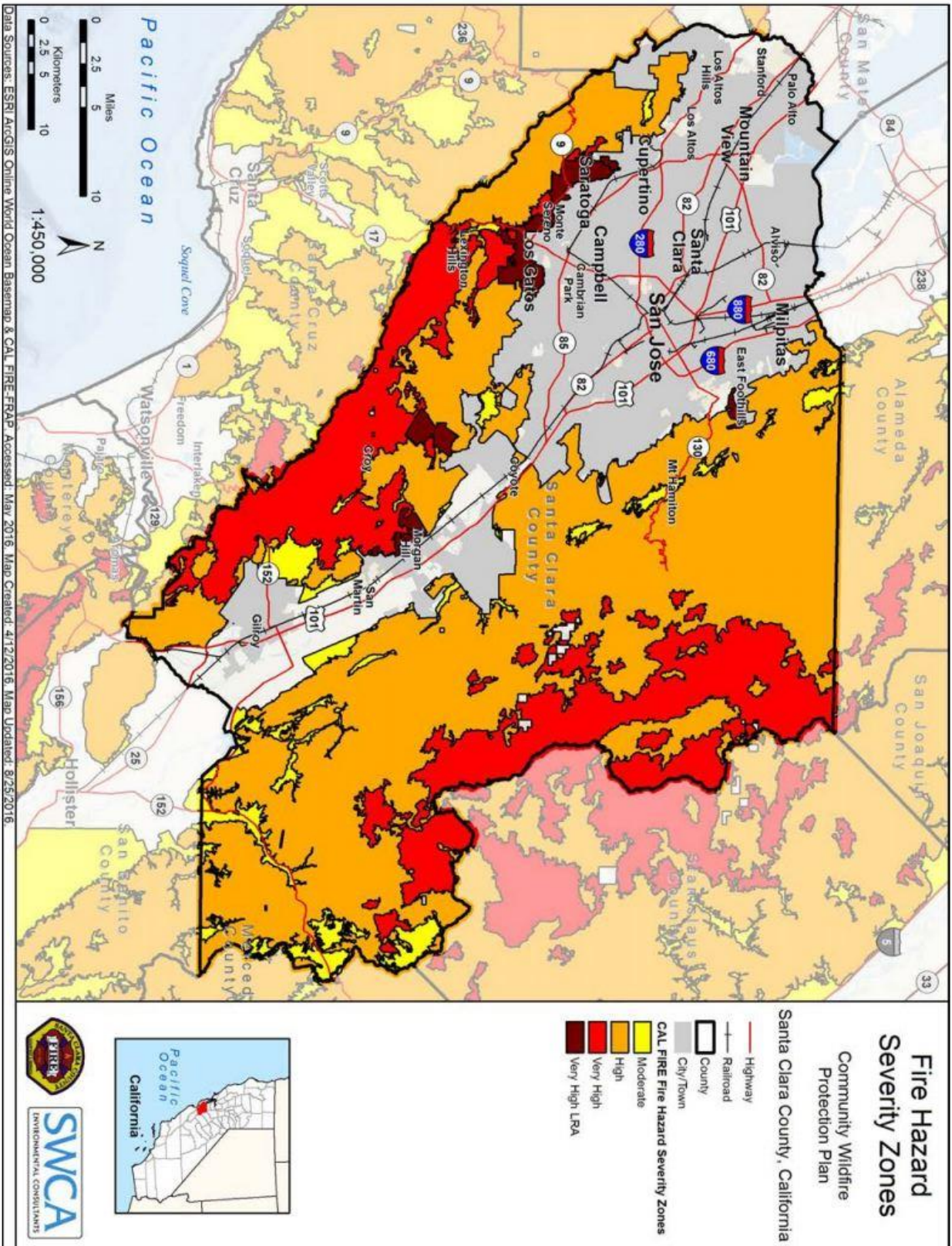
Existing and Potential Treatments Sierra Azul (1 of 5)



* See Table of Contents page for additional symbology.
 ** Fuel break widths are maximums. Fuelbreaks may be constructed at any width up to the maximum width.



Attachment 2



DRAFT



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 12

DATE: November 25, 2020

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803):

- a. Authorize the Town Manager to Negotiate and Execute a Measure B Funding Agreement with the Santa Clara Valley Transportation Authority (Attachment 1) to Accept a Measure B Grant in the Amount of \$2,754,990 for the Highway 17 Bicycle and Pedestrian Overcrossing Project Final Design Phase;
- b. Authorize Revenue and Expenditure Budget Increases in the Total Amount of \$3,701,200 (\$2,754,990 in Grant Fund and \$946,210 in General Fund Appropriated Reserve) in the Fiscal Year 2020/21 – 2024/25 Capital Improvement Program (CIP) Budget for the Highway 17 Bicycle and Pedestrian Overcrossing Project to Recognize the Receipt of Grant Funds in FY 2020/21;
- c. Authorize the Release of a Request for Proposals (Attachment 2) for the Highway 17 Bicycle and Pedestrian Overcrossing Design Project;
- d. Authorize the Town Manager to Negotiate and Execute a Consultant Agreement with the Highest Ranked Firm in an Amount Not to Exceed \$3,000,000; and
- e. Approve the Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan (Attachment 3).

RECOMMENDATION:

Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803):

- a. Authorize the Town Manager to negotiate and execute a Measure B Funding Agreement with the Santa Clara Valley Transportation Authority (Attachment 1) to accept a Measure B Grant in the amount of \$2,754,990 for the Highway 17 Bicycle and Pedestrian Overcrossing Project Final Design Phase;

PREPARED BY: Ying Smith
Transportation and Mobility Manager

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

- b. Authorize revenue and expenditure budget increases in the total amount of \$3,701,200 (\$2,754,990 in Grant Fund and \$946,210 in General Fund Appropriated Reserve) in the Fiscal Year 2020/21 – 2024/25 Capital Improvement Program (CIP) Budget for the Highway 17 Bicycle and Pedestrian Overcrossing Project to recognize the receipt of grant funds in FY 2020/21;
- c. Authorize the release of a Request for Proposals (Attachment 2) for the Highway 17 Bicycle and Pedestrian Overcrossing Design Project;
- d. Authorize the Town Manager to negotiate and execute a Consultant Agreement with the highest ranked firm in an amount not to exceed \$3,000,000; and
- e. Approve the Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan (Attachment 3).

EXECUTIVE SUMMARY:

The Highway 17 Bicycle and Pedestrian Overcrossing project has been identified as a local need through the Bicycle and Pedestrian Master Plan, the Traffic Impact Mitigation Fee program, and the Connect Los Gatos program. The Blossom Hill corridor has been identified in the regional Valley Transportation Plan 2040 and the Valley Transportation Authority's (VTA) Countywide Bicycle Plan.

To date, Town staff has emphasized the community outreach portion of this project, developing a project specific outreach plan and ensuring interested parties have an opportunity at every step to provide input.

The greatest portion of project funding comes from outside sources. Recommendation "a" allows for an agreement with the VTA to support the next phases of design through Measure B funding of \$2.75M. Because of the strong ranking of this project among all projects in the County, funding is available earlier than originally anticipated. Recommendation "b" makes the necessary fiscal year timing and budget adjustments to facilitate continued progress.

The next step of the project is to take the project through the next design phases and environmental analysis. Recommendations "c, d, and e" facilitate that effort with the goal of achieving a project that solves the challenges of the corridor. This report outlines those phases, the schedule, outreach, and Council decision points.

BACKGROUND:

The Highway 17 Bicycle and Pedestrian Overcrossing Project is one of the Connect Los Gatos projects and has received strong support from the Complete Streets Commission and other community members, while the Ohlone Court neighbors remain concerned. The project location is one of the most heavily travelled bicycle and pedestrian locations in Town, serving as a main crossing of Highway 17 on what are narrow and uncomfortable shoulders and sidewalks.

BACKGROUND (continued):

The location is used by all types of users, with perhaps the most notable being students going to and from school.

The Town began a Feasibility Study for the Highway 17 Bicycle and Pedestrian Overcrossing (BPOC) in September 2019. The project is included in the Fiscal Year 2020/21 – 2024/25 CIP Budget. At its March 3, 2020 meeting, the Town Council approved the project purpose and need, and authorized staff to proceed with design alternatives for a separate bicycle and pedestrian overcrossing. Establishing the purpose and need at the onset of the project development phase helps to ensure the project reflects the Council's and community's vision and priorities.

At its September 1, 2020 meeting, the Town Council approved the Feasibility Study for the project and directed staff to proceed with the final design of a separate bridge structure between 16 and 20 feet wide located immediately south of the Blossom Hill Road Bridge.

The *Highway 17 Bicycle and Pedestrian Overcrossing Feasibility Study* includes detailed information on the alignment alternative evaluation and technical reports. The project team also conducted extensive community engagement, which is documented in the *Community Engagement Activities Report*. Both documents are posted on the project website: <https://www.losgatosca.gov/2556/Hwy-17-Bicycle-Pedestrian-Overcrossing>.

Attachment 4 provides a summary of key project background information, including the project purpose and need, alternative evaluation, and community engagement in the Feasibility Study phase.

In April, staff submitted a grant application to the Santa Clara Valley Transportation Authority (VTA) for the Measure B Bicycle and Pedestrian Competitive Grant Program. In June, the VTA Board approved the Measure B program, including the \$2,754,990 award to fund the final design phase of this project.

DISCUSSION:

The next step to move this project forward is the final design phase, which will include preliminary engineering, environmental clearance, and final design. This phase of the project will be funded by the Measure B grant and the Town's local match. The recommended actions are necessary to proceed with the grant acceptance and allocate the Measure B dollars in the project. Relevant information is provided in this staff report to support the Town Council's consideration and evaluation.

DISCUSSION (continued):

Project Cost by Phase

The final design phase cost is estimated to be \$3,701,200. The construction cost is estimated to be \$24,932,000 and the total cost with all project phases combined would be \$28,867,700.

Table 1 shows the project costs by phase and funding sources.

Table 1 – Project Cost by Phase and Funding

Phase	Grant	Source	Town	Source/Year	Total
Feasibility Study	\$87,000	TDA3	\$147,000	TMF (FY19/20)	\$234,000
Final Design	\$2,755,000	Measure B	\$946,200	GFAR (FY20/21)	\$3,701,200
Construction	\$23,932,000	TBD	\$1,000,000	TBD	\$24,932,000
Total	\$26,774,000		\$2,093,200		\$28,867,200

Notes to Table 1:

1. TMF = Traffic Mitigation Fees, GFAR = General Fund Appropriate Reserve
2. Feasibility Study and Final Design costs are in 2020 dollars. Construction costs are in 2024/25 dollars (midpoint of construction). All costs rounded to nearest \$100.
3. Total project costs include all phases.
4. Construction costs are based on the most expensive structure type, steel arch.
5. The Town’s contributions in the Final Design and Construction phases are pending Town Council’s budget decisions.

Project Funding Plan

The Town has been very strategic in investing in the early stage of the project development using the Town’s Traffic Mitigation Fee and its share of the Transportation Development Act Article 3 (TDA 3) funds for the current phase. The progress has positioned the project to be competitive in grant programs, including the Santa Clara County 2016 Measure B program. The project was awarded \$2,754,990 in Measure B funds for the final design phase, which will require \$946,200 from the Town’s contribution as local match.

The Fiscal Year 2020/21 – 2024/25 CIP Budget shows \$946,200 in General Fund Appropriated Reserve (GFAR) funds as the local match in FY 2021/22. At the time the CIP budget was approved, the VTA Measure B grant funding decision was not finalized and the timing of the Measure B grant availability was unknown. The best assumption at that time was to put both the Measure B grant and the local match in the FY2021/22 budget, setting funds aside in next year’s CIP. This project was ranked number six out of 39 submitted regional projects. This competitive ranking allowed the Town to secure funding in the first fund distribution cycle due to the strength of the project. To take advantage of the Measure B funds, the fiscal portions of the staff recommendation would move the funds into the current fiscal year. The Measure B funds will be available upon the execution of the Funding Agreement (Attachment 1). The awarded Measure B grant can only be used for this project’s final design, as described in the grant application.

DISCUSSION (continued):

The Town has yet to secure funding for the project construction, with an estimated cost close to \$25 million. The first opportunity to compete for grant funding was the 2021 Active Transportation Program (ATP) cycle. However, after further consultation and analysis, staff concluded that the application would not be competitive in this over-subscribed program. The ATP grant program requested detailed construction phasing and cost information that was beyond the work prepared to date. Staff will continue to seek future grant funding opportunities as the design work progresses, including the next ATP funding cycle in two to three years.

Most of the grant programs are highly specialized with project types well defined. Considering the current revenue forecast and grant programs available at the State, regional and County levels, bicycle and pedestrian projects, such as this one, have a much higher chance of getting funded. For example, the ATP program is not likely to be affected by the revenue decrease due to the COVID-19 pandemic, unlike other State and regional transportation funds. Other project types, such as highway and roadway projects, will likely face uncertainty in revenue options.

Request for Proposal for the Final Design Phase

The project design phase would involve preliminary engineering, environmental determination and clearance, and final design. A draft of the Request for Proposal (RFP) to solicit proposals from qualified engineering design consultants for the final design phase of the project is included as Attachment 2. Below is a list of few key task items included in the draft RFP as scope of services:

- Completion of the required Caltrans project development process to obtain an encroachment permit for construction of the project. This includes completion of the Project Initiation Document (PID), Environmental Documents and Project Report (PA/ED), and the final project Plans, Specifications, and Estimates (PS&E). The process will require subsequent agreements between the Town and Caltrans, along with payment to Caltrans for reimbursement of Caltrans' assistance on the PID phase documents.
- Assistance to the Town in the selection of the final bridge type.
- Provision of consultant services in line with federal project delivery and reimbursement requirements to allow the project to remain eligible for future federal construction funding opportunities.
- Assistance to the Town in the presentation of the 35%, 65%, and 95% complete PS&E to the community and Town Council/Commissions for review and comments.
- Coordination with utility companies regarding the project and any necessary utility relocations and future services.

DISCUSSION (continued):

- Surveying, civil, geotechnical, environmental, structural and other professional engineering services as needed to complete the PS&E.
- Construction support services, potentially including materials testing. The final scope of services for the construction support services task will be refined and awarded when construction funding has been secured for the project.

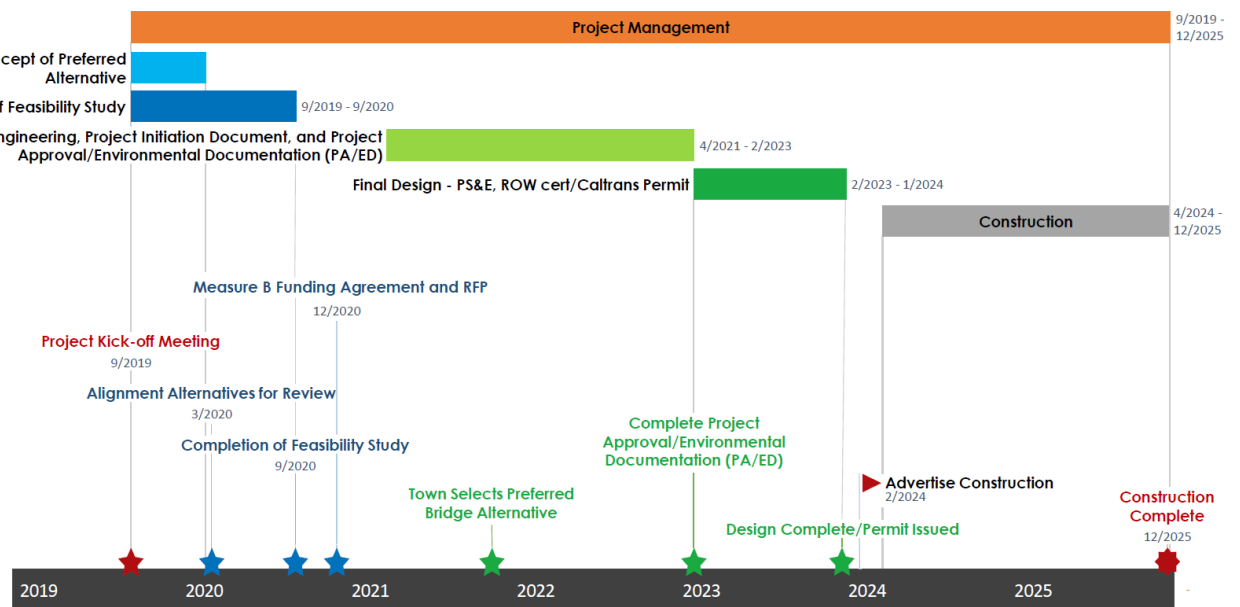
Upon the Town Council’s authorization, staff will release the RFP and conduct evaluation per the process described in the RFP. Consultant selection and contract negotiation are expected in February and March, with a target start date in April 2021.

Project Timeline

The project timeline is shown in Figure 1. The Feasibility Study phase was completed. With the Town Council’s approval, the final design work can begin in early 2021 and is expected to be completed in 2023. The last phase is construction, which could start as early as 2024 with construction completion by the end of 2025, if construction funding is available.

Figure 1 – Project Timeline

★ ★ Project milestones/Council decisions



Community Engagement Plan

In the Feasibility Study phase, community engagement for this project followed the framework identified in the *Connect Los Gatos Community Engagement Plan*, adopted by Town Council in

DISCUSSION (continued):

March 2020. The project team conducted extensive community engagement, which is documented in the Community Engagement Activities Report.

At the September 1, 2020 Town Council meeting, staff indicated that there would be ample opportunities for the community to provide input in the design and construction phases. Staff is recommending a project specific Community Engagement Plan to guide the engagement efforts in the design phase. The Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan (Attachment 3) provides a framework and describes specific tools and actions to maximize the opportunities for all stakeholders to provide meaningful feedback, as highlighted by the following three key components:

- Stakeholders: Identifying the key stakeholders will help ensure the community engagement efforts are comprehensive, focused, and effective. This is also one of the requirements of the Measure B Funding Agreement.
- Complete Streets and Transportation Commission: The Commission will play a more vital role in representing the community, providing input to the project team, and advising the Town Council in key decisions.
- Information Sharing and Transparency: The project webpage will be the central place for information, including project updates, meetings announcements, documents, and reports. Providing one central place for information allows for consistent and accessible information for all stakeholders.

CONCLUSION:

Approval of the staff recommendations would enable this project to continue through the design phases. In the design phases, the Project Team will present the design to the Town Council for its consideration at several decision points per the project schedule, including bridge type selection, 35% design/environmental documentation, and final design – PS&E, Right of Way certification/Caltrans permit. Upon approval of the final design, if the Town is successful in securing construction funds, the next step is issuing a construction bid, which will also require the Town Council's approval.

ALTERNATIVES:

The Town Council may reject the Measure B grant and choose not to proceed with final design. Although approving the Community Engagement Plan is not required per Town policies or the Measure B grant program, the Town Council's approval will strengthen the community engagement process. The Town Council may choose not to approve the engagement plan or request further changes.

COORDINATION:

At its November 12, 2020 meeting, the Complete Streets and Transportation Commission recommended approving the staff recommendations.

FISCAL IMPACT:

Table 2 shows a comparison between the adopted project budget vs. the proposed revised project expenditure and revenue.

Table 2 - Adopted 2020/21 Project Budget vs. Revised Expenditure and Revenue

Adopted 2020/21 Project Budget					
	2019/20	2020/21	2020/21	2021/22	Total
Revenue	Estimated	Revised Funding	Budget	Proposed	Project
GFAR				\$946,210	\$946,210
Traffic Mitigation	\$147,005				\$147,005
Grants	\$86,995			\$4,484,093	\$4,571,088
Total Revenue	\$234,000			\$5,430,303	\$5,664,303
Total Use of Funds	\$234,000			\$5,430,303	\$5,664,303
Revised 2020/21 Project Budget					
	2019/20	2020/21	2020/21	2021/22	Total
Revenue	Estimated	Revised Funding	Budget	Proposed	Project
GFAR		\$946,210	\$946,210		\$946,210
Traffic Mitigation	\$147,005				\$147,005
Grants	\$86,995	\$2,754,990	\$2,754,990		\$2,841,985
Total Revenue	\$234,000	\$3,701,200	\$3,701,200		\$3,935,200
Total Use of Funds	\$234,000	\$3,701,200	\$3,701,200		\$3,935,200

Table 2 reflects the following specific budget changes:

1. Decrease grant revenue by \$1,729,103 from \$4,484,093 to \$2,754,990 and shift the amount from FY 2021/22 to FY2020/21 to reflect the actual grant amount and year awarded;
2. Change the FY2021/22 GFAR budgeted funds of \$946,210 to FY 2020/21.
3. Shift all expenditures in FY2021/22 to FY 2020/21.

If Council approves this item, the Town will receive grant revenue of \$2,754,990 for the Highway 17 Bicycle and Pedestrian Overcrossing project final design phase. The

FISCAL IMPACT (continued):

recommendation also includes the authorization for a consultant agreement in an amount not to exceed \$3,000,000. The revised project budget and proposed uses are show on Table 3.

Table 3 – Fiscal Table

	Available Budget	Expended/ Encumbered to Date	Proposed Contract Amount	Available Balance
Traffic Mitigation	\$ 147,005	\$ 147,005		
TDA Article 3 (FY 18/19 & 19/20)	\$ 86,995	\$ 86,995		
Measure B Grant	\$ 2,754,990			
GFAR	\$ 946,210			
Total Budget	\$ 3,935,200	\$ 234,000	\$ 3,000,000	
Remaining Balance				\$ 701,200

Note to Table 3:

Measure B Grant and GFAR are only available upon the approval of recommended Council Action.

ENVIRONMENTAL ASSESSMENT:

Actions of authorizing a funding agreement, budget adjustments, approving a consultant services agreement, and approving a community engagement plan are not considered projects as defined under CEQA, and no further action is required. The construction of improvements is considered a project and environmental analysis will be prepared in the final design phase after preliminary engineering is completed.

Attachments:

1. Draft Measure B Funding Agreement with the Santa Clara Valley Transportation Authority.
2. Draft Request for Proposals for Professional Engineering Design Services.
3. Draft Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan.
4. Highway 17 Bicycle and Pedestrian Overcrossing Project Background.
5. Public Comment Received.

DRAFT – 11.20.2020
FUNDING AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
BICYCLE & PEDESTRIAN OVERCROSSING OVER HIGHWAY 17

THIS AGREEMENT (“AGREEMENT”) is between the TOWN OF LOS GATOS, referred to herein as “TOWN”, and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as “VTA”. Hereinafter, TOWN and VTA may be individually referred to as “PARTY” or collectively referred to as “PARTIES”.

I. RECITALS

1. Whereas, on June 24, 2016, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2016 to authorize a one-half of one percent retail transaction and use tax (“2016 MEASURE B”) for 30 years for nine transportation-related program categories; and
2. Whereas, on November 8, 2016, the voters of Santa Clara County enacted 2016 MEASURE B for 30 years to pay for the nine transportation-related program categories; and
3. Whereas, the duration of 2016 MEASURE B will be 30 years from the initial year of collection, beginning April 1, 2017, and continuing through March 31, 2047; and
4. Whereas, on October 5, 2017, the VTA Board of Directors established the 2016 Measure B Program (“PROGRAM”) and adopted the 2016 Measure B Program Category Guidelines; and
5. Whereas, the PROGRAM includes a Bicycle and Pedestrian program category (“BIKE/PED CATEGORY”) to fund bicycle and pedestrian projects and educational programs; and
6. Whereas, the BIKE/PED CATEGORY consists of three sub-categories, including a Capital Projects Competitive Grant Program (“BIKE/PED CAPITAL PROGRAM”); and
7. Whereas, on October 3, 2019 the VTA Board of Directors adopted the BIKE/PED CAPITAL PROGRAM criteria; and
8. Whereas, on December 3, 2019 the Fiscal Year (FY) 2020 (July 1, 2019 to June 30, 2020) to Fiscal Year 2030 (July 1, 2029 to June 30, 2030) BIKE/PED CAPITAL PROGRAM call for projects was released; and
9. Whereas on June 4, 2020 the VTA Board of Directors approved the FY2020 to FY2030 10-year priority project list for the BIKE/PED CAPITAL PROGRAM; and
10. Whereas, Bicycle & Pedestrian Overcrossing over Highway 17 is an eligible project on the VTA Board of Directors approved FY2020 to FY2030 10-year priority project list for the BIKE/PED CAPITAL PROGRAM; and

11. Whereas, the anticipated cost for the Conceptual Design and Final Design Phases of the Bicycle & Pedestrian Overcrossing over Highway 17 project is expected to be \$3,935,700; and
12. Whereas, TOWN has contributed \$234,500 towards the Conceptual Design Phase of the Bicycle & Pedestrian Overcrossing over Highway 17; and
13. Whereas, VTA and TOWN desire to specify herein the terms and conditions under which the BIKE/PED CAPITAL PROGRAM funds will be administered to TOWN by VTA as directed by the VTA Board of Directors.

NOW, THEREFORE, the PARTIES agree as follows:

II. AGREEMENT

1. PROJECT DESCRIPTION

The project is a new, separate bicycle and pedestrian overcrossing (BPOC) just south of the existing Blossom Hill Road bridge to provide a new Class I facility for bicyclists and pedestrians (PROJECT). The PROJECT is located south of the existing Blossom Hill Road bridge over Highway 17 and is along the Blossom Hill Road between Roberts Road West and Roberts Road East in the Town of Los Gatos. PROJECT includes Conceptual Engineering and Final Design Phases.

2. SCOPE OF WORK

The scope of work for this AGREEMENT is for the Final Design for the PROJECT (SCOPE OF WORK). SCOPE OF WORK activities include environmental clearance, right-of-way, and activities leading to the development of bid-ready construction document. The deliverable of the SCOPE OF WORK is the bid-ready document for construction.

3. TERM OF AGREEMENT

The term of this AGREEMENT will commence on the Effective Date (as defined in the signature block below) and continue through the later of: (i) June 30, 2024, (ii) completion of the PROJECT, or (iii) cancellation of the PROJECT.

4. COST OF PROJECT

Total cost of the PROJECT is estimated not to exceed \$3,935,700.00 (TOTAL PROJECT COST). TOTAL PROJECT COST includes \$234,500 in Conceptual Engineering costs that have been borne by the Town of Los Gatos.

The TOTAL PROJECT COSTS means the total cumulative dollar amount actually incurred and expended toward the PROJECT by all PARTIES involved, as measure at the completion or termination of the PROJECT.

5. COST OF SCOPE OF WORK

The total cost of the SCOPE OF WORK is estimated not to exceed \$3,701,200 (TOTAL SCOPE OF WORK COST).

6. FINANCIAL CONTRIBUTION TO COST OF PROJECT

- a. VTA's Financial Contribution for PROJECT. VTA will contribute an amount not to exceed \$2,754,900.00 of BIKE/PED CAPITAL PROGRAM funds to be used by TOWN for completion of SCOPE OF WORK of PROJECT. All funds will be available on a reimbursement basis only, pursuant to the terms and conditions set forth herein.
- b. TOWN's Financial Contribution for PROJECT. TOWN is solely responsible for all funds TOWN has expended toward the PROJECT prior to Effective Date of this AGREEMENT, and TOWN must not seek reimbursement from VTA for such costs.
- c. Additional Funds. Any additional funds required to complete the PROJECT will be TOWN's sole responsibility.

7. SCOPE OF WORK SAVINGS

If the SCOPE OF WORK is anticipated to be delivered under budget, BIKE/PED CAPITAL PROGRAM funds will be reduced in proportion to TOWN's Financial Contribution to SCOPE OF WORK.

8. ELIGIBLE USE OF FUNDS

Only SCOPE OF WORK costs incurred by TOWN after the Effective Date of this AGREEMENT, will be eligible for reimbursement.

VTA will only reimburse TOWN for actual costs directly related to the SCOPE OF WORK ("ELIGIBLE COSTS"). ELIGIBLE COSTS are costs that: (i) are directly related to the SCOPE OF WORK of the PROJECT; and (ii) were incurred in compliance with all applicable 2016 Measure B program requirements.

9. TOWN's ROLE

- a. Tasks. TOWN will be the sponsor and implementing agency for the final design phase for the PROJECT. In its role as sponsor and implementing agency under this AGREEMENT, TOWN must perform and/or be responsible for the following tasks:
 - i. Serve as project manager for PROJECT;
 - ii. All actions necessary to procure design services for the PROJECT, including but not limited to advertising the work via a public solicitation, opening bids in response to the public solicitation, awarding a contract, approving contract documents, and administering the awarded design contract in accordance with all applicable laws, regulations, and codes, including but not limited to the California Public Contract Code and the California Labor Code.

- iii. Conduct standard close-out activities for the PROJECT, including but not limited to performing final accounting review and reviewing all contractual requirements.

b. Other PROJECT Management Duties. TOWN must:

- i. Submit to VTA the most current version of VTA's 2016 Measure B Complete Streets Checklist for Capital Projects (as supplied by VTA to TOWN) within five (5) business days of the Effective Date of this AGREEMENT.
- ii. Submit a project management plan (PMP) to VTA within thirty (30) business days of the Effective Date of this AGREEMENT. The PMP must be in writing and must include information regarding staffing plan, cost, schedule, contracting plan, and risk assessment.
- iii. Actively monitor actual PROJECT expenditures to ensure that the 2016 MEASURE B funds are used to pay only for ELIGIBLE COSTS (as defined in Section 8).
- iv. Provide VTA with written quarterly progress updates on the PROJECT, including but not limited to updates on PROJECT expenditures, any changes in scope and schedule, and PROJECT status.
- v. Submit the PROJECT's final report ("FINAL REPORT") to VTA. This FINAL REPORT must be in writing and must include information regarding final PROJECT, along with any other information VTA may require for inclusion in the FINAL REPORT.
- vi. Provide VTA copies of PROJECT deliverables including, but not limited to, reports, designs, drawings, plans, specifications, schedules, and other materials. TOWN will provide VTA a minimum of thirty (30) calendar days to review and provide comments. VTA's comments must be considered in the final design phase of the PROJECT before TOWN constructs the PROJECT. If TOWN chooses not to incorporate any VTA comment into the final design for the PROJECT, TOWN must provide VTA with a written explanation of why such comment was not incorporated.
- vii. TOWN will make staff available to present on the PROJECT at VTA committees as needed.

10. VTA's PROJECT Role. VTA will perform and/or be responsible for the following tasks:

- a. Tasks. VTA will perform and be responsible for the following tasks to perform oversight for ELIGIBLE PROJECT ACTIVITIES:
 - i. Review PROJECT's Complete Streets checklist to ensure Complete Streets compliance;
 - ii. Provide technical oversight of PROJECT, including reviews of PMP and PROJECT deliverables listed in Section 9.b.vi.

- iii. Provide oversight of the delivery of the PROJECT to ensure PROJECT compliance with the 2016 Measure B Program Category Guidelines.

Costs and expenses to perform these tasks will be paid for by 2016 Measure B Program Administration funds.

11. TOWN'S OBLIGATIONS

TOWN must:

- a. Ensure that all 2016 MEASURE B funds are expended on only allowable BIKE/PED CAPITAL PROGRAM expenditures as described above in Section 8.
- b. Begin requests for reimbursement of ELIGIBLE COSTS (see Section 8) from VTA within one (1) year of the Effective Date of this AGREEMENT.
- c. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- d. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this AGREEMENT for five (5) years. TOWN shall make such records available to VTA upon VTA's written request for review and audit purposes. Financial audits will be performed at VTA's sole discretion.
- e. Submit invoices to VTA, no more frequently than monthly, for reimbursement of ELIGIBLE COSTS (see Section 8. ELIGIBLE USE OF FUNDS). TOWN must submit invoices within one year of the date TOWN incurs the cost submitted on the invoice for reimbursement (unless otherwise approved by VTA in writing).

12. VTA'S OBLIGATIONS

VTA will remit the amount due to the TOWN under an invoice within thirty (30) calendar days of receipt of a complete and proper, fully documented invoice complying with the requirements set forth herein.

13. INDEMNIFICATION

Neither VTA nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to TOWN's acts or omissions under or in connection with any work, authority, or jurisdiction associated with this AGREEMENT. Pursuant to California Government Code §895.4, TOWN must fully defend, indemnify, and save harmless VTA from all suits or actions of every name, kind, and description arising from an injury (as defined by California Government Code §810.8) relating to TOWN's acts or omissions under or in connection with any work, authority, or jurisdiction delegated to TOWN under this AGREEMENT. This provision will survive the termination or expiration of this AGREEMENT.

14. INSURANCE

At all times during this AGREEMENT, TOWN must comply with the insurance requirements and specifications of Exhibit A attached hereto, and herein incorporated by reference.

15. ADDITIONAL INSURED AND INDEMNITY PROVISION

In any agreement executed between the TOWN and a third party for purposes related in any way to the subject matter of this AGREEMENT (“Third Party Contract”), the TOWN must require that VTA be named as (i) Additional insureds on a primary and non-contributory basis with Separation of Insureds and Waiver of Subrogation on all policies of insurance, except when not applicable required in the Third Party Contract and (ii) indemnified parties in any indemnity provision contained in the Third Party Contract. Third Party Contracts must contain insurance requirements with coverages at least as broad as, and limits at least as great as, the requirements of Exhibit B in this AGREEMENT.

16. PUBLIC WORKS

If the TOWN awards a contract to a third party for the performance of a public work (as defined in California Labor Code Section 1720 through 1720.6) (a “Public Works Contract”) in connection with this AGREEMENT, the TOWN must comply, and must require such third party to comply, with the requirements of California Labor Code Section 1720 et seq. If the Public Works Contract is funded in whole or in part with federal funds, the TOWN must also comply, and must require such third party to also comply, with the requirements of the Davis Bacon Act (40 U.S.C. Sections 3141-3144 and 3146-3148).

17. COMPLIANCE WITH APPLICABLE LAW

In the execution of the PROJECT and performance of its responsibilities set forth herein, TOWN must comply with all applicable requirements of state, federal, and local law.

18. COMPLIANCE WITH 2016 MEASURE B REQUIREMENTS

In its performance under this AGREEMENT, TOWN must comply with, and must ensure PROJECT compliance with all 2016 MEASURE B requirements set forth in the 2016 Measure B Program Category Guidelines for the BIKE/PED CATEGORY as identified in Attachment B, attached hereto, and herein incorporated by reference.

19. TERMINATION

Each of the PARTIES may at any time terminate this AGREEMENT by giving ten (10) business days' written notice of such termination to other PARTY. Notice must identify the effective date of such cancellation and must be provided in accordance with the terms and conditions of this AGREEMENT.

In the event of termination as set forth herein, TOWN must submit its final invoice to VTA within thirty (30) calendar days of the effective date of termination, solely for ELIGIBLE COSTS incurred by TOWN prior to termination (see Section 8).

20. AUDIT AND RECORDS

- a. All PARTIES shall maintain, and shall require their contractors to maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data pertaining to services performed under this AGREEMENT, including the costs of contract administration. Such documentation must be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges and must be sufficient to allow a proper audit of services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the services must be clearly identified and readily accessible.
- b. For the duration of the AGREEMENT, and for a period of five (5) years after final payment, the PARTIES and their representatives shall have access during normal business hours to any books, accounts, records, data, and other relevant documents that are pertinent to this AGREEMENT for audits, examinations, excerpts, and transactions and copies thereof must be furnished upon request.

21. NOTICES

All notices required or permitted under this AGREEMENT must be in writing, will be effective five (5) days after being sent by personal service or certified mail, or forty-eight (48) hours after being sent by electronic mail to the individuals at the addresses set forth below, or to such other address which may be specified in writing by the PARTIES hereto.

VTA:
 Marcella Rensi
 Deputy Director, Grants & Allocations
 Santa Clara Valley Transportation Authority
 3331 N First Street
 San Jose, CA 95134
 Email: marcella.rensi@vta.org

TOWN of LOS GATOS:
 [INSERT TITLE]
 TOWN
 Address
 TOWN, CA, Zip Code
 Email

Written notification to the other PARTY must be provided, in advance, for changes in the name or address of the individuals identified above.

22. GENERAL TERMS AND CONDITIONS

- a. **Headings.** The subject headings of the articles and paragraphs in this AGREEMENT are included for convenience only and will not affect the construction or interpretation of any of its provisions.

- b. **Construction and Interpretation of Agreement.** This AGREEMENT, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the PARTIES. Accordingly, each PARTY expressly acknowledges and agrees that (i) this AGREEMENT will not be deemed to have been authored, prepared, or drafted by any particular PARTY and (ii) the rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this AGREEMENT or in the resolution of disputes.
- c. **Amendment.** No alteration or variation of the terms of this AGREEMENT will be valid unless made in writing and signed by both of the PARTIES hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the PARTIES hereto.
- d. **Entire Agreement.** This AGREEMENT contains the entire understanding between VTA and TOWN relating to the subject matter hereof. This AGREEMENT supersedes any and all other agreements which may have existed between the PARTIES, whether oral or written, relating to the subject matter hereof. This AGREEMENT is binding upon each PARTY, their legal representatives, and successors for the duration of the AGREEMENT.
- e. **Representation of Authority.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a party to this AGREEMENT.
- f. **No Waiver.** The failure of either PARTY to insist upon the strict performance of any of the terms, covenants and conditions of this AGREEMENT will not be deemed a waiver of any right or remedy that either PARTY may have, and will not be deemed a waiver of either PARTY's right to require strict performance of all of the terms, covenants, and conditions hereunder.
- g. **Dispute Resolution.** If a question or allegation arises regarding (i) interpretation of this AGREEMENT or its performance, or (ii) the alleged failure of a PARTY to perform, the PARTY raising the question or making the allegation shall give written notice thereof to the other PARTY. The PARTIES shall promptly meet in an effort to resolve the issues raised. If the PARTIES fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the PARTIES to the greatest extent possible to avoid litigation as a method of dispute resolution.
- h. **Severability.** If any of the provisions of this AGREEMENT (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and TOWN shall negotiate an equitable adjustment in the provisions this AGREEMENT with a view toward effecting the purpose of this AGREEMENT, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
- i. **Governing Law.** The laws of the State of California will govern this AGREEMENT, as well as any claim that might arise between TOWN and VTA, without regard to conflict of law provisions.
- j. **Venue.** Any lawsuit or legal action arising from this AGREEMENT must be commenced and prosecuted in the courts of Santa Clara County, California. TOWN agrees to submit to the

personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

- k. **Ownership of Work.** All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for; in the process of being assembled or prepared by or for; or furnished to VTA or TOWN under this AGREEMENT are the joint property of all PARTIES. Each PARTY is entitled to copies and access to these materials during the progress of the PROJECT and upon completion of the PROJECT or termination of this AGREEMENT. All PARTIES may retain a copy of all material produced under this AGREEMENT for use in their general activities.
- l. **Attribution to the VTA.** TOWN must include attribution to VTA that indicates part of work was funded by 2016 Measure B Funds. This provision applies to any project or publication that was funded in part or in whole by 2016 Measure B Funds. Acceptable forms of attribution include 2016 Measure B's branding on project-related documents, construction signs, public information materials, and any other applicable documents. VTA will provide 2016 Measure B branding to TOWN.
- m. **Non-discrimination.** The PARTIES and any contractors performing services on behalf of the PARTIES ("Contractors") will not unlawfully discriminate or permit discrimination, harass, or allow harassment against any person or group of persons because of race, color, religious creed, national origin, ancestry, age (over 40), sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition (including cancer), mental disability, physical disability (including HIV and AIDS), genetic information, or military and veteran's status, or in any manner prohibited by federal, state, or local laws. In addition, the PARTIES and Contractors shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. The PARTIES and Contractors must ensure that the evaluation and treatment of their employees and applicants for employment is free of such discrimination and harassment.
- n. **Relationship of the PARTIES.** It is understood that this is an AGREEMENT by and between independent parties and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of independent contractor.
- o. **Warranty of Authority to Execute Agreement.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a PARTY to this AGREEMENT.

Signatures of PARTIES on following page.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the last date set forth below (“Effective Date”).

***Santa Clara Valley
Transportation Authority***

TOWN

Nuria I. Fernandez
General Manager/CEO

Name
Title

Date

Date

Approved as to Form

Approved as to Form

Shannon Smyth-Mendoza
Sr. Assistant Counsel for VTA

Name
Title

ATTACHMENT A

INSURANCE REQUIREMENTS

TOWN'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT TOWN CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS AGREEMENT.

INSURANCE

Without limiting TOWN's indemnification and defense of claims obligations to VTA, TOWN must procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise under or in connection with any work, authority, or jurisdiction associated with the Agreement. The cost of such insurance must be borne by TOWN. TOWN must furnish complete copies of all insurance policies within three (3) business days of any request for such by VTA.

A. MINIMUM SCOPE OF INSURANCE

Coverage must be at least as broad as:

1. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable.
2. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance.
4. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor's services under this Contract. This coverage must be continuously maintained for a minimum of two (2) years following completion of this Contract. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.

B. MINIMUM LIMITS OF INSURANCE

- a. TOWN must maintain limits no less than:

1. General Liability: \$1,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
 2. Automobile Liability (including umbrella/excess liability): \$1,000,000 limit per accident for bodily injury and property damage.
 3. Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of \$1,000,000 per accident.
 4. Professional Liability: \$1,000,000 each occurrence/aggregate minimum limit per claim.
- b. Notwithstanding any language in this Lease to the contrary, if TOWN carries insurance limits exceeding the minima stated in Section B(a)(1)-(3) immediately above, such greater limits will apply to this Agreement.

C. SELF-INSURED RETENTION

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if TOWN is a publicly-traded company) must be declared to and approved by VTA. If TOWN is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$50,000, TOWN must provide a current financial report including balance sheets and income statements for the past three years, so that VTA can assess TOWN's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by VTA in its sole discretion, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require TOWN to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by TOWN. TOWN may request execution of a nondisclosure agreement prior to submission of financial reports.

D. CLAIMS MADE PROVISIONS (NOT APPLICABLE TO GENERAL LIABILITY OR AUTO LIABILITY)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must comply with the following:

1. The policy retroactive date must be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, TOWN must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must cover at least two (2) years.
3. No prior acts exclusion may be added to the policy during the Agreement period.
4. The policy must allow for reporting of circumstances or incidents that might give rise to future claims.

E. OTHER INSURANCE PROVISIONS

The policies must contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. VTA, its directors, officers, officials, employees, and volunteers must be named as additional insureds as respects: liability arising out of TOWN's performance under this Agreement. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.
- c. Coverage must state that Lessee's insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.
- e. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.

2. All Coverages

- a. TOWN must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising under or in connection with any work, authority, or jurisdiction associated with the Agreement.

- b. TOWN's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to TOWN's insurance. TOWN's insurance must not seek contribution from VTA's insurance program.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.

- b. If any coverage forms or endorsements required by this Agreement are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Agreement, VTA reserves the rights to require TOWN to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

F. ACCEPTABILITY OF INSURERS

Insurance must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

G. CERTIFICATES OF INSURANCE

TOWN must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy must be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. TOWN must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to real.estate@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required herein, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA property leased must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be

listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Agreement documents.

It is a condition precedent to granting of this Agreement that all insurance certificates and endorsements be received and approved by VTA before Agreement execution. No occupancy may be taken until insurance is in full compliance. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If TOWN receives notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, TOWN must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

H. MAINTENANCE OF INSURANCE

If TOWN fails to maintain insurance as required herein, VTA, at its option, may suspend the Agreement until a new policy of insurance is in effect.

ATTACHMENT B

Bicycle & Pedestrian Program Guidelines

(Adopted by VTA Board of Directors on October 5, 2017)

Definition from Resolution No. 2016.06.17

To fund bicycle and pedestrian projects of countywide significance identified by the cities, County and VTA. The program will give priority to those projects that connect to schools, transit and employment centers; fill gaps in the existing bike and pedestrian network; safely cross barriers to mobility; and make walking or biking a safer and more convenient means of transportation for all county residents and visitors. Bicycle and pedestrian educational programs such as Safe Routes to Schools, will be eligible for funding.

Total Funding

- \$250 million in 2017 dollars.

Distribution

- Board of Directors will allocate funding schedule and amount for program through the budget cycle.
- VTA anticipates that allocations will be programmed based upon the total allocation for the Bicycle & Pedestrian Program contained in 2016 Measure B divided by the number of years in the measure.
- Future allocations will vary depending on the amount of sales tax revenue collected.
- Funds will be distributed on a 2-year cycle. The program will consist of three categories: education & encouragement programs, planning studies, and capital projects.
- A total of 15% of available program area funds will be set aside for the education & encouragement category. The funds will be allocated as follows:
 - \$250,000 for countywide (including targeting unincorporated areas) education & encouragement programs
 - Remaining funds allocated by TOWN population formula with a \$10,000 annual minimum allocation per TOWN
- A maximum of 5% of available program area funds will be allocated to planning studies grants category.
- If the planning studies grants category is not fully awarded, the remaining funds will roll into the capital category.
- If a cycle's funds are not fully awarded, the balance will roll into the next cycle's budget.
- Example of breakdown of grant program funding: If Bicycle/Pedestrian Program Area is programmed at \$8.3 million/year:
 - Capital - \$6.6 million (minimum)
 - Planning - \$415,000 (maximum)
 - Education & Encouragement - \$1.25 million (maximum)

Implementation

Education & Encouragement (Formula Distribution)

- VTA and individual agencies will enter into a Master Agreement for Education & Encouragement funds.
- VTA will notify agency of estimated allocation for two-year cycle.
- Agency will submit annual education & encouragement work program.
- Funds will be available on a reimbursable basis. Agencies may submit invoices to VTA on a monthly, quarterly or annual basis. Invoices must be submitted within one year of the date posted on the contractor's invoice.
- Education & Encouragement funds may be banked for a maximum of three years with explanation of banking purposes.
- VTA will conduct an assessment regarding the effectiveness of the program.

Grant Program (Competitive)

- Only a public agency can serve as a project sponsor. Other entities must partner with a public agency to apply for a grant.
- The grant program will contain two categories:
 - Capital projects
 - Activities leading to/including:
 - Environmental Clearance
 - Design
 - Right of Way
 - Construction
 - Construction grant requests must include cost estimates supported by 30% to 35% design.
 - Planning studies
 - Includes planning studies to support capital project development for those projects currently listed on Attachment A of 2016 Measure B. It does not include general/master planning efforts.
- The minimum grant award is \$50,000.
- The maximum grant award per sponsoring agency can be no more than 50% of the total available funds per call for projects per cycle, unless the cycle is undersubscribed.
- Project criteria will be developed in conjunction with the VTA Technical Advisory Committee (TAC) Capital Improvement Program Working Group, and brought to the TAC and Bicycle & Pedestrian Advisory Committee (BPAC) for input.
- Scoring committee for the grant program will be comprised of three BPAC members, three Member Agency staff, and one VTA staff person.

Criteria

- Only projects currently listed on Attachment A of 2016 Measure B are eligible.
- Capital Projects will be scored on criteria that supports the language in 2016 Measure B.
 - Countywide significance

- Connection to/serves schools, transit, or employment centers
- Fills gaps in bicycle/pedestrian network
- Provides safer crossings of barriers
- Makes walking or biking safer
- Makes walking or biking more convenient
- Other criteria to consider:
 - Safety benefits
 - Increase in bicycle and pedestrian usage
 - Community support
 - Project readiness
 - Projects serve Communities of Concern

Requirements

- Competitive grant projects require a 10% non-2016 Measure B contribution.
- Reporting requirements will be detailed in agreements executed with VTA for project funding.
- All applications must include a delivery schedule.
- Funds will be available on a reimbursement basis.
- VTA Complete Streets reporting requirements will be required for Planning and Capital projects.
- All collateral material will be required to display a 2016 Measure B logo.



Town of Los Gatos

**REQUEST FOR PROPOSALS
To Provide
PROFESSIONAL ENGINEERING SERVICES
For The
HIGHWAY 17 BICYCLE AND PEDESTRIAN OVERCROSSING PROJECT**

**Contract Numbers:
TLG 19-818-0803**

Date Released:

DECEMBER 4, 2020

**Town of Los Gatos
Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95030**

Proposals are due prior to 1:00 P.M., January 7, 2021



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Professional Engineering Services

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Request for Proposals for Highway 17 Bicycle and Pedestrian Overcrossing Project Professional Engineering Services

Proposal Due: 1:00 PM on Thursday, January 7, 2021.

Pre-Proposal Meeting: A pre-proposal virtual meeting will be held on **December 17, 2020 at 10:30 a.m.**

Consultants are highly encouraged to attend. For details and the link to the virtual pre-proposal meeting, e-mail Michelle Quinney @ MQuinney@losgatosca.gov before 5pm on December 15, 2020.

A. PURPOSE

The Town of Los Gatos - Parks and Public Works Department hereby invites qualified professionals, experienced in working with public agencies and federally funded Projects (Proposers) to submit proposals to provide services for environmental clearance, engineering design, preparation of construction documents, and construction support services for the Highway 17 Bicycle and Pedestrian Overcrossing Project. The selected Consultant is expected to coordinate and directly interface with California Department of Transportation (Caltrans) and provide all professional services as necessary to complete the environmental clearances, preliminary and final civil engineering design, including structural engineering, geotechnical engineering, surveying and mapping, utility coordination, Project management, bid and construction support, and quality control as outlined in this request for proposals (RFP).

B. OVERVIEW

The Highway 17 Bicycle and Pedestrian Overcrossing Project (Project) is one of many Projects included in the Town's Connect Los Gatos Program. The Connect Los Gatos Program is a collection of bicycle and pedestrian Projects that will promote connectivity and improve the multimodal network throughout the Town. Connect Los Gatos is aimed at making it easier and safer for all to bike and walk in Los Gatos, expanding access and improving safety between key community destination points. Projects included in the Connect Los Gatos program were originally identified in the Town's Bicycle and Pedestrian Master Plan, adopted by the Town Council March of 2017 and updated in September 2020.

The Project is included in the Connect Los Gatos Program as one of the highest priority bicycle and pedestrian improvements for the Town. A Feasibility Study for the Project, to confirm the purpose and need of the Project, and to investigate viable options for a bicycle and pedestrian crossing of Highway 17, was recently completed in 2020. The Feasibility Study and other relevant Project documents are available on the Project website: <http://www.losgatosca.gov/2556/Hwy17BicyclePedestrianOvercrossing>.

In late 2019 the Town began the Feasibility Study and developed the following purpose and need for the Project:

Purpose: To improve bicycle and pedestrian mobility across Highway 17 in the vicinity of the Blossom Hill Road overcrossing. Include a focus on improving safety for all modes of travel and creating a safe route to schools while promoting active transportation, reducing traffic congestion and greenhouse gas emissions by providing comfortable mobility alternatives.

Need: Highway 17 creates both a physical and psychological barrier for both pedestrians and bicyclists as it divides the Town in two. The existing Blossom Hill Road Bridge over Highway 17 is one of only a few roadways that provide the Town with east-west connectivity across the highway. With two travel lanes in each direction, carrying upwards of 63,000 vehicles per day, the roadway is congested and unfriendly to bicyclists and pedestrians.

The current Blossom Hill Road Overcrossing provides 10.5-foot wide travel lanes, 4-foot wide bike lanes, and 5-foot wide sidewalks in each direction. This sub-standard width does not meet current and future bicycle and pedestrian demands. The deficiency becomes more apparent during school hours when the bicycle and

pedestrian volumes are high. Furthermore, the narrow width lacks the necessary separation and protection between the various modes and creates less than optimal conditions given the high volume and speed of vehicles on the roadway. The current facility is considered high stress, especially for vulnerable street users including youth, older adults, and those with access and functional needs.

The Feasibility Study, which included public outreach and community meetings, began by evaluating three basic options for getting pedestrians and bicycles across Highway 17. The pros and cons of each option were identified, and a staff recommendation was made to proceed with a separate bicycle and pedestrian overcrossing (BPOC). At the March 3, 2020 meeting, the Town Council approved the Project purpose and need, and authorized staff to proceed with the feasibility analysis for a separate BPOC over Highway 17. After additional analysis and community input, the final Feasibility Study was approved by the Town Council on September 1, 2020 and directed staff to pursue the final design of a separate bicycle and pedestrian overcrossing to be located to the south of the existing Blossom Hill Road crossing of Highway 17.

The Town is now prepared to move into the design phase for the Project. The Project will include the final design of a separate BPOC structure just south of the existing Blossom Hill Road bridge to provide a new Class I facility for bicyclists and pedestrians. In general, the Project scope includes determination/selection of final bridge type through a community engagement process, environmental clearance, preliminary and final design, resulting in bid ready documents allowing for the construction of the Project.

A Project location map is included in Attachment 1.

The intent is for the Project is to be designed and constructed completely within the existing Town and Caltrans right of way. A Caltrans Encroachment Permit will be required to complete the Project construction, and the Project should be considered to be a Complex Project requiring the preparation of the PID, PA/EA, and PS&E for submission to Caltrans for approval prior to the issuance of the Encroachment Permit. It shall be the Consultant's duty to determine all other permits, as needed, for the Project construction.

The Consultant Services Agreement is anticipated to be a multi-phased contract consisting of two phases as outlined in the Requested Scope of Services. Phase I will include services necessary to complete the environmental clearances, preliminary and final design, bid and award support services. Phase II will include services necessary to provide construction support for the Project throughout construction. A separate Notice to Proceed will be issued prior to the Consultant beginning work on each phase. Payment for each phase shall be as outlined in the Method of Payment section of this RFP. Compensation for Phase I shall be on a lump sum, not to exceed basis and will be paid based on percentage complete of each task. Compensation for Phase II shall be on a cost per unit of work basis and will be paid based on units of work completed. Cost proposals shall be submitted on the appropriate Caltrans forms contained in Attachment 4 – Exhibit 10-H1, 10-H3, and 10-H4.

The funding for Phase I of the Project is funded in part with Santa Clara County 2016 Measure B funds. All Consultant services will need to comply with the requirements attached to the Measure B funding, including invoicing, reporting, insurance, advertising, and record keeping requirements. Funding for the Phase II construction support services will be determined at a later date. It is likely that federal construction funds will be allocated for the construction of the Project. The Consultant shall be required to follow the federal guidelines for the design of the Project in order to meet the requirements regarding future Project federalization. Should federal funds be secured, the Consultant shall be prepared to meet all requirements for providing construction support services compliant with federal Project delivery guidelines and requirements. A consultant services contract will not be awarded to a Consultant without an adequate financial management and accounting as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31.

The DBE goal for this Project is 12%.

The proposals submitted in response to this RFP will be used as a basis for selecting the Consultant for this Project. The Proposer's attention is directed to Section E, "Proposal Requirements." Each proposal will be evaluated and ranked according to the criteria provided in Section F, "Proposal Evaluation," of this RFP.

If any proposer has any question regarding the meaning of any part of this RFP, the proposer shall e-mail a request for an interpretation or clarification to: MQuinney@losgatosca.gov before 3:00 PM on December 22, 2020.

Addenda to this RFP, if issued, will be posted on the Town of Los Gatos - Parks and Public Works Department RFP website at:

<http://www.losgatosca.gov/2258/RFPREQ>

It shall be the Proposer's responsibility to check the Town's website to obtain any addenda that may be issued.

Proposers are requested to submit three (3) hard copies of the proposal, in addition to a digital copy on a USB flash drive, and under separate cover, one (1) hard copy of the cost proposal. As a result of the continuing Shelter In Place Order, all Town Departments are closed for any in-person services. Therefore, proposal submittals, including the hard and digital copies, shall be mailed via certified mail with return receipt or delivered by package carrier to the Town of Los Gatos - Parks and Public Works Department at the address shown below, to be received by the Town prior to **1:00 PM, January 7, 2021**. Proposals shall be submitted in two separately sealed packages clearly marked:

1. **"PROPOSAL** for the Highway 17 Bicycle and Pedestrian Overcrossing Project - Professional Engineering Services"
2. **"COST PROPOSAL** for the Highway 17 Bicycle and Pedestrian Overcrossing Project - Professional Engineering Services"

and shall be addressed as follows:

WooJae Kim, Town Engineer
Town of Los Gatos - Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95030

Proposals received after the time and date specified above will be considered nonresponsive and will be returned to the Proposer.

Any proposals received prior to the time and date specified above may be withdrawn by a written request of the Proposer. To be considered, however, any modified proposal must be received prior to **1:00 PM., January 7, 2021**.

Proposers are advised that should this RFP result in recommendation by Town staff for award of a contract, the contract will not be in force until it is approved and fully executed by the Town Manager and a Notice to Proceed has been issued. It is anticipated that the contract will be awarded in two phases, with an individual Notice to Proceed being issued for the construction support phase.

The performance period of the contract will be from the date of the Notice to Proceed through the completion of the phase, or ultimately through the construction of the Project if all phases are ultimately awarded.

All products used or developed in the execution of any contract resulting from this RFP will remain in the public domain at the completion of the contract.

Any questions related to this RFP shall be submitted in writing to the attention of Michelle Quinney, Special Projects Manager via email at MQuinney@losgatosca.gov. Questions shall be submitted before **3:00 PM on December 22, 2020**. Responses will not be provided to questions received after **3:00 PM on December 22, 2020**. No oral questions or inquiries about this RFP shall be accepted.

The anticipated timeline for the consultant selection process is as follows:

Release of Request for Proposals	December 4, 2020
Pre-proposal Meeting	December 17, 2020
Question Cut-Off (before 3:00 PM)	December 22, 2020

Proposals Due (before 1:00 PM)	January 7, 2021
Proposal Review and Evaluation	January 8 - 29, 2021
Consultant Oral Interviews/Presentations	February 9-10, 2021
Negotiations with Top Ranked Consultant	February 15-26, 2021
Town Manager Considers Contract Award	March 2021
Notice to Proceed	April 1, 2021

C. GENERAL PROVISIONS AND REQUIREMENTS

1. Each Proposer is responsible for determining and complying with all applicable business licensing requirements necessary to complete the Project’s scope of work.
2. The successful Proposer shall be required to provide evidence to the Town that it is authorized to do business in California prior to the award of the contract.
3. Each Proposer is responsible for determining and complying with all applicable professional licensing requirements necessary to complete the Project’s scope of work.
4. If applicable, California Department of Industrial Relations (“DIR”) Registration is required. If applicable, Selected Consultant will be required to certify that they have verified that their subcontractors on this Project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Consultant shall provide such proof of registration to the Town.
5. The Town’s Project Manager shall be the Consultant’s primary contact for the Town.
6. Throughout the design phase, the consultant’s project manager shall provide bi-weekly updates to the Town’s Project Manager at minimum. Updates can be in a form of a report, meeting, or telephone conference.
7. The Selected Consultant shall prepare technical documents in compliance with the latest applicable codes, rules, regulations, and guidelines.
8. The Selected Consultant shall manage, coordinate, and review work submitted by the Project’s sub-consultants for accuracy and conflicts with other disciplines.
9. The Consultant shall maintain the Consultant’s key personnel, as presented in the Proposal through the entire duration of services. The Consultant will conduct their business in a professional manner to schedule and support their personnel to provide the scope of services in a timely and professional manner. The Town must approve of any key personnel change in advance through personnel qualifications review and oral interviews with Town staff.
10. The Selected Consultant shall prepare and periodically update the Project Schedule by identifying milestones, dates for decisions required by the Town, design services furnished by the consultant and sub-consultants, deliverables to be furnished, completion of documentation, commencement of construction, and project completion.
11. The consultant shall not proceed further with next tasks until each design submittals and cost estimates are approved and authorized by the Town.
12. The consultant shall submit design documents for Town’s review, evaluation, and comments and address comments provided by the Town into a single set of coordinated comments/responses and make revisions as required by the Town within two (2) weeks. In responding to review comments and revising the design documents, the consultant shall review, coordinate and address all associated consequences of the revisions to maintain the integrity of the documents and the design intent.
13. The Town does not warrant the accuracy or completeness of its documents provided. The consultant shall verify all information to consultant’s professional satisfaction and note and report any discrepancies observed in the course of professional activities covered by the services.
14. Deliverables will be submitted in electronic format (PDF) and in native document formats such as Word, Excel, AutoCAD, etc. unless otherwise specified.
15. Selected Consultant shall comply with local, county, regional, State and Federal health orders.

D. REQUESTED SCOPE OF SERVICES

General

The selected qualified professional firm shall provide the environmental clearances, preliminary engineering, final design and construction support for the Highway 17 Bicycle and Pedestrian Overcrossing Project, to be located south of the existing Blossom Hill Road Overcrossing over Highway 17 in the Town of Los Gatos. The selected Consultant shall prepare all work products, including but not limited to plans, specifications and estimates in a prompt, professional, and workmanlike manner, in accordance with the standards of the design profession. The bridge, bike/pedestrian approaches to the bridge, roadway design, intersection improvements and traffic signal design/modifications are to follow Caltrans, Town of Los Gatos, and current ADA Standards for multi-use paths. Design should factor in and accommodate occasional maintenance vehicle travel on the overcrossing.

The Consultant selected shall provide the professional engineering services necessary to complete the contract documents and tasks to advance the Project to the construction phase and shall provide support services to the Town during the bidding and construction phases of the Project, as needed, to successfully complete the Project construction.

The selected Consultant will be delivering the Project in two phases. Phase 1 includes the engineering design work for the Project, and phase two includes consultant construction support during the construction of the Project. Currently the Town only has funding for the Phase I work outlined in this RFP. It is anticipated that the Phase II work will be added to the Consultant contract, by amendment, when construction funding has been obtained.

The Town has secured Measure B funding from the Valley Transportation Agency (VTA) for Phase I. The Town anticipates the funding for the construction of the Project, and for the Phase II construction support services, will include federal funds. Therefore, the Project design should proceed following federal guidelines and should assume the use of federal funds for the construction segment of the Project. The Consultant shall proactively provide direction to the Town regarding the Project steps necessary to deliver the federalized Project consistent with Caltrans and federal reimbursement requirements.

The requested scope of services as presented is an outline only for use in the RFP process. The final scope of services will be negotiated with the selected Consultant prior to the execution of the consultant services agreement.

All work in Phase I shall be done on a lump sum basis and will be paid on a percentage complete for each subtask as ultimately outlined in the final scope of services. All work in Phase II shall be paid on a cost per unit of work. Proposal cost estimates shall be provided for each phase on the appropriate Caltrans Cost Proposal forms and shall be submitted in a separately sealed envelope.

The work shall comply with the requirements of all of the following without limitation, and shall apply to this RFP and any subsequent contract as though incorporated herein by reference:

1. Federal laws
2. State laws
3. Local laws
4. Rules and regulations of governing utility companies and utility districts
5. Rules and regulations of other authorities with jurisdiction over the procurement of products

A preliminary scope of services is outlined below. The Consultant shall review the preliminary scope of services and deliverables and shall include any modifications, recommendations, additions, deletions, as the Consultant believes prudent for the Project in the Consultant's proposal.

For each task/sub-task listed below, (or as modified by the Consultant in the proposal), the proposal shall indicate the anticipated resource allocation (both Consultant and sub Consultants) that will be assigned to the task/sub-task and

the number of hours anticipated for each. The final scope of services shall be developed with the Town during the final contract negotiations with the selected Consultant and shall be included in the final contract for services.

PHASE I - ENGINEERING DESIGN SERVICES AND ENVIRONMENTAL CLEARANCES:

The Consultant selected shall provide all design services, including but not limited to: Project management; preliminary engineering; environmental studies and clearances; utility coordination and right-of-way; permits and coordination with other agencies; surveys and mapping; geotechnical investigations and reports; structural and final design and development of all contract documents; bid support and obtaining the authorization to proceed to construction from Caltrans for the Highway 17 Bicycle and Pedestrian Overcrossing Project as more specifically described as follows.

- **Task A.1 Project Management**

The Consultant shall provide all the necessary Project coordination, administration, management and interfacing with the Town, Caltrans, and other internal/external stakeholders to achieve Project objective. The Consultant shall proactively provide direction to the Town regarding the Project tasks necessary to deliver the federally funded Project consistent with Caltrans permitting requirements and federal reimbursement requirements. The Consultant shall be responsible for Project management activities throughout the life of the contract. The scope of these activities includes, but is not limited to,

- provide, distribute, and maintain contact information for all Project team members
- coordinate and schedule meetings/conference calls as needed
- prepare and distribute meeting minutes
- itemize, track, and pursue all Project action items to completion
- develop and maintain the Project schedule, report on Project progress
- manage Consultant and sub Consultant activities to remain on schedule,
- supervise, coordinate, and monitor design for conformance with all current applicable design standards from the Town, AASHTO, Caltrans Design Standards and Specifications, California Building Code, and any affected utilities
- supervise, coordinate, and monitor the design for conformance with permit requirements from Caltrans, VTA, and utility companies
- conduct field reviews as needed
- prepare and track Town’s submissions to Caltrans
- provide internal quality control checks and document quality control actions conducted for the Project
- conduct cross-checking to avoid potential conflicts between various subconsultant’s work
- develop Project filing and record keeping system for Project files for a period of 5 years
- develop a list of Project stakeholders for coordination during Project design
- provide the Town with required documents and information, such as quarterly progress reports, reimbursement forms and other documents for compliance with the Measure B funding agreement between the Town and VTA funding. Refer to Attachment 3 – Links to Relevant Project Information for link to funding agreement.

Deliverables to include: Meeting minutes, schedule, progress reports, action item logs, tracking spreadsheets, Caltrans submissions and other items resulting from Consultant’s Project management duties

- **Task A.2 Data Collection and Review**– The Consultant shall obtain and collect data as needed to develop general Project design concepts and related activities needed to establish the parameters for final design, such as, existing topography/geometrics, grading and drainage considerations, geotechnical/retaining wall considerations, structural engineering and proposed bridge structure, ADA considerations, extent of required demolition activities, construction phasing/staging, environmental and future maintenance considerations. The scope of these activities includes, but is not limited to, (items to be provided by the Town or items on the Town’s Project webpage are as indicated below.).

- Complete an extensive site review/existing conditions assessment of the Project area
- Collect and review existing background information regarding the Project including:
 - o Town’s adopted Bicycle and Pedestrian Master Plan and Update (see Attachment 3)
 - o Highway 17 Bicycle and Pedestrian Overcrossing Feasibility Analysis (see Attachment 3)

- Funding Agreement between the Town of Los Gatos and Santa Clara Valley Transportation Agency for the Bicycle and Pedestrian Overcrossing Over Highway 17 (see Attachment 3)
- Caltrans Local Procedures Manual
- Plans for existing utilities in Project area
- Development plans for adjacent properties – (Town to provide)
- Proposed developments in the Project vicinity (Town to provide) and potential Project impacts
- Street improvement plans, including signalized intersections (Town to provide)
- Aerial photos and any available mapping, including digitized topography
- Survey control data
- ROW information, including Caltrans right of way documents, existing easements, etc.
- Existing as-built information from the Town, Caltrans, property owners, local agencies, utility companies, and other organizations
- Existing Blossom Hill Road Highway 17 Overcrossing bridge structure plans and geotechnical information
- Geologic and soil literature in the Project vicinity
- Design standards and codes applicable to the Project
- Town’s Standard Specifications and Details for Construction, 2010 Caltrans Standard Specifications and Standard Plans, and applicable portions of the MUTCD and California MUTCD, and other controlling design standards as appropriate
- Americans with Disabilities Act (ADA) requirements
- Connect Los Gatos webpage and Highway 17 Bicycle and Pedestrian Overcrossing Project page
- Minutes from Project related community meetings
- Based on existing conditions and Project objectives, determine required permits and permit requirements necessary for successful completion of Project and review permit applications and requirements
- Based on the data collected and site evaluations, review the preliminary layout as presented in the feasibility study, verify assumptions, and confirm consistency with the Project’s objectives and budget.
- Based on information collected, prepare a summary or diagram of existing conditions highlighting any special/potential conditions that may affect the final design (opportunities and constraints diagram)

Deliverables to include: Video of existing site conditions, listing of all potentially required permits, opportunities and constraints diagram

- **Task A.3 Surveys and Base Mapping** – The Consultant shall be responsible for data collection, and all mapping and surveying necessary to complete a comprehensive base map and other plans as indicated below. The scope of a comprehensive base map and survey includes setting Project bench marks and establishing control for Project layout and construction, aerial photogrammetry, design level topographic surveys, identification of all public right-of-way, adjacent parcels, property lines, easements, and existing utility locations. The extent of the topographical surveying and mapping shall extend a minimum of 10’ or more beyond the existing Blossom Hill Road right of way to show adequate conforms to existing conditions and proper future drainage. Existing conditions mapping shall include appropriate data collected in Task A.2.
 - Consultant shall conduct a detailed field survey to review and record existing conditions in the Project area and shall identify any unusual or special conditions that may affect the design or construction of the Project. The field survey for the Project area shall include at a minimum, the location of all existing above and below grade facilities, including but not limited to, roadways, signing/stripping, medians, traffic signals and appurtenances, fire hydrants, street lights, retaining walls, sidewalks, curbs, gutters, ramps, SR 17 overcrossing structure including the embankments and structural components, fences, gates, utilities, flood control facilities, waterways, outfalls, trees greater than 6” DBH, and any existing irrigation facilities.
 - Consultant shall review data and survey information collected with proposed Project layout and shall complete physical verification of utility locations in areas of potential conflict. Consultant shall obtain all permits and approvals necessary to complete the potholing operations. Results of potholing shall be included on the Utilities Base Map.

- Based on the survey and data collected, Consultant shall prepare one or more existing conditions base maps, at a scale of 1"=20' for use in the Project design and community meetings, including
 - o Existing Conditions Base Map
 - o Existing Utilities Base Map
 - o Existing Tree Plan - Consultant shall prepare a separate plan showing the location and number of existing trees over 6" DBH, including size and species
 - o Right of Way Map – showing location of all property lines and easements within or immediately adjacent to the Project area.

Deliverables: Survey data sheets, base map(s) and plans in AutoCAD format– including Existing Conditions Base Map, Existing Utilities Base Map, Tree Locations and Right of Way Map

- **Task A.4 Stakeholder Coordination and Project Permits**– Consultant shall identify all Project stakeholders and shall take actions necessary to coordinate Project design with the Town and Project stakeholders. Meetings with the stakeholders, including the Town, Town Council and Commissions, community members, Caltrans, VTA, any affected utilities, and any affected private properties will be included in this scope of work and shall include preparing and providing supporting documents, reports, and exhibits. Consultant shall determine the need for permits to allow for the ultimate construction of the Project, including a Caltrans encroachment permit, and any other permits deemed necessary for construction access and staging areas and shall prepare required applications, documents, and reports to allow the Town to obtain the Project permits in a timely manner. Design of the Project is to remain within the existing public and Caltrans right of way, however, the Consultant will identify any conform or other activities that may need to temporarily take place on private property, and will coordinate with adjacent property owners to obtain clearances for such activities. Consultant shall coordination permits necessary for geotechnical drilling operations and USA clearances.

Caltrans Coordination: Consultant will take the lead and coordinate with Caltrans and the Town to prepare a Project Initiation Document (PID), Project Study Report-Project Development Study (PSR-PSD), Project Approval & Environmental Document (PA&ED), and final PS&E including all reports and documentation required by Caltrans in order to obtain a Caltrans encroachment permit for the Project. The PID shall comply with the Caltrans standard PSR-PDS requirements and will include the overall site plan and typical conceptual cross-sections for the alternatives identified in the feasibility study. The Consultant shall assist the Town in the development of the necessary Cooperative Agreements with Caltrans for the PID, PA/ED, and PS&E phases. The Consultant shall schedule and hold meetings as needed with Caltrans and shall also schedule and hold regular Project team coordination meetings with Caltrans and shall prepare the meeting agendas, minutes, and action items. It will be the Consultant's responsibility to prepare, implement and monitor a realistic schedule of the activities necessary, to lead the Town through the PID, PA/ED, and PS&E phases of the Project.

Deliverables to include: Approved PID, PA/ED, and PS&E; Project team meeting agendas, minutes, action item lists, Caltrans encroachment permit for Project construction.

Selection of Preferred Bridge Type: The feasibility study has identified three feasible types of bridge structures for consideration. The Consultant shall develop each concept further and shall assist the Town in the presentation of these three alternatives to the community, the Town's Complete Streets and Transportation Commission and the Town Council. The Consultant shall lead the Town's effort to develop a consensus regarding the final bridge type for advancing into the final design process. This process is to take place concurrently with the development of the Project Initiation Document (PID), and shall result the Town Council's selection of the final bridge type prior to the completion of the PID phase. The following tasks are anticipated for the selection of the preferred bridge structure:

- o Prepare an opportunities and constraints diagram for each bridge type
- o Refine each alternative to show impacts to adjacent properties and relationship to adjacent property lines
- o Provide diagrams and plans showing the movement of bicycle and pedestrians across the structures and through the adjacent intersections and across bridge structure

- Develop additional perspectives for each bridge structure showing:
 - Viewer friendly plans showing proposed alignment, profiles, and cross-sections of each bridge alternative
 - Visual simulation/view of each bridge structure from both south and northbound SR 17
 - Visual simulation/view of each bridge from the user's perspective both east and west bound directions
 - Potential additional architectural features or opportunities for each bridge type
 - Refine basic cost estimate for each bridge type
- Assist the Town in a community workshop(s) to review bridge types and determine community preference
- Assist the Town in presentations to the Parks and Recreation Commission, the Complete Streets and Transportation Commission, and Town Council to determine the final bridge type.

Deliverables to include: Opportunities and constraints diagrams, visual simulations, plans, profiles, cross-section, meeting presentations, cost estimates.

Community Coordination: With assistance from the Consultant, Town staff will implement and lead the Project's Community Engagement Plan. Specific community engagement activities required of the Consultant are anticipated to include the following:

- Stakeholder Engagement – The Consultant shall provide supporting documents and exhibits for the Towns use in stakeholder notifications.
- Community Meeting and Workshops – The Consultant and Town shall develop a list of key Project milestones for community input and workshops. For the purposes of this Proposal, Proposers shall include a minimum of eighteen (18) 2- hour public meetings/workshops. A preliminary list of anticipated milestone presentations is outlined below. The Town shall arrange venues for workshops and shall notify stakeholders of meetings and workshops, however the Consultant shall be prepared to lead the community discussion/workshops and Commission/Council presentations and shall provide supporting documentation and visual aids. Visual aids shall include renderings and visual simulations of major Project elements. All Project materials shall include the appropriate Measure B logo and acknowledgements. The Consultant shall provide meeting summaries and follow up on outstanding comments or issues. It is anticipated that the community meetings, workshops, and presentations will be required at the following Project milestones:
 - Preferred Bridge Type Selection – Two (2) community workshops, plus four (4) Council or other Commission presentations
 - Community/Commission Design Reviews– minimum of two (2) each at PID, PA/ED, 35% design, 65% design, and 95% design
 - Town Council presentation at 35% and at 100% complete PS&E
- On-line Engagement – Consultant shall provide periodic progress updates for the Town to post on the Project web-page.

Deliverables to include: Workshops and presentations (min. 18), agendas, visual aids/visual simulations, renderings, meeting summaries, follow-up as needed,

VTA Coordination: Consultant shall review the Town's funding agreement with the VTA for the Project and shall assist the Town in compliance with the requirements contained in the funding agreement. The following tasks are anticipated to be required:

- Provide the Town with written quarterly progress updates on the Project, including but not limited to updates on Project expenditures, any changes in scope and schedule, and Project status.
- Include insurance coverage and endorsements as required by VTA funding agreement.
- Provide VTA copies of Project deliverables including, but not limited to, reports, designs, drawings, plans, specifications, schedules, and other materials. Consultant shall allow VTA a minimum of thirty (30) calendar days to review and provide comments and shall include such review time in the master Project schedule. VTA's comments must be considered in the final design phase of the Project. Consultant shall provide back-up information as necessary for any VTA comment that will not be incorporated into the final design documents.

- Consultant shall be available to present on the Project at VTA committees as needed.
- Submit to the Town all records including invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- Provide information to the Town for the submittal of the Project's final report to VTA, including information regarding final Project costs and post-construction photos, along with any other information VTA may require for inclusion in the final report.
- Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to the Project for five (5) years. Consultant shall make such records available to VTA and the Town upon written request for review and audit purposes. Financial audits may be performed at VTA's sole discretion.

Deliverables to include: Updates, invoices, reports, written responses to VTA review comments.

Utility Coordination – The complete effort for utility coordination is to include accurately identifying and mapping of existing utilities, identifying and defining any relocations or modifications required by the Project, and documenting utilities in accordance with Caltrans policies, and coordinating any future utility requirements for the Project.

- Coordinate with all utility companies early in Project to identify and confirm any potential conflicts with the Project.
- Submit proposed plans to utility companies as necessary for review in accordance with utility requirements.
- Complete potholing to verify location of utilities in potential conflict areas.
- Coordinate any necessary utility relocations, including and temporary relocation of the utility facilities, as needed, for bridge installation or other construction considerations.
- Coordinate with PG&E and the SJWC for future power and water service points needed for the Project.
- Develop and maintain a list of utility contacts and relocation tracking database for the Project design and construction activities.
- Prepare Utility A, B, and C letters.
- Conduct utility coordination meetings, prepare agendas, minutes, and track action items.
- Prepare utility conflict maps clearly delineating existing and proposed utilities in current and final locations.
- Provide support to the Town for the utility relocation process, determining liability for the costs associated with necessary relocations.
- Prepare necessary Utility Agreements.
- Incorporate relocation activities into Project schedule.
- Certify that all utility conflicts are addressed and other actions necessary to obtain the Utility Certification as part of the ROW Certification.

Deliverables to include: A, B, C, letters and utility certifications, agreements, permits, clearances as required to obtain the Caltrans encroachment permit and for construction of the Project, meeting minutes, utility contact list.

- **Task A.5 Environmental Studies and Documentation – CEQA and NEPA** The Consultant shall complete all required environmental reviews and obtain all environmental clearances to allow the Project to move forward into construction. All environmental documents and reports, studies and public noticing shall be conducted according to the provisions of the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA). Consultant will prepare an Initial Study pursuant to the requirements of CEQA. For the purposes of this proposal, Proposers shall assume the City will be designated as the lead for the CEQA process and that the Initial Study will determine a Categorical Exemption is the appropriate filing for the Project. NEPA clearance will be required due to the future federal funding for construction of the Project. Consultant will work with Caltrans, the lead for the NEPA process, and will complete all studies as identified by the Initial Study and as required by Caltrans to complete the NEPA documents. For proposal purposes, Proposers should assume the appropriate filing for the NEPA will be a Categorical Exclusion. The

Proposer shall confirm that the Project team possesses the expertise necessary to complete any level of environmental documentation.

Consultant will attend field meetings, conduct field investigations, research and review appropriate literature, prepare forms (including any required maps, plans, and/or exhibits), and prepare any/all required technical reports/studies necessary to obtain the CEQA and NEPA clearances.

Regulatory Agency Permits - Consultant will identify any/all regulatory agency permits required for the Project, including the State Water Resources Control Board. Consultant will prepare/submit required applications to the each identified regulatory agency and obtain approvals/permits as required for the Project. Consultant will coordinate and attend any meetings required for/by the regulatory agencies.

Deliverables to include: Environmental studies and reports as required by Caltrans, CEQA and NEPA, CEQA and NEPA clearances, Caltrans authorization to proceed to final design, Regulatory permits and documentation of activities required by the State Water Resources Control Board, Incorporation of mitigation measures, if any, into final contract documents.

- **Task A.6 Geotechnical Investigations and Reports** – The Consultant shall conduct geotechnical investigations as necessary to ensure that all geotechnical data within the Project area that may affect the final design and construction of the Project are identified and addressed per the Caltrans encroachment permit requirements and in the final design of the Project.
 - Investigations shall include a boring program for the bridge abutments and supports, any relevant design parameters, bearing capacities, anticipated settlements, testing locations for hazardous or unsuitable materials, subgrade preparation, and treatment recommendations for wet, unsuitable and/or saturated conditions as appropriate.
 - Consultant shall provide the number of necessary borings in the Project area, located appropriately to provide sufficient information to support cost-effective solutions for final design of the proposed improvements. The proposed boring locations (and quantity) shall be identified in the proposal.
 - Conduct any soil sampling and studies, including laboratory testing, as necessary to obtain detailed information required for final design of the improvements, including the existence of any contaminated, hazardous, or unsuitable soil/materials including aerially deposited lead. The number of soils samples shall be sufficient to provide statistically representative indication of the type and level of contaminants as required by the Town and Caltrans.
 - Consultant shall prepare a foundation report and log of test borings for all proposed new bridge structures.
 - Consultant shall perform engineering analyses and evaluation and develop design recommendations for the proposed bridge foundation system. Evaluation shall include alternate foundation systems, seismic and liquefaction considerations, California Building Code and current Caltrans seismic design criteria. ARS curves shall be provided by the Consultant.
 - Draft and final foundation reports shall be prepared for submittal to Caltrans and shall follow Caltrans guidelines and shall include recommendations for the bridge foundation.
 - Consultant shall submit an encroachment permit application to the appropriate agency prior to performing any borings. Coordination and approval from the Town shall be required prior to commencement of the work.
 - Soils testing shall also be completed for the multi-use pathway for use in the final design recommendations.
 - The results of the field work, the laboratory testing, and the analyses shall be provided to the Town in a letter report.

Deliverables: Geotechnical Reports, Soils testing reports, Foundation Reports, and/or Technical Memorandums

- **Task A.7 35% PS&E** – The preliminary 35% design is intended to allow the Town, Caltrans, the community, and other stakeholders to review and comment based upon the basic design concepts early in the design process. Plan development shall be based on the base mapping, data collection, and other determinations that

are developed through the Environmental and PID/ phases. Consultant shall prepare the 35% design and submit to stakeholders for review and comment at community, commission, and Council meetings. Stakeholder comments shall be addressed in writing by the Consultant prior to continuation of the design to the next level.

35% submittal, at a minimum, is anticipated to include the following:

- Town's standard cover sheet and title sheet
 - Index of all plan sheets that will be included in the final plan set
 - Index of all required special details
 - Existing utilities and existing right of way base map
 - Horizontal and vertical alignment plans
 - Demolition plan(s)
 - Typical trail cross sections
 - Preliminary grading and drainage plans and details
 - Preliminary utility plans and details (including water service for landscape areas)
 - Preliminary landscape plans and details
 - Preliminary bridge plans (structural and architectural), typical cross sections, and details
 - Preliminary electrical plans and details (including bridge, trail, traffic signals, etc)
 - Preliminary lighting plans and details
 - Preliminary intersection plans and details (signing and striping)
 - Preliminary retaining wall plans, details, and cross sections
 - Options and preliminary plans for architectural features and enhancements for bridge structure and pedestrian and bicycle facility
 - Tree removal plan
 - Preliminary stormwater management plan
 - Standard Specifications and Special Provisions prepared to a 35% complete level
 - Construction cost estimate including all anticipated cost items and an appropriate estimating contingency
 - Independent quality control check including a review of the 35% plans and specifications for accuracy and conformance to applicable design standards and codes, constructability, and potential for value engineering/cost savings measures.
- **Task A.8 Final Design** – Based on the 35% PS&E documents and resolved comments, and following Caltrans approval of the PA/ED, the Consultant will prepare the PS&E for the 65%, 95% and Final 100% submittals. PS&E shall be submitted to the Town of Los Gatos - Parks and Public Works Department at 65%, 95% and 100% complete. At each submittal stage, the items listed in A.7 shall be completed to the appropriate level of design. At each state, 3 hard copy sets of D-size (24"x36") plans and 3 hard copy sets of B-size (11"x17") plans shall be submitted along with electronic copies prepared in PDF format. At each stage 3 hard copies of the Specifications, Special Provisions, and Cost Estimates shall be provided along with electronic copies in MS Word/Excel. After each submittal, the Consultant shall allow appropriate time frames for identified stakeholders to review the submittal and return comments. All comments provided shall be addressed in writing prior to beginning work on the following submittal.

65% submittal shall include all plan sheets developed to a minimum 65% complete stage and shall have been reviewed by the Consultant for quality control, and coordination and consistency between plan sheets. Specifications and Special Provisions at the 65% level shall include a complete table of contents with all special provisions necessary for the construction of the Project identified. The construction cost estimate shall be prepared and shall include an appropriate estimating contingency.

Bridge Design Calculations and Independent Check: Structural calculations, Project plans and specifications shall be independently checked by a Structural Engineer registered in the State of California and hired by the Town. Consultant shall provide the 65% complete Project plans and specifications and allow sufficient time for the independent review. All review comments from the independent check will be resolved between the designer and the checker, and incorporated into the final design. The independent check will also include a constructability review to evaluate potential fabrication, transport, and erection schemes to verify the feasibility of the proposed structure design and possible joint locations. At least one feasible fabrication and

erection scheme will be outlined on the drawings for approval by the Town, Caltrans, VTA and any third party reviewers. The structural detailing will be developed to allow contractor flexibility if feasible.

Consultant shall ensure all activities necessary to comply with regulations of the State Water Resources Control Board, including the requirements for the National Pollutant Discharge Elimination System permitting process, preparation of Project Registration Documents (PRDs) by a licensed qualified stormwater pollution prevention plan (SWPPP) developer (QSD), submittal of information to the Stormwater Multi Application Permit Tracking System (SMARTS), obtaining the WDID Project number, processing any other applicable documents, studies, waivers, and payment of all fees is addressed by the Consultant and/or included in the construction Project specifications for completion during construction.

95% submittal shall be the fully developed set of contract documents including all plans sheets, Specifications and Special Provisions, details, and other contract documents necessary for the construction of the Project. The construction cost estimate shall be finalized and shall include a 10% estimating contingency. The Consultant shall have conducted an internal quality control review of the plans, Specifications, Special Provisions, and construction cost estimate prior to submitting the 95% complete set and shall ensure that the contract documents are well coordinated, and information is consistent between all documents.

Following submission and review of the 95% submittal, the Consultant shall prepare and provide the Town with the final contract documents 100% for use in the construction bid process. All contract documents (plans, Specifications, Special Provisions, and estimates) are to be signed by the appropriately licensed professional engineer in responsible charge of the design.

Consultant shall provide an electronic copy of the final contract documents, a signed and stamped mylar copy of the final approved plans, and a hard copy of the final signed, approved, and stamped Specifications, Special Provisions, and construction cost estimate. The electronic copy of the plans shall be provided as both AutoCAD files and PDF files, and the electronic copy of the specifications and estimate shall be provided in both Microsoft Word/Excel format and PDF format. Town of Los Gatos - Parks and Public Works Department will be responsible for making copies of contract documents and will distribute to plan rooms and contractors in advance of the bid phase.

Deliverables: Plans, Specifications, Special Provisions, and estimates for Town review at 35%, 65%, 95% design stages; final contract documents, SWPPP, WDID Project number

Right of Way, Utility and ADA Certifications – It is not anticipated that right of way will be required for the Project. Consultant shall verify and prepare the appropriate Right of Way, Utility, and ADA certifications to advance the Project to the construction phase using procedures outlined in the Caltrans Local Assistance Procedures Manual. All property lines are to be shown on the design and construction documents.

Deliverables: Utility Clearance, Right of Way and ADA Certifications

- **Task A.9 - Additional Reports and Services** –Additional reports and/or services may be required by the Town or Caltrans during the course of design. Under Task A.9, Proposers may include, as subtasks, any additional reports or services they believe may be required or necessary as part of the Project. During design, should additional reports or services be required, the Town and Consultant shall agree on the work involved in the required subtask, and the Consultant shall provide a cost proposal for the subtask work. Upon agreement of the scope and cost of the subtask, the Town will provide a written authorization to proceed with the subtask, with deliverables and lump sum payment identified. Subtasks may include any item of work for which the expertise required to complete the subtask was evaluated as part of this RFP. This includes, but is not limited, to additional reports or services requiring surveying, mapping, environmental surveys, studies, and reporting, structural engineering, landscape design, public interaction, soils and geotechnical testing and reporting. There is no guarantee, either expressed or implied, that the services and costs shown for this task A.9 will be authorized in full.

- **Task A.10 Construction Phase Authorization** – Consultant shall assist the Town in the preparation of the Request for Authorization to advance Project to Construction using procedures outlined in the Caltrans Local Assistance Procedures Manual and shall complete any items necessary to obtain authorization for the Town to proceed with construction.

Deliverables: Caltrans Encroachment Permit, Authorization from Caltrans to proceed with construction (E-76)

- **Task A.11 Bid Support Services** – Consultant shall respond in writing to questions that arise during the bid phase and shall prepare addendums, if necessary, which will be distributed by the Town of Los Gatos - Parks and Public Works Department. Each addendum shall also address cost implications to the Project construction cost estimate. Consultant shall prepare written responses to questions received and addenda in a format that can be easily posted to the Town's website. Following completion of bid stage, Consultant shall incorporate any addenda into the final contract documents and shall prepare the final "Conformed Contract Documents". Consultant shall provide an electronic copy of the final Conformed Contract Documents, a signed and stamped mylar copy of the final conformed plans, and a hard copy of the final signed, approved, and stamped conformed Specifications, Special Provisions, and cost estimate. The electronic copy of the plans shall be provided as both AutoCAD files and PDF files, and the electronic copy of the specifications and estimate shall be provided in both Microsoft Word/Excel format and PDF format.

PHASE II - CONSTRUCTION SUPPORT SERVICES:

- **Task B.1 Project Management**
The Consultant shall provide all the necessary Project coordination, administration, management and interfacing with the Town, Caltrans, and other internal/external stakeholders to achieve Project objective. Consultant shall proactively provide direction to the Town regarding the Project tasks necessary to deliver the federally funded Project consistent with Caltrans permitting requirements and federal reimbursement requirements. The Consultant shall be responsible for Project management activities throughout the life of the contract. The scope of these activities includes, but is not limited to,
 - provide, distribute, and maintain contact information for all Project team members
 - coordinate and schedule meetings/conference calls as needed
 - prepare and distribute meeting minutes
 - itemize, track, and pursue all Project action items to completion
 - develop and maintain the Project schedule, report on Project progress
 - supervise, coordinate, and monitor the construction for conformance with permit requirements from Caltrans, VTA, and utility companies
 - conduct field reviews as needed,
 - prepare all submissions for the Town's submittal to Caltrans
 - provide internal quality control checks and document quality control actions conducted for the Project
 - conduct cross-checking to avoid potential conflicts between various subconsultant's work
 - develop Project filing and record keeping system for Project files for a period of 5 years
 - develop a list of Project stakeholders for coordination during Project design
 - provide the Town with required documents required for compliance with the Measure B funding Agreement between the Town and VTA, Including but not limited to progress reports, reimbursement forms, etc.)
 - provide monthly Project updates for posting on the Project page of the Town's website

Deliverables: Meeting minutes, schedule, progress reports, action item logs, tracking spreadsheets, Caltrans submissions and other items resulting from Consultant's Project management duties

- **Task B.2 Construction Support Services** – Consultant shall be prepared to provide the following construction support services:
 - Provide construction surveying
 - Provide materials testing services as required per Caltrans, Town, and federal requirements
 - Review of submittals and shop drawings for compliance with Contract Documents

- Review and response to Requests for Information, Requests for Change Orders, Quotes from Contractor
- Review of Contract Change Orders
- Review and tracking of results from materials testing for conformation to Contract Documents
- Field review and geotechnical monitoring during bridge installation
- Structural review and field monitoring during bridge installation
- Prepare design modifications if necessary due to unforeseen conditions

Contract Term – Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs and must be done prior to expiration of the original contract. Only work within the original advertised scope of services shall be added by amendment to the contract.

Method of Payment –

Phase I – Design Services - Lump Sum Fee

Phase II – Construction Support Services – Cost per Unit of Work

For Phase I, progress payments will be based on the percent of work complete by task or upon completion of clearly defined milestones as approved by the Town.

For Phase II, the Consultant agrees to be paid based on a cost per unit of work. The Consultant’s cost proposal must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. Consultant’s cost proposal shall include a not to exceed amount for these services.

Insurance Requirements - The Consultant shall comply with all insurance requirements of the Town of Los Gatos - Parks and Public Works Department, included in the sample Agreement contained in Attachment 2. Submittal of a proposal is a guarantee that the Consultant will provide documentation of compliance with the insurance requirements prior to contract award.

Minimum Qualifications of Personnel – The Consultant shall meet, at a minimum, the appropriate professional qualifications as required to complete the work outlined in the RFP and as required by State Law and the contract. The responsible Consultant/engineer shall sign all Plans, Specifications, Special Provisions, Estimates (PS&E) and engineering data and reports furnished under the Agreement including the engineer’s registration number and expiration date.

Equipment Requirements - The Consultant shall have and provide adequate office equipment and supplies to complete the work required by the Agreement, including any home/work offices or arrangements. Consultant shall have and provide adequate field tools, instruments, equipment, materials, supplies, and safety equipment to complete the required field work and that meet or exceed Caltrans Specifications per the Caltrans Manuals.

Quality Control/Assurance Measures – Consultant shall implement and maintain quality control procedures to manage conflicts, insure product accuracy, and identify critical reviews and milestones. Consultant shall provide knowledge, experience, and familiarity with the Quality Control and Quality Assurance (QA/QC) for California Test Methods and laboratories.

Materials to be provided by the Agency - Unless otherwise specified in this Agreement, the Consultant shall provide all materials to complete the required work in accordance with the Scope of Services and the delivery schedule and cost estimate outlined for each Task. Materials that may be furnished or made available by the Town of Los Gatos - Parks and Public Works Department and where listed in the individual Tasks and this Agreement, are for the Consultant’s use only, shall be returned at the end of the Contract.

Work to be performed by the Agency - The Town shall assist in the coordination between the Consultant and the various offices of Caltrans, the Town Council, the community and the contractor, however, it is expected that the selected Consultant has experience with local federally funded Projects and will provide both the technical as well as

procedural support necessary to proactively guide the Town through the design and construction process to be compliant with Caltrans and federal requirements. The Town shall provide general construction management, but shall rely on Consultant for geotechnical, structural inspection, and materials inspection services during construction as needed. The Town reserves the right to hire an independent Materials Testing firm to provide testing services during the Project construction. Should the Town hire an independent Materials Testing firm, the Consultant shall assist the Town in the scheduling, coordination, and review of the activities of the testing firm..

Conflict of Interest Requirements - Throughout the term of the awarded contract, any person, firm or subsidiary thereof who may provide, has provided or is currently providing Design Engineering Services and/or Construction Engineering Services under a contractual relationship with a construction contractor(s) on any local Project listed in this Scope of Services must disclose the contractual relationship, the dates and the nature of the services. The prime Consultant and its subconsultants shall also disclose any financial or business relationship with the construction contractor(s) who are working on the Projects that are assigned for material Quality Assurance services through task orders on the contract.

Similar to the disclosures regarding contractors, all firms are also required to disclose throughout the term of the awarded contract, any Design Engineering services including claim services, Lead Project Management services and Construction Engineering Services provided to all other clients on any local Project listed in this Scope of Services.

In addition to the disclosures, the Consultant shall also provide possible mitigation efforts, if any, to eliminate or avoid any actual or perceived conflicts of interest.

The Consultant shall ensure that there is no conflict before providing services to any construction contractor on any of the agency’s Projects listed in this Scope of Work. The submitted documentation will be used for determining potential conflicts of interest.

If a Consultant discovers a conflict during the execution of an assigned task, the Consultant must immediately notify the Contract Manager regarding the conflicts of interest. The Contract Manager may terminate the Task involving the conflict of interest and may obtain the conflicted services in any way allowed by law. Failure by the Consultant to notify the Contract Manager may be grounds for termination of the contract.

Some examples of conflict of interest are the following:

- Certified Materials Tester(s) or Plant Inspector(s) from the same company that performs Quality Control for the Contractor and Quality Assurance for the Town of Los Gatos - Parks and Public Works Department on the same Project.
- Providing services to construction contractor’s subcontractors, fabricators, equipment installer, material suppliers and other firms associated with the Projects listed in the Contract can be a potential conflict of interest when such contractor teams are identified.

Project Schedule – The following milestone dates have been identified for the scope of services.

Notice to Proceed	April 2021
Project Initiation Document (PID)	April 2021-February 2022
Bridge Type Selection	June 2021 – October 2021
PA/ED	February 2022 – January 2023
Complete 35% Design	May 2022
Complete 65% Design	July 2023
Complete 95% Design	December 2023
Final Contract Documents	January 2024
Advertise/Bid Phase*	February 2024 – April 2024
Construction Phase*	April 2024 – December 2025*

*The schedule for the bid and construction phases will be dependent on the Town securing funding to proceed and are subject to modification based on the availability of the actual funding source.

In order to easily assess duration and resources, the Project planning and scheduling of tasks and deliverables by the Consultant should be done using a Gantt chart.

E. PROPOSAL REQUIREMENTS

These guidelines are provided for standardizing the preparation and submission of Proposals by all Consultants. The intent of these guidelines is to assist Consultants in preparation of their proposals, to simplify the review process, and to help assure consistency in format and content.

Proposals shall contain the following information in the order listed:

1. Introductory Letter

The introductory (or transmittal) letter shall be addressed to:

WooJae Kim, Town Engineer
Parks & Public Works Department
41 Miles Avenue
Los Gatos, CA 95030

The letter shall be on Consultant letterhead and include the Consultant's contact name, mailing address, telephone number, facsimile number, and email address. The letter will address the Consultant's understanding of the services being requested, statement on financial stability of the firm, and any other pertinent information the Consultant believes should be included. Proposer must state that they take no exceptions to the Town of Los Gatos Consultant Services Agreement (Attachment 2) or list items for exceptions for Town's consideration. All addendums received must be acknowledged in the transmittal letter. Introductory letter shall be limited to two (2) pages.

The letter shall be signed by the individual authorized to bind the Consultant to the proposal.

2. Executive Summary

Proposers shall include in the executive summary a statement addressing the firm's ability to establish an office within the Town of Los Gatos, the County of Santa Clara, or the surrounding area. Executive Summary shall be limited to two (2) pages.

3. Consultant Information, Qualifications & Experience

The Town of Los Gatos - Parks and Public Works Department will only consider submittals from Consultants that demonstrate they have successfully completed comparable federally funded Projects. These Projects must illustrate the quality, type, and past performance of the Project team. Submittals shall include a detailed description of a minimum of three (3) Projects within the past five (5) years which include the following information:

1. Contracting agency
2. Contracting agency Project Manager
3. Contracting agency contact information
4. Contract amount
5. Funding source
6. Date of contract
7. Date of completion
8. Consultant Project Manager and contact information
9. Project Objective
10. Project Description
11. Project Outcome

12. Accuracy of Cost Estimate prepared by Consultant

4. Organization and Approach

1. Describe the roles and organization of your proposed team for this Project. Indicate the composition of subcontractors and number of Project staff, facilities available and experience of your team as it relates to this Project.
2. Describe your Project and management approach. Provide a detailed description of how the team and scope of work will be managed.
3. Describe the roles of key individuals on the team. Provide resumes and references for all key team members. Resumes shall show relevant experience, for the Project's Scope of Services, as well as the length of employment with the proposing Consultant. Key members, especially the Project Manager, shall have significant demonstrated experience with this type of federally funded Project, and should be committed to stay with the Project for the duration of the Project.

5. Scope of Services

1. Review the preliminary scope of services included in the RFP "Requested Scope of Services". Prepare a detailed Scope of Services outline per the RFP "Requested Scope of Services", describing all services proposed to be provided with explanations regarding any proposed deviations or modifications to the preliminary scope of services and tasks included in the RFP. Include for each task the anticipated resource allocation (both Consultant and Sub Consultants) that are proposed to be assigned to the task/sub task along with the anticipated number of hours anticipated for each resource to be assigned.
2. Describe Project deliverables for each phase of your work.
3. Describe your cost control, budgeting, and quality control methodology for this Project.
4. Provide responses to the following:
 - a. Describe critical engineering design issues associated with the Project and how you will address these.
 - b. Describe critical environmental issues and how you will address these.
 - c. Describe how Project cost could be minimized and how Project schedule could be expedited.

6. Schedule of Work

Review the preliminary schedule included in the RFP "Requested Scope of Services". Provide a summary schedule for all tasks/phases of the Project and the proposed Consultant's services, including time for reviews and approvals. The schedule shall meet the Project Schedule as shown in the RFP "Requested Scope of Services" or shall be modified with explanation as to why an alternate schedule is being proposed.

7. Conflict of Interest Statement

The proposing Consultant shall disclose any financial, business or other relationship with the Town of Los Gatos that may have an impact upon the outcome of the contract or the construction Project. The Consultant shall also list current clients who may have a financial interest in the outcome of this contract or the construction Project that will follow. The proposing Consultant shall disclose any financial interest or relationship with any construction company that might submit a bid on the construction Project.

8. Litigation

Indicate if the proposing Consultant was involved with any litigation in connection with prior Projects. If yes, briefly describe the nature of the litigation and the result.

9. Contract Agreement

Indicate if the proposing Consultant has any issues or requested changes to the Town's Agreement for Consultant Services, as included as Attachment 2.

The Consultant shall provide a brief statement affirming that the proposal terms shall remain in effect for ninety (90) days following the date proposal submittals are due.

Prior to award, Consultants must provide documentation of an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. In the proposal, the Consultant shall indicate whether or not the Consultant has possession of a Cognizant Letter of Approval for Indirect Cost Rates from Caltrans which will be accepted for completion of this Project. A contract will not be awarded to a Consultant without an adequate financial management and accounting system as required by 48 CFR Part 31 and 2 CFR Part 200.

10. Federal-Aid Provisions

Consultant shall demonstrate familiarity of providing services for federally funded Projects and a clear understanding of requirements/needs to facilitate the Project through and in compliance with Caltrans Local Assistance and the Local Assistance Procedures Manual. Proposers shall demonstrate familiarity and highlight expertise the following areas.

The proposing Consultant's services are not federally funded, however it is likely the construction will be federally funded, and as such the design services contract is likely to be federalized necessitating compliance with additional requirements. Special attention is directed to Attachment 4 – Local Assistance Procedures Manual Exhibits. The proposing Consultant shall review and comply with Exhibit 10-I: Notice to Proposers DBE Information, and complete and submit the following forms with the proposal to be considered responsive. Sample of these forms and instructions are provided for the proposer in Attachment 4, however it is the Proposer's responsibility to complete the most current version of the form by downloading from the Caltrans website at <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>.

- Local Agency Proposer DBE Commitment (Consultant Contracts); (LAPM 10-01). **The local agency's current contract DBE Goal is 12%.**
- DBE Information - Good Faith Effort (LAPM 15-H) – Required only if DBE goal is not achieved. It is recommended that proposer prepare and submit a GFE irrespective of meeting the DBE goal.
- Disclosure of Lobbying Activities (LAPM 10-Q)
- Cost proposals per Sample Cost Proposal Exhibit 10-H (10-H1, 10-H3 and 10-H4)

Consultant shall assist the Town in completion of Exhibit 10-A, the Consultant Financial Document Review Request, and provide all required documents for submission. Upon award, during, and at completion of the Project, the successful proposing Consultant will be required to follow applicable federal-aid requirements. Consultant shall complete and submit the following forms with the Agreement at the time of award:

- Local Agency Proposer DBE Information (Consultant Contracts) (LAPM 10-02) This form must be completed by the successful Consultant and it will be incorporated into the final Consulting Services Agreement with the Town.
- Exhibit 10-K Consultant Certification of Contract Costs and Financial Management System
- Any other relevant forms required during the Project.

11. Cost Proposal

The Consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit if applicable, as outlined below.

In order to assure that the Town of Los Gatos - Parks and Public Works Department is able to acquire professional services based on the criteria set forth in the Brooks Act and Government Code 4526, the proposal shall include a cost proposal for each task included in the proposal. Proposing Consultants will be required to submit certified payroll records, as required. **Cost proposal shall be submitted in a separate sealed envelope from the**

proposal. The cost proposal is confidential and will be unsealed after all proposals have been reviewed, and most qualified Consultant has been selected.

The Consultant cost proposal shall include separate cost and resource allocations for the two phases outlined in the RFP “Requested Scope of Services”, as follows:

Phase I – Design Services - Lump Sum Fee. Consultant shall prepare a Lump Sum Fee estimate with progress payments at specifically defined milestones or at defined percent complete stages. Cost estimates shall be prepared in accordance with the reference sample cost estimate in Attachment 3 - Sample Cost Proposal Form 10-H1.

Phase II – Construction Support Services – Specific rate of compensation. Consultant shall prepare a fee estimate based on specific items of work to be performed. The Consultant’s cost proposal must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. Cost estimates shall be prepared and submitted in accordance with the reference sample cost estimate in Attachment 3 - Sample Cost Proposal Form 10-H3 and Form 10-H4 for Prevailing Wage considerations. The Consultant’s cost proposal shall include the hourly rate schedule for all personnel and shall specify a maximum contract amount for these services.

Selected Consultant shall comply with Chapter 10 of the Local Assistance Procedures Manual regarding the A&E Consultant Contract Audit and Review process (including Section 10.1.3).

F. PROPOSAL EVALUATION, CRITERIA AND SELECTION PROCESS

Evaluation Process

All proposals will be evaluated by a Town Selection Committee (Committee). The Committee may be composed of Town of Los Gatos - Parks and Public Works Department staff and other parties that may have expertise or experience in the services described herein. The Committee will review the submittals and will rank the proposers. The evaluation of the proposals shall be within the sole judgment and discretion of the Committee. All contacts during the evaluation phase shall be through the Town of Los Gatos - Parks and Public Works Department Contract Administrator/Project Manager only. Proposers shall neither contact nor lobby evaluators during the evaluation process. Attempts by Proposer to contact members of the Committee may jeopardize the integrity of the evaluation and selection process and risk possible disqualification of Proposer.

The Committee will evaluate each proposal meeting the qualification requirements set forth in this RFP. Proposers should bear in mind that any proposal that is unrealistic in terms of the technical or schedule commitments may be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the Town’s requirements as set forth in this RFP.

The selection process will include oral interviews. The Consultant will be notified of the time and place of oral interviews and if any additional information that may be required to be submitted.

Upon completion of the evaluation and selection process, only the cost proposal from the most qualified Consultant will be opened to begin cost negotiations. All unopened cost proposals will be returned at the conclusion of procurement process. Upon acceptance of a cost proposal and successful contract negotiations, staff will recommend a contract be awarded.

Evaluation Criteria

Proposals will be evaluated according to each Evaluation Criteria and scored on a zero to five point rating. The scores for all the Evaluation Criteria will then be multiplied according to their assigned weight to arrive at a weighted score for each proposal. A proposal with a high weighted total will be deemed of higher quality than a proposal with a lesser-weighted total. The final maximum score for any Project is five hundred (500) points.

Rating Scale		
0	Not Acceptable	Non-responsive, fails to meet RFP specifications. The approach has no probability of success. For mandatory requirement this score will result in disqualification of proposal.
1	Poor	Below average, falls short of expectations, is substandard to that which is the average or expected norm, has a low probability of success in achieving Project objectives per RFP.
2	Fair	Has a reasonable probability of success, however, some objectives may not be met.
3	Average	Acceptable, achieves all objectives in a reasonable fashion per RFP specification. This will be the baseline score for each item with adjustments based on interpretation of proposal by Evaluation Committee members.
4	Above Average/Good	Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFP requirements and expectations.
5	Excellent/Exceptional	Exceeds expectations, very innovative, clearly superior to that which is average or expected as the norm. Excellent probability of success and in achieving all objectives and meeting RFP specification.

The Evaluation Criteria Summary and their respective weights are as follows:

No.	Written Evaluation Criteria	Weight
1	Completeness of Response	Pass/Fail
2	Qualifications & Experience	15
3	Organization & Approach	15
4	Scope of Services to be Provided	20
5	Schedule of Work	5
6	Conflict of Interest Statement	Pass/Fail
7	Local Presence	5
8	References	10
Subtotal:		70

No.	Interview Evaluation Criteria	Weight
9	Presentation by team	15
10	Q&A Response to panel questions	15
Subtotal:		30
Total:		100

1. Completeness of Response (Pass/Fail)

- a. Responses to this RFP must be complete. Responses that do not include the proposal content requirements identified within this RFP and subsequent addenda and do not address each of the items listed below will be considered incomplete, be rated a Fail in the Evaluation Criteria and will receive no further consideration.

2. Qualifications & Experience (15 points)

- a. Relevant experience, specific qualifications, and technical expertise of the firm, team, and sub-Consultants to conduct professional engineering services on federal-aid Projects.

3. Organization & Approach (15 points)

- a. Describes familiarity with this specific Project and demonstrates understanding of Project objectives moving forward as a federally funded Project. Demonstrates a thorough review and evaluation of the RFP “Requested Scope of Services”
- b. Roles and Organization of Proposed Team
 - i. Proposes adequate and appropriate disciplines of Project team.
 - ii. Some or all of team members have previously worked together on similar Project(s).
 - iii. Overall organization of the team is relevant to Town of Los Gatos - Parks and Public Works Department needs.
- c. Project and Management Approach
 - i. Team is managed by an individual with appropriate experience in similar Projects. This person’s time is appropriately committed to the Project.
 - ii. Project team and management approach responds to Project issues. Team structure provides adequate capability to perform both volume and quality of needed work within Project schedule milestones.
- d. Roles of Key Individuals on the Team
 - i. Proposed team members, as demonstrated by enclosed resumes, have relevant experience for their role in the Project.
 - ii. Key positions required to execute the Project team’s responsibilities are appropriately staffed.
- e. Working Relationship with Town of Los Gatos - Parks and Public Works Department
 - i. Team and its leaders have experience working in the public sector and knowledge of public sector procurement process and knowledge of the Caltrans process for consistency with requirements for federally funded Projects.
 - ii. Team leadership understands the nature of public sector work and its decision-making process.
 - iii. Proposal responds to need to assist Town of Los Gatos - Parks and Public Works Department during the Project.

4. Scope of Services to be Provided (20 points)

- a. Detailed Scope of Services to be Provided
 - i. Proposed scope of services is appropriate for all phases and tasks of the work.
 - ii. Scope adequately addresses all known Project needs.
 - iii. Resources appear reasonably assigned to complete tasks presented in scope of services.
 - iv. Scope appears achievable in the timeframes set forth in the Project schedule or presents logical amendments to the scope/schedule.
- b. Project Deliverables
 - i. Deliverables are appropriate to schedule and scope set forth in above requirements.
- c. Cost Control and Budgeting Methodology
 - i. Proposer has a system or process for managing cost and budget.
 - ii. Evidence of successful budget management for a similar Project.

5. Schedule of Work (5 points)

- a. Schedule shows completion of the work within or preferably prior to the Town of Los Gatos – Parks and Public Works Department overall time limits as specified in the RFP “Requested Scope of Services”, or provides modifications that are logical, reasonable, and timely.
- b. The schedule serves as a Project timeline, stating all major milestones and required submittals for Project management and Federal-Aid compliance.
- c. The schedule addresses all knowable phases of the Project, in accordance with the general requirements of this RFP.

6. Conflict of Interest Statement (Pass/Fail)

- a. Discloses any financial, business or other relationship with the Town of Los Gatos that may have an impact upon the outcome of the contract or the construction Project.
- b. Lists current clients who may have a financial interest in the outcome of this contract or the construction Project that will follow.
- c. Discloses any financial interest or relationship with any construction company that might submit a bid on the construction Project.

7. Local Presence (5 points)

- a. Evaluation of the statement addressing firm’s ability to establish an office within the County or surrounding area.

8. References (10 points)

- a. Completeness of information provided regarding references as outlined in the RFP.
- b. Evaluation of references and Project information provided from at least three (3) agencies you currently or have previously consulted for in the past five (5) years.

9. Presentation by Team (15 points)

- a. Presentation is given by Project team members and is clear, concise, and focused on the Project.
- b. Team presentation conveys Project understanding, communication skills, innovative ideas, critical issues and solutions.

10. Q&A Response to Panel Questions (15 points)

- a. Proposer’s Project team members provide comprehensive, well versed, and educated responses to various interview panel questions.

Weighted scores for each Proposal will be assigned utilizing the table below:

No.	Evaluation Criteria	Rating (0-5)	Weight	Score (Rating * Weight)
1	Completeness of Response	N/A	Pass/Fail	Pass/Fail
2	Qualifications & Experience		15	
3	Organization & Approach		15	
4	Scope of Services to be Provided		20	
5	Schedule of Work		5	
6	Conflict of Interest Statement	N/A	Pass/Fail	Pass/Fail
7	Local Presence		5	
8	References		10	

9	Presentation by Team		15	
10	Q&A Response to Panel Questions		15	
Total:			100	

G. Additional Requirements and Information

1. **Authorized signature.** Unsigned proposals or proposals signed by an individual not authorized to bind the prospective Consultant will be considered nonresponsive and rejected.
2. **Reservation of Rights.** This RFP does not commit the Town of Los Gatos to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The Town reserves the right to accept or reject any or all proposals, to postpone or cancel the selection process for its own convenience at any time, to waive any defects or irregularities in the RFP, to negotiate with any qualified Consultant, or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the Town of Los Gatos to do so. Furthermore, a contract award may not be made based solely on price. The Town also reserves the right to accept or reject any individual sub-consultant that a candidate proposes to use. This RFP and the interview process shall in no way be deemed to create a binding contract or agreement of any kind between the Town and the Proposers. The Town’s consultant agreement will form the basis of the contract between the parties.
3. **Proposer’s Costs.** Each proposer responding to this RFP acknowledges and agrees that the preparation of all materials for submittal to the Town and all presentations, related costs, and travel expenses, including but not limited to vehicle miles, vehicle rentals, flights, transit fares, and meals, are at the Proposer’s sole expense. The Town shall not, under any circumstances, be responsible for any cost or expense incurred by the Proposer. In addition, each proposer acknowledges and agrees that all documentation and/or materials submitted with the RFP shall remain the property of the Town.
4. **DIR Monitoring.** This Project may be subject to compliance monitoring and enforcement by the DIR.
5. **Communicating with Town.** If you have any questions regarding this RFP, please contact Michelle Quinney, Special Projects Manager at:

MQuinney, Special Projects Manager
Parks and Public Works Department
Town of Los Gatos
41 Miles Avenue, Los Gatos CA 95030
mquinney@losgatosca.gov

The Town’s primary point of contact for this RFP shall be the Town’s Project manager who shall administer the RFP process. All communications shall be submitted in writing and shall specifically reference this RFP (identify the Project in the subject line). Only answers issued by Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. No contact with other Town staff, Town council members, or any other public official concerning the Project during the procurement process is allowed. A violation of this provision may result in the disqualification of the Consultant.

6. **Assumptions of Proposers.** The Town is not responsible for the assumptions of Proposers. Neither the participation of the Town in any pre-proposal meeting, nor the subsequent award of the contract by the Town shall in any way be interpreted as an agreement or approval by the Town that a Proposer’s assumptions are

reasonable or correct. The Town specifically disclaims responsibility or liability for any Proposer's assumptions in developing its proposal.

7. **Public Record.** All responses to this RFP become property of the Town and will be kept confidential, subject to the requirements of the California Public Record Act, until a recommendation for award of a contract has been announced. Submittals are subject to public inspection and disclosure under the California Public Records Act. (Cal. Govt. Code sections 6250 *et seq*). Unless the information is exempt from disclosure by law, the content of any proposal, request for explanation, or any other written communication between the Town and any Proposer, and between Town employees or Consultants, regarding the procurement, shall be available to the public. In any event, the Town shall have no liability to Proposer for making disclosures required by the California Public Records Act or other law, court order, legal proceeding discovery request, investigative demand, subpoena, or order from a regulatory body having jurisdiction over either of the parties. Nothing contained herein shall be construed as requiring or obligating the Town to withhold information in violation of the California Public Records Act or other laws.
8. **Equal Opportunity.** The Town hereby notifies all Proposers that it will affirmatively insure that in any contract entered into pursuant to this procurement, minority business enterprises will be afforded full opportunity to submit PROPOSAL's in response to this RFP and will not be discriminated against on the grounds of race, creed, color, national origin, ancestry, sexual orientation, political affiliations or beliefs, sex, age, physical disability, medical condition, marital status, pregnancy, or other protected characteristic as set forth hereunder.
9. **Appeal.** The Town will entertain appeals regarding this RFP process only as set forth herein. The appeal process presented in this RFP will take precedence in the case of any conflict with the appeal processes contained in the Town's Policies and Procedures. The Town will not entertain appeals regarding, or reconsider, substantive scores or determinations made in the evaluation process.

Appeals may be based upon restrictive requirements or alleged improprieties in the RFP that are apparent or reasonably should have been discovered prior to the Town's receipt of proposals. Such appeals shall be written and hand delivered or sent via certified mail to be received by the Town's Contact at least fourteen (14) calendar days prior to the Town's receipt of proposals. The appeal must clearly specify in writing the grounds and evidence on which the appeal is based.

Appeals may also be based upon alleged improprieties that are not apparent in the RFP or that could not reasonably have been discovered prior to the Town's receipt of the proposals. Such appeals are limited to 1) the Town's failure to follow its own appeal procedures set forth in this Section; and 2) other procedural errors in the RFP process. The appeal must clearly specify in writing the grounds and evidence on which the appeal is based. Such appeals shall be in writing and hand delivered or sent via certified mail to be received by the Town. Contact within five (5) calendar days from receipt of the notice from the Town informing of the successful proposer.

The Town's Contact will respond to an appeal in writing within ten (10) business days of receipt, and that determination shall be final.

The appeal procedures summarized in this Section are mandatory and comprise the sole and exclusive appeal procedures for this RFP. A Proposer's failure to comply with the procedures set forth herein will result in rejection of the appeal and constitute a waiver of any right to further pursue a protest or appeal (including, but not limited to, filing a Government Code claim or legal proceeding). If the Town determines the appeal to be frivolous, the Respondent originating the appeal may be determined to be irresponsible and may be ineligible for future purchase orders and/or contracts.

In order to prevail on an appeal based on alleged improprieties not apparent in the RFP as described herein, a Proposer must demonstrate that an error was material and prejudicial to the Proposer's effort to become selected for participation in this Project. In other words, in order to prevail, the Proposer must demonstrate that but for the Town's error, the Proposer would have been selected as the Successful Respondent.

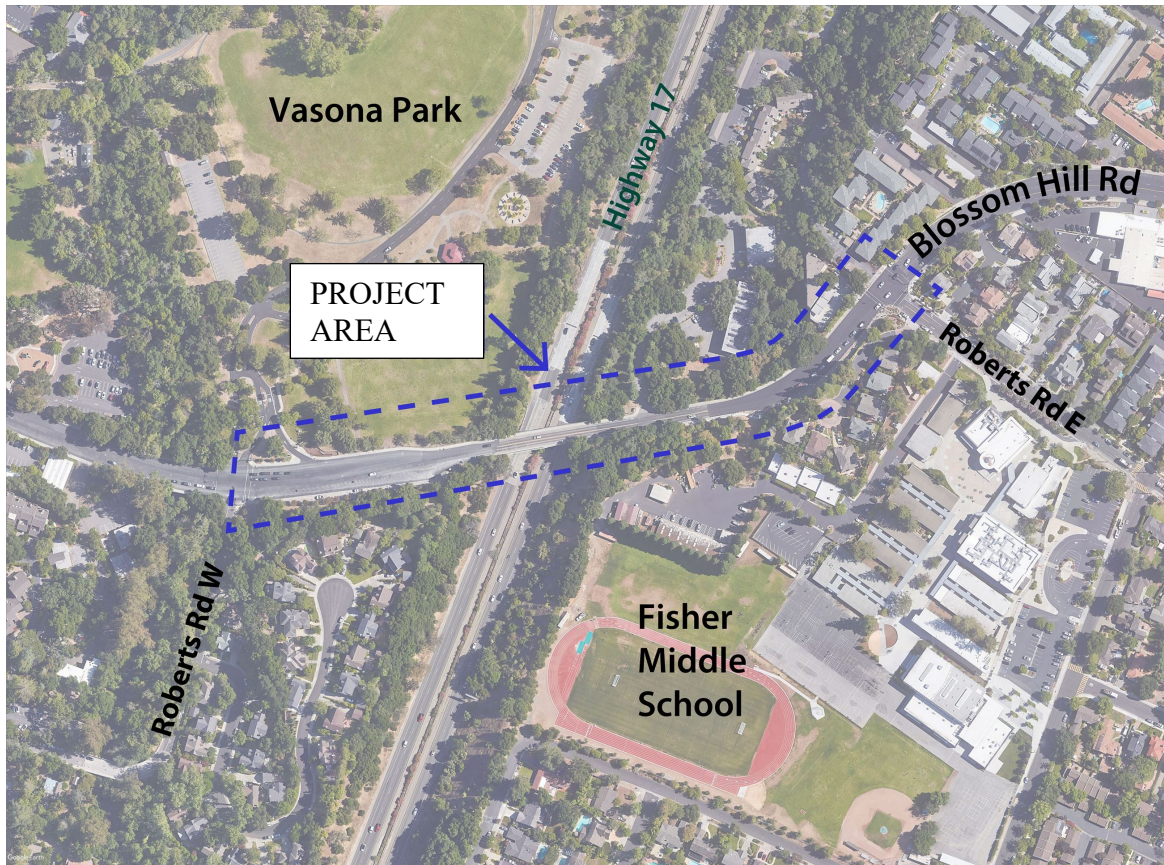
If an appeal is received within five (5) business days from receipt of the notice from the Town informing of the successful proposer, the Town will proceed with the following process: 1) Town provides a copy of the appeal to the Successful Respondent and, within five (5) business days of receipt, successful proposer may provide to the Town a written response to the appeal; 2) within ten (10) business days thereafter, Town prepares a written response to the appeal and to the successful proposer's response, if any, and provides the analysis to appellant and successful proposer; 3) within five (5) business days, appellant and successful proposer may provide written responses; 4) Town sets a hearing date for a Town Council determination on the appeal and prepares a written staff report and recommendation; 5) Town staff notifies successful proposer and appellant of the date and time of the hearing and prepares and distributes a written record containing all documents necessary for the Town Council determination and distributes the record to all parties; 6) Town Council hearing in which successful proposer and appellant are provided full opportunity to present matter to Town Council; 7) Town Council renders a final determination.

10. **Governing Law.** The laws of the State of California shall govern the interpretation and enforcement of the contract. Legal action may be instituted only in the Superior Court of the County of Santa Clara, State of California, or in the Federal District Court in the Northern District of California.

11. **Adherence to All Local, State, and Federal Laws and Requirements.** The Proposer shall adhere to all applicable federal, state, and local laws, ordinances, statutes, rules and regulations, and rulings or directives of any agencies having jurisdiction including without limitation those relating to the environment (including, but not limited to, those promulgated by EPA, California Department of Public Health), wages, hours, health and safety (including, but not limited to, those promulgated by CAL-OSHA and FED-OSHA), equal employment opportunity, and working conditions or which pertain in any way to the Project and/or Proposer's scope of work on the Project.

ATTACHMENT 1

Highway 17 Bicycle and Pedestrian Overcrossing Project
VICINITY MAP



ATTACHMENT 2 –Sample -AGREEMENT FOR CONSULTANT SERVICES

HIGHWAY 17 BICYCLE AND PEDESTRIAN OVERCROSSING PROJECT 18-832-4505

ARTICLE I - INTRODUCTION

A. This AGREEMENT is made and entered into on _____ (DATE) by and between the TOWN OF LOS GATOS, a California municipal corporation, hereinafter referred to as, LOCAL AGENCY and _____ (CONSULTANT), hereinafter referred to as, CONSULTANT, whose address is _____ (ADDRESS OF CONSULTANT). The CONSULTANT is incorporated in the State of (NAME OF STATE).

The Project Manager for the “CONSULTANT” will be (NAME)

The Contract Administrator for LOCAL AGENCY will be WooJae Kim, Town Engineer.

This Agreement is made with reference to the following facts.

The LOCAL AGENCY desires to engage CONSULTANT to provide professional engineering services for the Highway 17 Bicycle and Pedestrian Overcrossing Project.

The CONSULTANT represents and affirms that it is willing to perform the desired work pursuant to this Agreement.

The CONSULTANT represents and warrants to LOCAL AGENCY that it possesses the distinct professional skills, qualifications, experience, and resources necessary and has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for CONSULTANT to practice its profession and to timely perform the services described in this Agreement. CONSULTANT acknowledges LOCAL AGENCY has relied upon these warranties to retain the CONSULTANT.

CONSULTANT shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws.

CONSULTANT shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.

- B. The work to be performed under this AGREEMENT is described in Article II entitled Statement of Work and the approved CONSULTANT’s Cost Proposal dated (DATE). The approved CONSULTANT’s Scope of Service (Exhibit A) and Cost Proposal (Exhibit B) is attached hereto and incorporated by reference. If there is any conflict between the approved Scope of Services or Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees, to the fullest extent permitted by law, to save, keep, indemnify and hold harmless and defend the LOCAL AGENCY, its officers, agents, employees and volunteers from all damages, claims, demands, 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, errors, or omissions of the CONSULTANT, or any of the CONSULTANT’S officers, employees, or agents or any sub-consultant. CONSULTANT will reimburse LOCAL AGENCY for any expenditure, including reasonable attorney fees, incurred by LOCAL AGENCY in

defending against claims ultimately determined to be due to negligent acts, errors, or omissions of CONSULTANT.

- D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of LOCAL AGENCY. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to LOCAL AGENCY 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.
- E. LOCAL AGENCY is not required to make any deductions or withholding from the compensation payable to CONSULTANT under the provisions of this AGREEMENT, and is not required to issue W-2 forms for income and employment tax purposes for any of CONSULTANT'S assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against LOCAL AGENCY based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.
- G. Except as expressly authorized herein, CONSULTANT'S obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from LOCAL AGENCY under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. .No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II STATEMENT OF WORK

CONSULTANT agrees to perform the services as outlined in "Exhibit A –Scope of Services" within the time frames specified therein, and "Exhibit B – Consultant's Cost Proposal" which are hereby incorporated by reference and attached.

ARTICLE III CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY'S Contract Administrator to determine, if CONSULTANT is performing to

expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.
- C. This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the CONSULTANTS fee.

ARTICLE IV PERFORMANCE PERIOD

- A. This contract shall go into effect on (insert award date), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The contract shall end at the earlier of final Project construction or on 12/31/26 unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on LOCAL AGENCY until the contract is fully executed and approved by LOCAL AGENCY.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

TASK 1 -

- A. The method of payment for PHASE I of this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the Project. In the instance of a change in the scope of work or scope of the Project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONSULTANT will be reimbursed within 30 days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than 30 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each Project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and Project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice must be submitted within 60-calendar days after completion of CONSULTANT's work, unless a later date is approved by the LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Town of Los Gatos Parks and Public Works Department
ATTN: Lisa Petersen, WooJae Kim, Town Engineer

Highway 17 Bicycle and Pedestrian Overcrossing Project
41 Miles Avenue
Los Gatos, CA 95030

- E. The total amount payable by LOCAL AGENCY for PHASE I shall not exceed \$(Amount).

PHASE II

- A. The method of payment for Phase II shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$(Amount) per approved Cost Proposal. This rate shall be for a fully equipped vehicle(s) specified in Article II Statement of Work, as applicable. The specified rate to be paid for equipment shall be, as listed in the approved Cost Proposal.
- C. The method of payment for Phase II of this AGREEMENT, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and AGREEMENT is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "J," shall not be exceeded unless authorized by AGREEMENT amendment.
- D. In addition to the allowable costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$(0). The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- E. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- F. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- G. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- H. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- I. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall

detail the work performed on each milestone and each Project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and Project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Town of Los Gatos Parks and Public Works Department
ATTN: Woo Jae Kim/Town Engineer
Highway 17 Bicycle and Pedestrian Overcrossing Project
41 Miles Avenue
Los Gatos, CA 95030

- J. The total amount payable by LOCAL AGENCY for Phase II shall not exceed \$ _____.
- K. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by LOCAL AGENCY's Contract Administrator.
- L. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY provided that LOCAL AGENCY gives not less than thirty (30) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawing and data estimates performed to that date, whether complete or not.
- B. LOCAL AGENCY may temporarily suspend the AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by LOCAL AGENCY by virtue of any breach of this AGREEMENT by CONSULTANT, and LOCAL AGENCY may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due LOCAL AGENCY from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- E. LOCAL AGENCY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 or 48 CFR Part 31, are subject to repayment by CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CRF Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Government Code 8546.7; the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT, including but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT'S Independent CPA, shall make such materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal Government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of CONSULTANT, Subconsultants, and the CONSULTANT'S Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTS, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the

federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the contract and disallowance of prior reimbursed costs.

- E. CONSULTANT Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Caltrans' Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
1. During a Caltrans' review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred and fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred and fifty percent (150%) and two hundred percent (200%) - the provisional rate will be eighty five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the provisional rate will be seventy five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
 4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA-audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between LOCAL AGENCY and any subconsultant(s), and no subcontract shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. The CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by LOCAL AGENCY'S Contract Administrator, except that, which is expressly identified in the CONSULTANT'S approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to CONSULTANT by LOCAL AGENCY..
- E. Any substitution of subconsultant(s) must be approved in writing by LOCAL AGENCY'S Contract Administrator in advance of assigning work to a subconsultant(s).
- F. Prompt Progress Payment
CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.
- G. Prompt Payment of Withheld Funds to Subconsultants
The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY designates the method below to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant. Method 3: The LOCAL AGENCY shall hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY of the contract work and pay retainage to CONSULTANT based on these acceptances. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the LOCAL AGENCY. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY'S prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT; deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

ARTICLE XI EQUIPMENT PURCHASE

- A. Prior authorization in writing, by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000) prior authorization by LOCAL AGENCY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 - 1. "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
 - 2. Regulation 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the Project.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction Project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY Projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

- C. General Prevailing Wage Rate Determinations applicable to this Project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
1. Each CONSULTANT and subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works Project.
 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
 3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or subconsultant performing the work shall not be marked or obliterated.
 5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. The CONSULTANT or subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a subconsultant to comply with this section.

- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
 3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or subconsultant.
 4. If a worker employed by a subconsultant on a public works Project is not paid the general prevailing per diem wages by the subconsultant, the prime CONSULTANT of the Project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the subconsultant for the performance of work on public works Projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the subconsultant to the employees by periodic review of the certified payroll records of the Sub-consultant.
 - c. Upon becoming aware of the Sub-consultant's failure to pay the specified prevailing rate of wages to the subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the subconsultant for work performed on the public works Project.
 - d. Prior to making final payment to the subconsultant for work performed on the public works Project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the subconsultant that the subconsultant had paid the specified general prevailing rate of per diem wages to the subconsultant's employees on the public works Project and any amounts due pursuant to Labor Code §1813.

5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works Project within fifteen (15) calendar days of receipt of a complaint that a subconsultant has failed to pay workers the general prevailing rate of per diem wages.
 6. If LOCAL AGENCY determines that employees of a subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.
- G. Hours of Labor
Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.
- H. Employment of Apprentices
1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
 2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction Project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction Project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction Project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right in its discretion; to terminate the AGREEMENT without liability; to pay only for the value of the work actually performed; or to deduct from the AGREEMENT price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subagreements, which exceed one hundred thousand dollars (\$100,000) and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XVI NON DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - 3. Does not have a proposed debarment pending; and
 - 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility.

Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. CONSULTANT, subrecipient (LOCAL AGENCY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found [here](#).

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is **12%**. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-O2: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

- D. Contract Assurance

Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the CONSULTANT 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 the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;

- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and Substitution of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the LOCAL AGENCY's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.

The LOCAL AGENCY authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the Project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the Project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONSULTANT and the LOCAL AGENCY of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

F. Commitment and Utilization

The LOCAL AGENCY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
 - Name and business address of each 1st-tier subconsultant
 - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the LOCAL AGENCY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the LOCAL AGENCY within 90 days of contract acceptance. The LOCAL AGENCY will withhold \$10,000 until the form is submitted. The LOCAL AGENCY will release the withhold upon submission of the completed form.

In the LOCAL AGENCY's reports of DBE participation to Caltrans, the LOCAL AGENCY must display both commitments and attainments.

- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or Project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX INSURANCE

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance in compliance with the following:
 - 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 LOCAL AGENCY all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the LOCAL AGENCY 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.
 - General Liability:
 - i. The LOCAL AGENCY, 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 LOCAL AGENCY, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the LOCAL AGENCY, 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 LOCAL AGENCY, 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.

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 LOCAL AGENCY. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.

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 LOCAL AGENCY 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.

Indemnification. The Consultant shall save, keep, hold harmless and indemnify and defend the LOCAL AGENCY 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.

- B. CONSULTANT agrees that the insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

ARTICLE XX FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI CHANGE IN TERMS

- A. This AGREEMENT may be amended only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY’S Contract Administrator.
- C. There shall be no change in CONSULTANT’s Project Manager or members of the Project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY’S Contract Administrator.

ARTICLE XXII CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY’S Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the Project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction Project site.

- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the Project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper

ARTICLE XXVI OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT’s privileged information, as defined by law, or CONSULTANT’s personnel information, along with all other property belonging exclusively to City which is in CONSULTANT’s possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other Project except the one detailed in this Contract. Any reuse by City for another Project or Project location shall be at City’s sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY’S CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY’s construction contractor relating to work performed by CONSULTANT’s personnel, and additional information or assistance from CONSULTANT’s personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY’S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT’s personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT’s personnel services under this AGREEMENT.
- C. Services of CONSULTANT’s personnel in connection with LOCAL AGENCY’S construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY’s operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY’s actions on the same, except to LOCAL AGENCY’s staff, CONSULTANT’s own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY’S written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City’s attorney’s fees and disbursements, including without limitation experts’ fees and disbursements.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT’s failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT’s performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT

The LOCAL AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- 1) Each payment request shall be reviewed by the LOCAL AGENCY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- 2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A

request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

ARTICLE XXXII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT: _____
 (NAME)
 ATTN: _____
 (Project Manager)

(ADDRESS)

LOCAL AGENCY: Parks and Public Works Department
 ATTN: WooJae Kim, Town Engineer, Contract Administrator
 41 Miles Avenue
 Los Gatos, CA 95030

ARTICLE XXXIII CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXIV SIGNATURES

Recommended by Department Head:

IN WITNESS WHEREOF, THE LOCAL AGENCY AND CONSULTANT HAVE EXECUTED THIS AGREEMENT.

TOWN OF LOS GATOS by:

Laurel Prevetti, Town Manager

CONSULTANT by:

Signature

Printed Name and Title

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, CMC, Town Clerk

Town of Los Gatos - CONSULTANT SERVICES AGREEMENT (Continued)

EXHIBIT A – SCOPE OF SERVICES

Selected Consultant will prepare final Scope of Services with Town following consultant selection process.

EXHIBIT B – CONSULTANT'S COST PROPOSAL

Selected Consultant and Town will negotiate and develop final cost proposal following consultant selection process.

ATTACHMENTS TO CONSULTANT AGREEMENT

1. The following exhibits from the Caltrans Local Assistance Procedures Manual (in the most current form) are hereby included in this AGREEMENT for Consultant Services.
 - Exhibit 10-I, Notice to Proposers DBE Information
 - Exhibit 10-O2, Consultant Contract DBE Information
 - Exhibit 10-H, Sample Cost Proposals
 - Exhibit 10-K, Consultant Annual Certification of Indirect Costs and Financial Management System
 - Exhibit 10-A, A&E Consultant Financial Document Review Request

A&E consultant firms (prime and/or sub consultants) electing to use the Safe Harbor Rate (SHR) in a contract are required to submit a completed SHR Consultant Certification of Eligibility, Contract Cost, Financial Management System (Attachment 1R). This requirement is in addition to the A&E Consultant Audit and Review Process requirement described in Local Assistance Procedures Manual, Chapter 10, Section 10.3.

- Safe Harbor Rate - Attachment 1R
2. Consultant is responsible for filing in and submitting the following exhibits (in the most current form) upon Project completion.
 - Exhibit 17-F, Final Report – Utilization of DBEs

ATTACHMENT 3 – LINKS TO RELEVANT PROJECT INFORMATION

- **Highway 17 Bicycle and Pedestrian Project webpage:** <https://www.losgatosca.gov/2556/Hwy-17-Bicycle-Pedestrian-Overcrossing>
 - Key documents on Project webpage include:
 - Feasibility Study Report
 - Highway 17 Bicycle and Pedestrian Overcrossing – Preliminary alignment
 - Community Engagement Plan
 - Project outreach video
 - Measure B Funding Agreement – attachment to the Dec.1,2020 Town Council Meeting Agenda
- **Connect Los Gatos webpage** – <http://losgatosca.gov/connectlg>
- **Town of Los Gatos Bicycle and Pedestrian Master Plan:** <https://www.losgatosca.gov/2347/Bicycle-and-Pedestrian-Master-Plan>
- **Measure B Funding Agreement between Town and VTA** – Can be found as an Attachment to the Dec. 1, 2020 Town Council Meeting at: <https://www.losgatosca.gov/13/Agendas-Minutes>
- **Town of Los Gatos Engineering Standards:** <https://www.losgatosca.gov/1088/Town-Engineering-Standards>
- **Town of Los Gatos Interactive GIS Map:** <http://www.losgatosca.gov/MAP>.
- **Caltrans Local Assistance Procedures Manual:** <http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>

ATTACHMENT 4 – LOCAL ASSISTANCE PROCEDURES MANUAL EXHIBITS

The following Local Assistance Procedures Manual Exhibits are included to aid in the preparation of the Consultant's Proposal. It shall be the Proposer and selected Consultant to use the most current forms from the Caltrans website at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

- Exhibit 10-H-1: Sample Lump Sum Cost Proposal
- Exhibit 10-H-3: Sample Cost per Unit of Work Cost Proposal
- Exhibit 10-H-4: Cost Proposal for Caltrans with Prevailing Wage
- Exhibit 10-I: Notice to Proposers DBE Information
- Exhibit 10-01: Consultant Proposal DBE Commitment
- Exhibit 10-02: Consultant Contracts DBE Commitment
- Exhibit 15-H: Proposer/Contractor Good Faith Efforts
- Exhibit 10-A A&E Consultant Financial Document Review Request
- Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System
- Exhibit 10-Q: Disclosure of Lobbying Activities



Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan

Revised Draft
November 18, 2020

Connect Los Gatos

Connect Los Gatos is a program of bicycle and pedestrian projects that promote connectivity and improve the multimodal network throughout the Town. The program will expand access and improve safety for key community destination points. Connect Los Gatos is aimed at making it easier and safer for all to bike and walk in Los Gatos. The Highway 17 Bicycle and Pedestrian Overcrossing projects is one of the Connect Los Gatos projects.

In the *Bicycle and Pedestrian Master Plan (BPMP)* Update, adopted by the Town Council in September 2020, Prioritized Bicycle and Pedestrian Improvement Projects Table 4.2 are branded as Connect Los Gatos Projects. These projects will improve the Town’s multimodal network by providing safe and lower stress facilities, closing connectivity gaps, and providing safe crossings. As these prioritized projects are advanced, they will be supported under the Connect Los Gatos Community Engagement Program.

Community Engagement Goals

This document builds upon the original *Connect Los Gatos Community Engagement Plan* adopted by Town Council on March 3rd, 2020. In comparison to the program-level plan, this project-level plan establishes a framework, describes specific outreach approach and tools, while still allows flexibility in applying the tools. The purpose of this Community Engagement Plan is to maximize the opportunities for all stakeholders to provide meaningful feedback.

The plan provides a “toolbox” of options for outreach to the community. Outreach tools will be tailored to the specific project phase. The Town of Los Gatos is committed to creating bike and pedestrian connectivity projects that aligns with local needs and mobility priorities. Community input will be integral to each phase of the Highway 17 Bicycle and Pedestrian Overcrossing project process.

Key community engagement goals include:

1. Increasing community awareness of the mobility, safety and design challenges and opportunities for the Highway 17 Bike and Ped Overcrossing (BPOC) Project;
2. Providing access to project information and opportunities for meaningful participation;
3. Offering a range of communication and engagement tools to match interest and preferences;
4. Ensuring the Project reflects community priorities; and
5. Obtaining community support for the Project design and funding



Project Background, Purpose and Goals

Highway 17 is a barrier for bicyclists and pedestrians wanting to cross from one side of Los Gatos to the other. Within the Town limits, there are five crossings from north to south, Lark Avenue, Blossom Hill Road, Highway 9, an existing pedestrian bridge, and Main Street. The existing Blossom Hill Road bridge is situated near the middle among the five crossings. It provides suboptimal access for a variety of trips: school, work, shopping and recreation. This is a suggested route included in the Los Gatos-Monte Sereno Safe Routes to School “Walk & Roll” program.

At the March 3, 2020 meeting, the Town Council approved the project purpose and need, and authorized staff to proceed with design alternatives for a separate bicycle and pedestrian overcrossing. Establishing the purpose and need at the onset of the project development phase helps to ensure the project reflects the Council’s and community’s vision and priorities. The approved project purpose and need are:

Purpose: The project would improve bicycle and pedestrian mobility across Highway 17 in the vicinity of the Blossom Hill Road overcrossing. The project includes a focus on improving safety for all modes of travel and creating a safe route to schools while promoting active transportation. Additionally, the project would result in reduced traffic congestion and greenhouse gas emissions by providing comfortable mobility alternatives.

Need: With two travel lanes in each direction, carrying upwards of 63,000 vehicles per day, Highway 17 creates both a physical and psychological barrier for both pedestrians and bicyclists as it divides the Town in two. Blossom Hill Road is one of only a few roadways that provide east-west connectivity across the highway.

Stakeholders

This is a project that would benefit the immediate neighborhoods, the entire Los Gatos community, and a sub-region near Los Gatos. Identifying the key stakeholders will help ensure the community engagement efforts are comprehensive, focused, and effective. The community engagement efforts include engaging with the following stakeholders for project awareness, initial feedback, and alternatives and concept design input:

- Town Council
- Complete Street & Transportation Commission (CSTC)
- Schools and school community
 - Los Gatos Union School District and schools
 - Los Gatos-Saratoga Joint Union High School District and Los Gatos High School
 - Los Gatos-Monte Sereno Safe Routes to School (SR2S)



- Students and parents
- Residents, visitors and workers in Los Gatos
- Specific and under-represented populations:
 - Seniors
 - Disabled people and people with mobility limitations
 - Low-income households
 - People with limited English proficiency
- Residents in Monte Sereno
- Immediately Adjacent Neighborhoods: Ohlone Court, Serra Court
- Caltrans
- Santa Clara Valley Transportation Authority
- Utility companies:
 - San Jose Water
 - PG&E Electrical
 - Comcast

Complete Street & Transportation Commission

The Complete Streets & Transportation Commission (CSTC) is a key stakeholder in communicating with the community, advising the Council, and providing feedback to staff. They are advisory to the Town Council in matters pertaining to current trends and experiences in enhancing all modes of travel. They review Town transportation infrastructure, including bike and pedestrian pathways, with neighboring jurisdictions. They also review relevant grant applications, particularly transportation projects around schools. This includes enhancing safe routes to schools efforts. The CSTC also reviews and updates Town master plans, such as the Bicycle and Pedestrian Master Plan.

The CSTC and the former Bicycle and Pedestrian Advisory Commission have been actively engaged since the beginning of this project, including conducting a field meeting, leading a Silicon Valley Bicycle Coalition - Town infrastructure bike ride, conducting bicycle and pedestrian counts, and providing input at public and Commission meetings. In the next phase of the project design, the CSTC will play an even more vital role in representing the community, providing input to the project team, and advising the Town Council in key decisions. The project team will provide updates to the CSTC regularly at its monthly meetings and hold special workshops and field visits if necessary. At the monthly meetings, the CSTC will provide feedback to the project team on all aspects of project design, especially in the topics of user experience, environmental analysis, and neighborhood impacts.

The CSTC meetings are held on the second Thursday of each month at 7:30am and they are open to the public. The agenda center for the CSTC is available on the Town's website. Community members who are interested in project updates are encouraged to participate in the commission meetings.



Project Milestones

In early 2021, the Town will start the engineering and design phases of this Project. A significant amount of work needs to be done before reaching any final conclusions on the design of the Project. There will be many opportunities for the community to continue to be involved in this project moving forward. The Town is committed to open communication about this Project and its impact on the community. Following are key milestones and tasks involving community input and Council Direction.

Project Phase	Schedule
Begin Preliminary Design	April 2021
Decision on bridge architecture type	July - October 2021
Preliminary Engineering and Environmental Approval	April 2021 – April 2023
Development of plans, specifications, and cost estimates	February 2023 - Late 2023
Complete final design	Early 2024
Construction (pending funding availability)	2024 – December 2025

Outreach Approach and Tools

The outreach tools are based on the experience with the Connect Los Gatos program engagement. The tools that have shown to be most effective include the project webpage, social media, virtual meetings, and notification tools such as doorhangers. Not all tools outlined in the plan will be used at any given time. Outreach tools listed here will be tailored to the specific project phase and overall project goals.

TOOLS	DESCRIPTION	EVENTS
<u>Stakeholders Engagement</u>	Identifying the key stakeholders, including Town Council, community partners, and commissioners, that have a greater understanding of local active transportation issues in the community. Engagement with key stakeholders for project awareness, initial feedback, input from community workshops, alternatives and concept design.	Public meetings: Town Council – key decisions Complete Streets & Transportation Commission – regular updates Parks Commission – periodic updates Monte Sereno Better Streets Commission – periodic updates Safe Routes to Schools – periodic updates and discussions

<p><u>Community Meetings and Workshops</u></p>	<p>Meetings and workshops to engage a broad segment of the public with proposed project awareness, input, feedback, and opportunities for engaged participation. Notifications by mail via social media, and the “Notify Me” email list, as well as door hangers and postcards are important tools to use to advertise these meetings.</p>	<p>Public meetings and workshops at key milestones.</p> <p>Formats: online and in-person community meetings, group meetings with target audience, such as schools and neighborhoods.</p>
<p><u>Pop-Up Events and Messages</u></p>	<p>Pop-ups are an informal approach used to increase community participation and awareness by setting up booths or posters at community wide events. Informal outreach provides an opportunity to engage a diverse set of community members otherwise missed by traditional meetings.</p>	<p>Pop-Up Events: Back-to-School events Los Gatos Holiday Parade Farmer’s market Spring Into Green event</p> <p>Traditional ways of messaging may include posters at public locations, businesses, and movable message signs.</p>
<p><u>Online Engagement and Social Media</u></p>	<p>Online and social media engagement will deliver project information to the community at large. The project webpage will be the central place for information. This allows for consistent, accessible information for all stakeholders. Webpages will include community meetings, photos, graphics, maps, and reports.</p>	<p>Project Webpage: https://www.losgatosca.gov/2556/Hwy-17-Bicycle-Pedestrian-Overcrossing NotifyMe Emails & Text Messages</p> <p>Project Email Address</p> <p>Social media: Twitter Facebook What’s New Town website front page NextDoor Town Instagram</p>



<p><u>Targeted Outreach</u></p>	<p>Focused outreach in areas where under-represented residents will be reached. Provide contact information in multiple languages, special outreach efforts to seniors, disabled people, low-income households, and the youth.</p>	<p>Youth Commission Community & Senior Services Commission Emails and e-newsletter to schools and Safe Routes to School (SR2S) Contact information in Russian, Mandarin Chinese, Spanish, and Vietnamese Information included in LGS Recreation and other community partner information materials</p>
<p><u>Data Collection</u></p>	<p>Data collection provides baseline data and an assessment of existing conditions of bicycle and pedestrian infrastructure for the BPOC project.</p>	<p>Bicycle and Pedestrian Counts User interviews and surveys</p>

Information Sharing and Transparency

The project webpage will be the central place for information, including project updates, meetings announcements, documents, and reports. Providing one central place for information allows for consistent and accessible information for all stakeholders. This is a key component to achieving fair and equal transparency for all community members. The webpage also provides contact information for anyone who wants to communicate with the project team directly.

NotifyMe is a useful tool embedded in the project webpage. Interested individuals may sign up for this noticing service to receive either a text message or e-mail each time there is new information posted to the project webpage.

Information posted on social media shall be available on the project webpage, per the Town’s Social Media Policy.

Engagement Plan Updates

The Plan will need to be updated periodically to ensure the proper tools are being utilized to maximize public awareness and participation at the BPOC project specific level and to add tools as needed. Town staff will periodically update the Plan and adjust engagement activities as needed to continue to maximize authentic participation by residents and workers representing a diverse background.





Highway 17 Bicycle and Pedestrian Overcrossing Project Background

Updated November 23, 2020

Project Background, Purpose and Goals

Highway 17 is a barrier for bicyclists and pedestrians wanting to cross from one side of Los Gatos to the other. Within the Town limits, there are five crossings from north to south, Lark Avenue, Blossom Hill Road, Highway 9, an existing pedestrian bridge, and Main Street. The existing Blossom Hill Road bridge is situated near the middle among the five crossings. It provides suboptimal access for a variety of trips: school, work, shopping and recreation. This is a suggested route included in the Los Gatos-Monte Sereno Safe Routes to School “Walk & Roll” program.

At the March 3, 2020 meeting, the Town Council approved the project purpose and need, and authorized staff to proceed with design alternatives for a separate bicycle and pedestrian overcrossing. Establishing the purpose and need at the onset of the project development phase helps to ensure the project reflects the Council’s and community’s vision and priorities. The approved project purpose and need are:

Purpose: The project would improve bicycle and pedestrian mobility across Highway 17 in the vicinity of the Blossom Hill Road overcrossing. The project includes a focus on improving safety for all modes of travel and creating a safe route to schools while promoting active transportation. Additionally, the project would result in reduced traffic congestion and greenhouse gas emissions by providing comfortable mobility alternatives.

Need: With two travel lanes in each direction, carrying upwards of 63,000 vehicles per day, Highway 17 creates both a physical and psychological barrier for both pedestrians and bicyclists as it divides the Town in two. Blossom Hill Road is one of only a few roadways that provide east-west connectivity across the highway.

Alternative Selection

The Town’s planning documents, the 2017 Bicycle and Pedestrian Master Plan and the Traffic Impact Mitigation Fee program, identified three options to address barrier for bicyclists and pedestrians crossing Highway 17. These are the initial alternatives being considered at the start of the Feasibility Study:

Alternative 1: Bicycle and pedestrian bridge connecting to Nino Avenue

Alternative 2: A separate bicycle and pedestrian bridge along Blossom Hill Road



Alternative 3: Widening the existing Blossom Hill Road bridge for bicyclists and pedestrians

Alternative 1, a new bridge connecting at Nino Ave, includes several variations, one of which could provide a direct connection to the Los Gatos Creek Trail.

1A: Los Gatos Creek Trail Connector to Nino Ave – A perpendicular crossing that provides a direct connection between Los Gatos Creek Trail on the west side and Nino Way on the east side.

1B: Blossom Hill Road Skewed Connector to Nino Ave – A skewed main span crossing with a point of connection at Blossom Hill Rd to the West and Nino Way to the East.

1C: Blossom Hill Rd Perpendicular Connector to Nino Ave – A perpendicular main span crossing that provides the same points of connection as Alternative 1B (with the exception of the optional second landing along East Blossom Hill Rd). A switchback alignment is required along the west approach to provide enough distance to conform to existing grades along Blossom Hill Rd with a profile grade of 5% or less that meets ADA requirements.

There are benefits of providing a new connection to Nino Avenue, however, during the early engagement process from both the February community meeting and a community survey, residents on Nino Avenue expressed that the access would be an intrusion to the neighborhood. The Nino connection would provide a convenient path to the back side of Fisher Middle School. However, for travelers going to the commercial area along Los Gatos Boulevard and BHR, this path would require additional walking/biking distance.

Alternative 2 includes two variations.

Alignment 2A – separate BPOC south of the existing bridge

Alignment 2B – separate BPOC north of the existing bridge

Alignment 2B is less desirable due to the following significant setbacks:

Utility impacts: Due to the existing overhead electrical lines located along the north side, this alignment would have significant interference with the overhead electrical lines.

Potential property impacts: There is more public ROW available on south side than on the north side. If a BPOC is built on the north side, it may have private proper impacts and may impact Vasona County Park. Impacts on Vasona Park would trigger a process in the CEQA that requires the Town to demonstrate that other alternatives are not feasible.



Match with the existing pedestrian patterns: Alignment 2A would best match the existing desired travel line. The Town’s bicycle and pedestrian counts show that the pedestrian volumes on the south vs. north is 2:1. If the new BPOC is built on the north side, it would require a longer walk for Fisher students and make it difficult to navigate for eastbound cyclists to Fisher and further east.

In addition to the two variations, it was suggested that the Project Team considers putting a crossing below the existing BHR bridge, starting from the north side of BHR on the west and ending on the south side of BHR to the east of Highway 17. Due to the grade difference, such a crossing would have to slope down as it goes from west to the middle of Highway 17, then slope up sharply to match up with the grade to the east of Highway 17. In any design, the crossing has to meet the Caltrans clearance of 16’6” and ADA requirements. The Project Team doesn’t foresee a feasible engineering solution.

Alternative 3, widening the existing bridge, would present the most engineering and cost challenges.

The existing bridge is very old and does not meet current design standards. The Caltrans standard for roadways is 16’6”. Widening is constrained by the existing nonstandard vertical clearance of 15’2” and would require a design exception. It is highly unlikely that Caltrans will approve a design exception for maintaining or proposing nonstandard vertical clearance, especially since the underside of the bridge was recently struck. Caltrans could require replacement of the entire bridge, which would increase project costs significantly.

A bridge reconstruction would be a different project from building a BPOC and would be led by Caltrans, instead of the Town of Los Gatos. Currently the BHR bridge is not included in the Highway Bridge Program Ten Year Plan (TYP). Furthermore, Caltrans indicated given that most of the bridge assets are rating “good” and there is no target for Goods Movement (Clearance) at this time, no project would be forthcoming in the foreseeable future, ten to twenty years.

Although the good condition rating of the bridge seems to conflict with the non-standard clearance, realistically the two are viewed separately by Caltrans. Ideally bridges with non-standard clearance would be replaced, however the large inventory statewide make replacement for this reason alone unrealistic.

In summary, currently there is no schedule or funding identified for the replacement of the BHR bridge. Due to these challenges and uncertainties, staff recommended not to pursue the widening option (Alternative 3) as part of this project. This alternative was removed from further consideration, as presented to the Town Council at the March 3, 2020 meeting.



It is still possible that the bridge is replaced in the future, so it will be important for the Project Team to understand the Caltrans Right of Way at this location and design the new bridge with a strategic view on the separation from the existing structure.

The Project Team evaluated the alignment alternatives using a set of criteria:

- Community Feedback
- Caltrans Coordination
- Travel Demand and Patterns
- User Experience
- Potential Environmental Impacts: utilities, Right of Way constraints, geotechnical considerations, trees, and visual impacts
- Cost: construction and maintenance

Table 1 summarizes the determinations of the evaluation using the criteria:

Alternative	1A Nino	1B Nino	1C Nino	2A BHR south	2B BHR north	3 Widening
Circulation improvement	✓	✓	✓	✓	✓	✓
Maintains existing travel patterns	✗	✗	✗	✓	✗	✓
Meets Caltrans standards	✓	✓	✓	✓	✓	✗
Community acceptance	✗	✗	✗	✓	✓	Unknown
Add'l infrastructure cost	High	High	High	Medium	Medium	High
Accommodates future demand	✓	✓	✓	✓	✓	✗
ROW & utility constraints	High	Medium	High	Low	High	High
Environmental impact	Medium	Medium	Medium	Medium	Medium	Medium
Engineering constraints and complexity	Medium	Medium	Medium	Low	Low	High

While all the alternatives are considered feasible, Alternatives 1A, 1B, 1C, 2B and 3 were eliminated from further consideration as a result of the analysis summarized in Table 4 above. The Project Team concluded that Alternative 2A, a separate bridge structure just south of Blossom Hill Road Bridge, is the preferred alignment. The recommended alternative presents several benefits: consistency with the existing desired travel line, shortest distance between key origins and destinations, no or minimum utility impacts, no interference with the existing bridge, enhanced user experience, and neighborhood acceptance. The cost of this alternative is potentially lower than Alternative 1 because it would have a shorter bridge span.



Community Engagement in Feasibility Study Phase

Community engagement in the Feasibility Study phase followed the framework identified in the Connect Los Gatos Community Engagement Plan, adopted by Town Council in March 2020. This is one of the Connect Los Gatos projects and it is identified as a priority project in the 2020 Bicycle and Pedestrian Master Plan Update. Starting in the fall of 2019, the project team conducted extensive community engagement, which is documented in the Community Engagement Activities Report. The outreach efforts included:

- A dedicated project website containing the project information, progress updates, a project video, past Town Council decisions and staff reports, and the project manager’s contact information. The relevant project documents are also posted on the project website: <https://www.losgatosca.gov/2556/Hwy-17-Bicycle-Pedestrian-Overcrossing>;
- Regular project updates provided to the former Bicycle and Pedestrian Advisory Commission, the Complete Streets and Transportation Commission, and Safe Route to School representatives;
- Project information displayed at Back-to-School events in fall 2019;
- An online community survey conducted in March 2020;
- Two community meetings held on February 25 and August 25, 2020. Meeting notices were sent by regular mail, door hangers, social media posts, and flyers placed on the streets and local businesses;
- Notices via the Town’s website, social media and articles to the SR2S and LGUSD electronic newsletters;
- Onsite Ohlone Court neighborhood meeting held on October 19, 2020;
- Email and telephone exchanges between the project staff and residents.

From: Kevin Arroyo
Sent: Tuesday, November 24, 2020 8:54 AM
To: Council <Council@losgatosca.gov>
Subject: Highway 17 Ped & Bike Prelim Study Support

Hello Town Council,

I am a lifelong Los Gatos resident and want to express my support for a Highway 17 Bike and Ped Overcrossing preliminary study. This project will immensely increase bicycle safety within the local community. Over the years I've bicycled on the Blossom Hill Bridge to Vasona Park and faced multiple instances of vehicles passing too closely at unsafe distances. This project would help mitigate this hazard.

I fully support this proposal to help encourage residents to use alternative forms of transportation. We need more projects like this to better integrate the Los Gatos Creek Trail and help reduce our dependence on cars. My friends and family mentioned they would use the Creek Trail more often if there was a separate crossing.

Please vote yes to proceed with a preliminary study for this project. These are the type of local projects which makes me proud to see the town taking a leading role in creating a safer community for our future generations.

Thank you,
Kevin Arroyo

From: [Kim Wheeler](#)
To: [Council](#)
Subject: Bike bridge
Date: Monday, November 23, 2020 11:42:41 AM

Dear council,

I just wanted to send this note to let you know how very important the new bike bridge that is proposed on Blossom Hill Road is to this community. I have raised two sons and a family that has used that crossing so much over the years -to school , junior high, and high school, on the way to Boy Scouts and on weekend family bike rides.

It's an important thoroughfare from our side of Los Gatos- by Blossom Hill School, as it connects us to the trail and downtown businesses.

One thing that has crossed my mind so much is the danger of the cross and the narrow parts where my children and myself are right next to cars. It only takes one person to look away from the road to hit someone there. Also during school hours and weekends it can be hard to navigate the path with others. I have seen bikers swerve right into the road to avoid other riders.

A new bike bridge would be a huge step in making Los Gatos more bike friendly. By making this bike lane safer, I know my family and many others would be using it much more frequently. As a mother, I love to encourage biking, but knowing this stretch is not safe always

Attachment 5

gave me pause.

Please think of the future of our town and let this bridge be built. It's for future generations as well as those living here now. Biking and less cars are what make a community thrive and stay healthy.

Thank you

Kim Wheeler

From: Max Wheeler

To: Council

Subject: Blossom Hill Bike bridge

Date: Sunday, November 22, 2020 7:02:16 PM

Hello council members,

I'm just writing to express my support for the proposed bike bridge on Blossom Hill. I'm a huge fan of making the city more bikeable / walkable and that bridge is a major impediment for getting people on the East side of town down to the Creek trail. When my kids were younger, that was always the most harrowing part of the journey back from the Creek trail or Vasona. We always rode on the sidewalk but when pedestrians were present, that wasn't possible. It's not even that easy for a child to get off their bike if they've already started riding down the sidewalk.

Thanks for listening

Max Wheeler

Fairmead Lane

--

Max Wheeler

From: Sheldon Gilbert

To: Council

Subject: Support of Blossom Hill Road Bike/Ped Bridge

Date: Sunday, November 22, 2020 5:06:10 PM

Past commissioner and chair of the Bicycle and Pedestrian commission, I am a big supporter of the proposed

Bike/Ped bridge over the 17 at Blossom Hill Road. I wonder if it is possible to speak in support of this project at the

Dec. 1 Council meeting when this project is being discussed?

Thank You,

Sheldon Gilbert



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 12

ADDENDUM

DATE: November 30, 2020

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803):

- a. Authorize the Town Manager to Negotiate and Execute a Measure B Funding Agreement with the Santa Clara Valley Transportation Authority (Attachment 1) to Accept a Measure B Grant in the Amount of \$2,754,990 for the Highway 17 Bicycle and Pedestrian Overcrossing Project Final Design Phase;
- b. Authorize Revenue and Expenditure Budget Increases in the Total Amount of \$3,701,200 (\$2,754,990 in Grant Fund and \$946,210 in General Fund Appropriated Reserve) in the Fiscal Year 2020/21 – 2024/25 Capital Improvement Program (CIP) Budget for the Highway 17 Bicycle and Pedestrian Overcrossing Project to Recognize the Receipt of Grant Funds in FY 2020/21;
- c. Authorize the Release of a Request for Proposals (Attachment 2) for the Highway 17 Bicycle and Pedestrian Overcrossing Design Project;
- d. Authorize the Town Manager to Negotiate and Execute a Consultant Agreement with the Highest Ranked Firm in an Amount Not to Exceed \$3,000,000; and
- e. Approve the Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan (Attachment 3).

REMARKS:

This addendum reflects public comment received from 11:01 a.m., Wednesday, November 25, 2020 through 11:00 a.m., Monday, November 30, 2020.

PREPARED BY: Ying Smith
Transportation and Mobility Manager

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

PAGE 2 OF 2

SUBJECT: Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803)

DATE: November 25, 2020

Attachments Previously Received with Staff Report:

1. Draft Measure B Funding Agreement with the Santa Clara Valley Transportation Authority.
2. Draft Request for Proposals for Professional Engineering Design Services.
3. Draft Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan.
4. Highway 17 Bicycle and Pedestrian Overcrossing Project Background.
5. Public Comment Received.

Attachment Received with this Addendum:

6. Public Comment Received from 11:01 a.m., Wednesday, November 25, 2020 through 11:00 a.m., Monday, November 30, 2020.

November 27, 2020

Los Gatos Town Council
c/o Town Manager
110 E. Main St.
Los Gatos, CA 95030 Via E-Mail (manager@losgatosca.gov)

Re: **CEQA ENVIRONMENTAL REVIEW**
 Highway 17 Bicycle and Pedestrian Over-crossing (**Project 818-0803**)
 Objection to Agenda Item #12 (December 1, 2020 Town Council Meeting)

Dear Town Council Members:

I am writing on behalf of *Los Gatos Citizens for Responsible Town Government*, which is an unincorporated association of residents, citizens, homeowners, workers, taxpayers, and electors residing in the Town of Los Gatos. Its organizational purpose includes advocating for equitable and responsible land use development policies, maintaining political accountability of elected local officials, and enforcing land use planning and environmental laws in and around Los Gatos. Members, which include adult U.S. citizens and residents of Los Gatos, maintain a direct and regular geographic nexus with the Town of Los Gatos, and will suffer direct harm as a result of any adverse environmental and/or public health impacts caused by poorly planned or managed public projects. They have a clear and present right to, and beneficial interest in, the Town's performance of its duties, including complying with all applicable state and federal environmental, land use, and health laws and regulations. The association seeks to protect the interests of its Members and will enforce the public duties owed to them by the Town, if necessary.

The circumstances underlying this letter are rather remarkable. This Project had three original sites under consideration, with each site having multiple design alternatives available. In fact, Town Staff's currently-selected site, Blossom Hill Road, is known to have at least four different design alternatives available, bringing the total number of alternatives already known to be available for the Project to more than half a dozen. Remarkably, not only are the Members represented herein strong proponents of the Project generally, but they are in fact proponents of locating the Project at Blossom Hill Road, assuming a proper design is selected. Yet, disagreement arises here due to Staff's unyielding insistence on institutionally and now potentially financially locking-in upfront a very specific final design (i.e., very large (16-20' wide) separately-constructed/ancillary bike/pedestrian bridge, Southbound-aligned to existing Blossom Hill Road bridge) before any evaluation or consideration whatsoever of corresponding environmental and cumulative impacts, even though Staff's choice is already known to pose burdensome environmental impacts both for nearby residents and the community, and also known to pose substantial cumulative impacts from two successive large-scale bridge construction projects. This letter brings certain environmental laws to the Town Council's attention so that the Town understands the environmental review that is required before the Town commits as a practical matter to a definite course of action for the Project.

The California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA - Pub. Res. Code §§21000 et seq.), enacted in 1970, forms the basis of environmental law and policy in the State of California. CEQA is modeled after the National Environmental Policy Act (NEPA) and protects all aspects of the environment. Here, the focus is on maintaining a quality environment for the people of California, an environment that is healthful and pleasing to the senses, including preserving clear air and water, preserving the enjoyment of the aesthetic, natural, and scenic beauty that the state offers, and providing freedom from excess noise. Like the federal act, CEQA requires public agency decision makers to document and consider the environmental implications of their actions. However, CEQA requires more. "CEQA contains substantive provisions with which agencies must comply. The most important of these is the provision requiring public agencies to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects." *Sierra Club v. Gilroy City Council* (6th Dist. 1990) 222 Cal. App. 3d 30, 41. "A project may not be approved as proposed if feasible alternatives or mitigation measures would substantially lessen the project's significant environmental effect." *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal. App. 3d 433, 440-441.

In practice, CEQA requires public agencies to prepare environmental impact assessments of a proposed project and to circulate those documents to the public and other agencies for comment before approving that project. Agencies are required to avoid or mitigate environmental impacts whenever feasible. (Pub. Res. Code §21002; CEQA Guidelines §§15002, 15021). If avoiding or minimizing environmental damage is truly infeasible, CEQA requires agencies either to disapprove the proposed project or prepare a CEQA-compliant written justification of "overriding considerations" - supported by substantial evidence in the record - that explains why a given project still must be approved. (Pub. Res. Code §21081; Guidelines §15091). Even in the case where a public agency might not have the jurisdictional authority to effect a given mitigation, CEQA nevertheless requires the agency to disclose all such mitigations and to identify the other agencies that would have the power to implement the mitigations.

Public projects draw additional scrutiny under CEQA, as the public agency essentially prepares and approves the environmental review for its own projects. The later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project. Guidelines §15004 addresses this issue by detailing proper timing requirements for commencing environmental review for public projects, stating that "project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning" at the earliest feasible time. "[P]ublic agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance." This includes an explicit prohibition against taking "any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project." (CEQA Guidelines, § 15004, subd. (b)(2)) As no separate state agency is explicitly authorized to enforce CEQA, enforcement has primarily been accomplished through the courts via private attorney general actions brought by

environmental and citizen groups against agencies attempting to shortcut CEQA compliance.

As you are aware, on September 1, the Town Council approved Agenda Item #10 which formally endorsed Staff's Preferred Alternative (Blossom Hill Road Separate bridge, Southbound alignment) as well as approved a Feasibility Study. The September 1 action also authorized submission of a Caltrans Active Transportation Program (ATP) grant application by its September 15 application deadline, and committed up to \$1 million as matching funds for the grant. (The ATP grant application effort was abandoned by Staff.) Town records show approximately \$250k was spent on the Feasibility Study, which reflects less than 1% of the Project's currently-estimated \$28 million price tag. Staff's indication of a Preferred Alternative is, by itself, helpful to inform Town residents what the Town's preference is. The preference should merely be an objectively-prepared choice at this point however. Staff's choice certainly should not be approved, adopted, and funded as effectively *Town's Final Adopted Project Choice* before CEQA evaluation occurs to determine whether the choice is even advisable when compared to all the other reasonable and feasible alternatives. Instead, all reasonable alternatives (including a "no project" alternative) should be rigorously explored and objectively evaluated before a final choice is in fact made.

The present Agenda Item before the Town Council requests approval to obtain and commit \$2.8 million grant funds (from VTA Measure B) for "Final Design Phase," which when combined with matching funds (\$950k) would consume at least 13% of the Project's budget. When those amounts are combined with a \$3 million consulting agreement (Item #12. d), the Agenda Item potentially commits upwards of 24% of the Project's budget. Any Town Council approval of Staff's request should require Staff to comply with CEQA review procedures before the Town makes any significant financial commitment to a specific design or course of action for the Project, particularly spending millions of dollars in the pursuit of a Final Design of Staff's Preferred Alternative. Any premature commitment of substantial funds in the pursuit of the Final Design of Staff's Preferred Alternative at this juncture would serve as an economic yoke or constraint effectively limiting the Town's power in the future to consider the full range of alternatives and mitigation measures required by CEQA.

Under Guidelines §15004, CEQA documents should be prepared early enough in the planning process to enable environmental factors to influence project design, but late enough so that useful information is available for environmental assessment. Lead agencies should prepare CEQA documents during the agency planning process, and must complete and certify those documents before project "approval," which is the decision committing an agency to a definite course of action on the project (Guidelines §15352(a)). For the Project 818-0803, Staff has already generated highly detailed location, alignment, and engineering plans and specifications for the Project that are sufficiently well-defined and specific to allow meaningful rather than merely speculative review of potential impacts, and analysis of all reasonably feasible alternatives and mitigation measures available to the Project. Now, Staff requests that the Town Council approve the commitment of substantial funds to the Project, yet there is no indication that a complete environmental review would occur before Staff simply steers substantial funds to their Preferred Alternative. Such commitment of funding to a project (and in this case a particular final design of a proposed project), or otherwise taking any action that gives impetus to a planned-for foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA

compliance, is the type of action Guidelines §15004 aims to prevent.

As seen in the California Supreme Court's *Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116) decision, how strongly a lead agency commits to a proposed project may determine how early in the process CEQA compliance should occur. Staff has already advised residents who oppose Staff's Preferred Alternative that, while residents' input on minor bridge stylistic features might be considered, Staff has ruled out other known candidate sites as well as other alignment and design alternatives within the final Blossom Hill Road site, thus limiting residents' input to minor end-of-project details. All of the potential environmental impacts posed by Staff's Preferred Alternative choice and previously highlighted by the residents are left completely unaddressed, as if they had never been raised. Although an agency may telegraph its preferences by designating a non-committal "preferred alternative" before CEQA review, any substantive commitment beyond that point must be preceded by CEQA completion and compliance. Otherwise, future CEQA analysis would be tainted as the agency's pre-commitment of the Project to a certain alternative and course of action yields a defective or sham CEQA analysis, one that has improperly precluded the feasibility of other alternatives and mitigation measures before any environmental analysis has occurred. Approval of Staff's proposal (as written) risks the Town commencing the Project and an already-prescribed Final Design for the Project before completing CEQA review. Approval of Staff's request would be a major step in the Project's progress, and one that is very likely to be irreversible. The Town Council should ensure that Staff cannot now simply steer millions of dollars towards their Preferred Alternative, thereby erecting an economic barrier limiting the choice of other alternatives or mitigation measures, all before completing CEQA review. Staff's Preferred Alternative must remain a non-committal choice financially, along with all the other feasible alternatives, until such time that the Town's best alternative is determined under CEQA review.

CONCLUSION

I urge the Town Council to reject or modify the proposed action as written as it does not include adequate safeguards ensuring that environmental review of the proposed Project will occur before Staff commits the Town to a definite course of action for the Project and does so in a manner that constitutes a discretionary project "approval" under CEQA. The Town Council may accept, reject, or modify any Staff proposal on the Agenda. Thus, if you decide to approve Staff's proposed action, I urge the Town Council to condition such approval on requisite environmental review of the proposed Project before the Town commits to the Project as a practical matter, so that the Project's environmental impacts may be uncovered and properly addressed. This would, for example, preclude Staff from spending millions of dollars on Final Design of Staff's Preferred Alternative before environmental review has occurred. If you permit the proposed action to proceed, the rest of the development contemplated by the Project will inevitably follow as a result. The Town has not done an environmental analysis that reviews the impacts that can be expected if you make a decision to allow the Project to proceed. Such an analysis is absolutely required, not only to comply with environmental laws, but also to put the Town Council in a position to truly understand the implications of the decisions you are contemplating. Please insist on such a full environmental analysis before committing the Town to the Project.

Thank you for your attention and careful consideration of the mater.

Respectfully submitted,

John Smart Digitally signed by John Smart
DN: cn=John Smart, o, ou=Legal,
email=jsmart4@fastmail.us, c=US
Date: 2020.11.27 10:39:07 -08'00'

John A. Smart

Encls. *Save Tara v. City of W. Hollywood*

IN THE SUPREME COURT OF CALIFORNIA

SAVE TARA,)	
)	
Plaintiff and Appellant,)	
)	S151402
v.)	
)	Ct.App. 2/8 B185656
CITY OF WEST HOLLYWOOD,)	
)	
Defendant and Respondent;)	Los Angeles County
)	Super. Ct. No. BS090402
WASET, INC., et al.,)	
)	
Real Parties in Interest and)	
Respondents.)	
_____)	

Under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.),¹ a public agency must prepare an environmental impact report (EIR) on any project the agency proposes to “carry out or approve” if that project may have significant environmental effects (§§ 21100, subd. (a), 21151, subd. (a)). We address in this case the question whether and under what circumstances an agency’s agreement allowing private development, conditioned on future compliance with CEQA, constitutes approval of the project within the meaning of sections 21100 and 21151. We conclude that under some

¹ All further unspecified statutory references are to the Public Resources Code.

circumstances such an agreement does amount to approval and must be preceded by preparation of an EIR. Under the circumstances of this case, we further conclude the City of West Hollywood's conditional agreement to sell land for private development, coupled with financial support, public statements, and other actions by its officials committing the city to the development, was, for CEQA purposes, an approval of the project that was required under sections 21100 and 21151 to have been preceded by preparation of an EIR.

FACTUAL AND PROCEDURAL BACKGROUND

The property at 1343 North Laurel Avenue (1343 Laurel) in the City of West Hollywood (City) is occupied by a large colonial-revival-style house constructed in 1923, later converted to four apartments, and a chauffeur's house and garage. The buildings are set well back from the street and the property is heavily wooded and landscaped, in contrast to most other properties on the block. City designated the main house a local cultural resource in 1994. In 1997, Mrs. Elsie Weisman, the longtime owner of 1343 Laurel, donated it to City on condition she be permitted to live there until her death and the other tenants be permitted to occupy the premises for six months after her death. Mrs. Weisman died in 2000 at the age of 101.²

Two nonprofit community housing developers, West Hollywood Community Housing Corporation and WASET, Inc., and a corporation they created for the purpose, Laurel Place West Hollywood, Inc. (collectively, Laurel Place), propose to develop approximately 35 housing units for low-income seniors on the 1343 Laurel site. As outlined in a 2003 grant application to the United

² Whether because of its estate-like appearance or because *Gone With the Wind* was Mrs. Weisman's favorite film, 1343 Laurel has acquired the popular nickname "Tara."

States Department of Housing and Urban Development (HUD), the project would preserve the main house but not the chauffeur's house or garage. The existing two-story house would be converted to hold the manager's apartment, one resident's apartment, and communal space, including a multipurpose room, arts and crafts room, television lounge and kitchen. A new three-story building, wrapping around the existing house's back and sides, would contain 33 one-bedroom apartments and underground parking spaces for residents. Between the back of the existing house and the new building would be a landscaped courtyard. A 2,800-square-foot portion of the existing front yard would remain in City's hands and be used as a pocket park. The HUD application included preliminary architectural drawings showing the proposed renovation, new building, site plan and landscaping.

On June 9, 2003, to facilitate Laurel Place's HUD grant application, City's city council granted Laurel Place an option to purchase the 1343 Laurel property, allowing the developer to show HUD it had control of the project site. In a June 10 letter to a HUD official, City's city manager outlined City's intended contribution to the proposed project: "To make the project competitive, [City] has approved the sale of the property at negligible cost." More specifically, City planned to contribute \$1.5 million in land value. "In addition, [City] will commit additional funding, in an amount not to exceed \$1 million," toward development costs. "In summary, [City] will be contributing land and funds totaling \$2,500,000 toward the development of the Laurel Place project."

HUD approved a \$4.2 million grant to Laurel Place in late 2003. City's mayor announced the grant in a December 2003 e-mail to residents, explaining it "will be used to build 35 affordable senior residential units, rehabilitate an historic house, and provide a public pocket park on Laurel Avenue." He described the project as "a win-win-win for the City, balancing desperately needed affordable

senior housing with historic preservation and open space.” Similarly, a City newsletter announced that with the recent HUD grant, City and Laurel Place “will redevelop the property” to rehabilitate the main house, build 35 units of low-income senior housing, and create a pocket park. The mayor’s announcement referred residents with questions about the proposed development to Jeffrey Skornick, City’s housing manager.

Shortly after the HUD grant was approved, in November 2003, Skornick wrote to a 1343 Laurel tenant, Allegra Allison, reassuring her that “nothing is going to happen for about a year” and that “[a]s the project proceeds and prior to construction” the tenants would receive professional relocation assistance. While he knew she would prefer to stay at 1343 Laurel, the housing manager wrote, he pledged, on City’s behalf, to “do everything in our power to minimize the impact of this project on you.” In December 2003, Allison responded that “your relocation people” had already contacted tenants and, according to one tenant, had said they would soon be served with “one year eviction notices.”

In January 2004, Skornick, responding to a resident critical of the proposed development, explained that the project would retain the historic house and most of the property’s front yard, as the new building would be to the rear of the site. He continued: “We are happy to consider variations on the approach. However, inasmuch as the City and its development partners have been awarded a \$4.2 million federal grant to help develop this project for senior housing, we must continue on a path that fulfills this obligation.” In another January 2004 e-mail to a resident, a city council member’s deputy used the same language, referring to the development of senior housing on the site as an “obligation” City “must” pursue.

On April 23, 2004, City announced the city council would consider, at its May 3 meeting, an agreement to facilitate development of the 1343 Laurel project, “subject to environmental review” and other regulatory approvals. Save Tara, an

organization of City residents and neighbors opposed to the project, wrote City to urge that it conduct CEQA review, including an EIR, *before* approving any new agreement, making a loan, or renewing the purchase option. Despite that and numerous other objections voiced at the meeting (many also expressed support), the city council on May 3, 2004, voted to (1) approve a “Conditional Agreement for Conveyance and Development of Property” between City and Laurel Place, including a \$1 million City loan to the developer, in order to “facilitate development of the project and begin[] the process of working with tenants to explore relocation options”; (2) authorize the city manager to execute the agreement “substantially in the form attached”; and (3) have appropriate City commissions review “alternative configurations” for the planned new building and obtain more public input “on the design of project elements.”

The “Conditional Agreement for Conveyance and Development of Property” the city council thus approved and authorized the city manager to execute (the May 3 draft agreement) had the stated purpose of “caus[ing] the reuse and redevelopment of [1343 Laurel] with affordable housing for seniors and a neighborhood pocket park, while retaining the historic integrity of the Site.” The agreement provided that “upon satisfaction of the conditions of this Agreement,” City would convey the property to Laurel Place and provide the developer a loan, and Laurel Place would construct 35 units of housing, one for the resident manager and 34 restricted to occupancy by low-income seniors. In the first phase of actions under the agreement, Laurel Place would obtain final HUD approval, “complete the relocation of tenants”³ and take actions necessary “to comply with

³ A staff report on the proposed agreement, presented to the city council, explained that relocation notices would be sent “shortly after” the agreement was executed, starting a one-year period for relocating the tenants.

CEQA” Once the property was conveyed, the second, construction phase would begin.

Under the May 3 draft agreement, City’s obligation to convey the property and make the improvement portion of the loan (i.e., all of the \$1 million loan other than the predevelopment portion and an earlier grant for \$20,000) was subject to several conditions precedent, among them that “[a]ll applicable requirements of CEQA . . . have been satisfied, as reasonably determined by the City Manager” and that “[d]eveloper shall have obtained all Entitlements.”⁴ The city manager, however, could waive these conditions. The predevelopment portion of the loan, which City estimated at \$475,000, was to be used for, inter alia, “environmental reports” and “governmental permits and fees” and was not subject to the CEQA compliance or entitlement conditions.

A “Scope of Development” discussion attached to the May 3 draft agreement explained that “[a] three- or four-story building over semi-subterranean parking will be erected at the west-rear portion of the lot, replacing what are currently the garage and outdoor parking area, and possibly the chauffeur’s quarters.” The new building’s exterior and interior design were described in some detail.

At the city council’s May 3, 2004, meeting, the project architect explained that the exact building design had not yet been determined and that historic preservation values would be fully considered in the final design. For example, the chauffeur’s house could be preserved, while still adding 35 housing units, by

⁴ The May 3 draft agreement defined “Entitlements” to include zoning changes, general plan amendments, and CEQA compliance, as well as any other permit or license required by City.

making the new building four stories rather than three, though the architect for aesthetic reasons preferred a three-story building.

Skornick, City's housing manager, similarly told the council that the further planning processes the project would undergo were "not a rubber stamp," as there were "real options to consider" regarding the design of the new building and park. At the same time, Skornick noted that staff had already rejected the alternative uses of 1343 Laurel suggested in public comments, such as dedication of the entire property for a park or use of the historic home as a library or cultural center. These alternatives, Skornick explained, failed to contribute to City's affordable housing goals and, in any event, "there were no funds available for those options." Finally, Skornick stressed that "while the agreement is conditional, the council needs to know that the recommended actions will commit the city as long as the developer delivers."

On July 12, 2004, Save Tara filed the operative complaint and petition for writ of mandate alleging, inter alia, that City had violated CEQA by failing to prepare an EIR before the city council's May 3 approval of the loan and draft agreement. On August 9, 2004, City and Laurel Place executed a revised agreement (the August 9 executed agreement).⁵ This agreement followed the May 3 draft agreement in many respects, but contained some potentially

⁵ Save Tara argues the administrative record should not have been augmented with the August 9 executed agreement, as its execution took place *after* the decision Save Tara has challenged, i.e., the city council's approval of the May 3 draft agreement. We agree with the Court of Appeal, however, that "[w]hile the May 2004 agreement is relevant for certain purposes, review of City's decision would be ineffective, if it were limited to the May 2004 Agreement, which is no longer operative." Like the lower court, we treat Save Tara's petition for writ of mandate as amended to address the August 9 executed agreement as well as the May 3 draft agreement.

significant changes. The requirement that all applicable CEQA requirements be satisfied could no longer be waived by the city manager, and the parties expressly recognized *City* retained “complete discretion over . . . any actions necessary to comply with CEQA” and that the agreement “imposes no duty on City to approve . . . any documents prepared pursuant to CEQA.” Finally, details on tenant relocation were stated, including that the developer was to begin the process by hiring a relocation consultant within 30 days.

The superior court denied Save Tara’s mandate petition, finding that while the parties agreed the 1343 Laurel project did call for an EIR at some time, none was required before approving the May 3 draft agreement because “the Agreement is expressly conditioned on compliance with CEQA . . . [and] does not limit the project alternatives or possible mitigation measures.” Thus, City “has not given its final approval to convey the property at issue to [Laurel Place], nor has it given its final approval of the housing project itself.”

The Court of Appeal reversed. Section 21100, the appellate court reasoned, requires an EIR be prepared whenever lead agencies “propose to approve or carry out” a project with potential significant effects; it is not, contrary to the trial court’s holding, “to be delayed until a ‘final’ decision has been made.” Moreover, conditioning a development agreement on CEQA compliance is insufficient because the EIR review process “is intended to be part of the decisionmaking process itself, and not an examination, *after the decision has been made*, of the possible environmental consequences of the decision.” Any question as to whether a particular point in the development process is too early for preparation of an EIR “is resolved by the pragmatic inquiry whether there is enough information about the project to permit a meaningful environmental assessment. If the answer is yes, the EIR review process must be initiated.” Before May 3, 2004, the Court of Appeal held, the project was well enough defined to permit

meaningful environmental analysis, which City should have performed between the award of the HUD grant in November 2003 and the approval of the May 3 draft agreement.

As remedy for the CEQA violation, the Court of Appeal remanded with directions that City be ordered (1) to void its approval of the May 3 and August 9 agreements, and (2) to “engage in the EIR review process (a) based on the project as described in the HUD application and (b) without reference to the May and August 2004 Agreements.” One justice dissented, arguing the matter was moot because, according to the parties, City had certified a final EIR for the project in October 2006.

We granted City’s and Laurel Place’s petitions for review, which presented the mootness issue as well as the substantive question of whether an EIR was required before City’s approval of the conditional development agreement.

DISCUSSION

I. Mootness

According to the Court of Appeal decision, City approved a final EIR for the 1343 Laurel project in October 2006, during pendency of the appeal. All parties agree on this chronology and further agree that Save Tara has not challenged the adequacy of this EIR in court.

The parties dispute whether these events rendered the present appeal moot. City and Laurel Place take the position that Save Tara has already received the relief it seeks in this action — preparation and certification of an EIR — and no further effective relief can be granted it. They cite CEQA cases in which, during pendency of the litigation, the project site had undergone irreversible physical or legal changes. (See, e.g., *Environmental Coalition of Orange County, Inc. v. Local Agency Formation Com.* (1980) 110 Cal.App.3d 164, 171-173 [challenge to

EIR for annexation moot where annexation had already occurred and could not be ordered annulled because annexing city was not a party to the action]; *Hixon v. County of Los Angeles* (1974) 38 Cal.App.3d 370, 378 [street improvement project involving tree replacement had already progressed to removal of original trees, which could not be restored].) Save Tara, in turn, argues that effective relief, in the form of an order setting aside City's approval of the May 3 draft agreement and August 9 executed agreement, can still be awarded, as it was by the Court of Appeal. It cites CEQA cases that were held not to be moot despite some intervening progress on the project. (See, e.g., *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1202-1204 [partial construction of a project did not moot the appeal, as the project could still be modified, reduced, or mitigated]; *Woodward Park Homeowners Assn. v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, 888 [already constructed project could be modified or removed].)

We agree with Save Tara that the preparation and certification of an EIR does not render the appeal moot. No irreversible physical or legal change has occurred during pendency of the action, and Save Tara can still be awarded the relief it seeks, an order that City set aside its approvals. As will appear, we ultimately conclude the matter must be remanded with directions that the superior court order City to void its approval of the May 3 and August 9 agreements and reconsider those decisions, informed this time by an EIR of the full environmental consequences. Neither City nor Laurel Place contends such reconsideration is impossible as a practical matter or that the superior court lacks the power to order it. Such an order remedies the CEQA violation Save Tara alleges occurred, approval of the agreements without prior preparation and consideration of an EIR, and thus constitutes effective relief.

II. Timing of EIR Preparation

We turn to the substantive CEQA issue presented: Was City required to prepare and consider an EIR before approving the conveyance and development agreement on May 3 and executing the revised agreement on August 9, 2004? To answer this question, we first outline, in this part of the opinion, the existing law on timing of EIR preparation and the legislative policies that shape this law. We next address, in part III, the general question of whether an agency may delay EIR preparation by making its final approval of a project contingent on subsequent CEQA compliance, while otherwise agreeing to go forward with the project. In part IV, we apply our conclusions to the facts of this case to determine that City's May 3 and August 9 actions constituted project approval requiring prior preparation of an EIR.

We begin with CEQA's text. Section 21100, subdivision (a) provides in pertinent part: "All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they *propose to carry out or approve* that may have a significant effect on the environment." (Italics added.) To the same effect, section 21151 provides that "local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they *intend to carry out or approve* which may have a significant effect on the environment." (Italics added.)⁶

⁶ Both sections appear applicable to City. Section 21151 applies to local governments by its terms. Section 21100, although placed in a chapter of CEQA mainly addressing the duties of state agencies, itself applies to all "lead agencies," a term that includes local public entities undertaking projects subject to CEQA. (See §§ 21067 ["'Lead agency' means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment"], 21063 ["'Public agency' includes any state

(footnote continued on next page)

While the statutes do not specify criteria for determining when an agency “approve[s]” a project, the law’s implementing regulations, the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.),⁷ do address the question. Section 15352 of the CEQA Guidelines provides as follows:

“(a) ‘Approval’ means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances. Legislative action in regard to a project often constitutes approval.

“(b) With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.” (Cal. Code Regs., tit. 14, § 15352, subs. (a), (b).)

CEQA Guidelines section 15004, subdivision (b) observes that “[c]hoosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project

(footnote continued from previous page)

agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision”].)

⁷ “The CEQA Guidelines, promulgated by the state’s Resources Agency, are authorized by Public Resources Code section 21083. In interpreting CEQA, we accord the Guidelines great weight except where they are clearly unauthorized or erroneous.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428, fn. 5.)

program and design and yet late enough to provide meaningful information for environmental assessment.” (Cal. Code Regs., tit. 14, § 15004, subd. (b).)⁸

This court has on several occasions addressed the timing of environmental review under CEQA, emphasizing in each case the same policy balance outlined in CEQA Guidelines section 15004, subdivision (b). In *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68 (*No Oil, Inc.*), discussing whether the proper scope of an EIR included possible related future actions, we quoted this observation from a federal decision: “ ‘Statements must be written late enough in the development process to contain meaningful information, but they must be written early enough so that whatever information is contained can practically serve as an input into the decision making process.’ ” (*Id.* at p. 77, fn. 5.) We again quoted this formulation of the general issue in *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779 (*Fullerton*), which considered whether a particular action was a “project” for CEQA purposes, adding, with what has turned

⁸ The parties’ briefs frame the timing issue here in two ways: (1) Did City, in May and August of 2004, *approve* the 1343 Laurel project? and (2) Was the contingent agreement to convey and develop 1343 Laurel itself a *project*? While this opinion will discuss some relevant decisions on the definition of a project, it largely follows the first formulation, asking whether City approved the project. As section 15378 of the CEQA Guidelines explains: “(a) ‘Project’ means the whole of an action, which has the potential for resulting in [an environmental change.] [¶] . . . [¶] (c) The term ‘project’ refers to the activity which is being approved and which may be subject to several discretionary approvals by government agencies. The term ‘project’ does not mean each separate government approval.” (Cal. Code Regs., tit. 14, § 15378.) The “project” in this case is the redevelopment of 1343 Laurel, not any of the individual steps City took to approve it. City and Laurel Place do not dispute the redevelopment of 1343 Laurel is a project requiring evaluation in an EIR; they disagree with Save Tara only on the required timing of that EIR process.

out to be an understatement, that “[t]he timing of an environmental study can present a delicate problem.” (*Fullerton*, at p. 797.)

In *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 (commonly known as *Laurel Heights I*), again discussing the proper scope of an EIR regarding future actions, we summed up the issue and attempted to state a rule, as follows: “We agree that environmental resources and the public fisc may be ill served if the environmental review is too early. On the other hand, the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project. . . . For that reason, ‘EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project, program or design.’ ” (*Id.* at p. 395.)⁹ We also observed that at a minimum an EIR must be performed before a project is approved, for “[i]f postapproval environmental review were allowed, EIR’s would likely become nothing more than *post hoc* rationalizations to support action already taken.” (*Laurel Heights I*, at p. 394.)

This court, like the CEQA Guidelines, has thus recognized two considerations of legislative policy important to the timing of mandated EIR preparation: (1) that CEQA not be interpreted to require an EIR before the project is well enough defined to allow for meaningful environmental evaluation; and

⁹ In the recent decision of *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th at page 441, discussing the extent to which a large housing project’s EIR was required to address water sources for the project’s later phases, we reiterated *Laurel Heights I*’s admonition that environmental analysis not be delayed to the point where “ ‘bureaucratic and financial momentum’ ” rendered it practically moot.

(2) that CEQA not be interpreted as allowing an EIR to be delayed beyond the time when it can, as a practical matter, serve its intended function of informing and guiding decision makers.

The CEQA Guidelines define “approval” as “the decision by a public agency which commits the agency to a definite course of action in regard to a project.” (Cal. Code Regs., tit. 14, § 15352, subd. (a).) The problem is to determine when an agency’s favoring of and assistance to a project ripens into a “commit[ment].” To be consistent with CEQA’s purposes, the line must be drawn neither so early that the burden of environmental review impedes the exploration and formulation of potentially meritorious projects, nor so late that such review loses its power to influence key public decisions about those projects.

Drawing this line raises predominantly a legal question, which we answer independently from the agency whose decision is under review. While judicial review of CEQA decisions extends only to whether there was a prejudicial abuse of discretion, “an agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: while we determine *de novo* whether the agency has employed the correct procedures, ‘scrupulously enforc[ing] all legislatively mandated CEQA requirements’ (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564), we accord greater deference to the agency’s substantive factual conclusions.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at p. 435.)

A claim, like Save Tara’s here, that the lead agency approved a project with potentially significant environment effects *before* preparing and considering an EIR for the project “is predominantly one of improper procedure” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40

Cal.4th at p. 435) to be decided by the courts independently. The claim goes not to the validity of the agency’s factual conclusions but to the required timing of its actions. Moreover, as noted above (fn. 8, *ante*), the timing question may also be framed by asking whether a particular agency action is in fact a “project” for CEQA purposes, and that question, we have held, is one of law. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 382; *Fullerton, supra*, 32 Cal.3d at p. 795.)¹⁰

Considering the timing issue as one of legally proper procedure does not remove all logistical discretion from agencies; it merely sets an outer limit to how long EIR preparation may be delayed. To accord overly deferential review of agencies’ timing decisions could allow agencies to evade CEQA’s central commands. While an agency may certainly adjust its rules so as to set “[t]he exact date of approval” (Cal. Code Regs., tit. 14, § 15352, subd. (a)), an agency has no discretion to define approval so as to make its commitment to a project precede the required preparation of an EIR.

III. Development Agreements Contingent on CEQA Compliance

The May 3 draft agreement and August 9 executed agreement conditioned City’s obligation to convey the property to Laurel Place for development on all

¹⁰ In *Mount Sutro Defense Committee v. Regents of University of California* (1978) 77 Cal.App.3d 20, 40, the Court of Appeal remarked that “the determination of the earliest feasible time [for environmental review] is to be made initially by the agency itself, which decision must be respected in the absence of manifest abuse.” (Accord, *Stand Tall on Principles v. Shasta Union High Sch. Dist.* (1991) 235 Cal.App.3d 772, 780; see also *City of Vernon v. Board of Harbor Comrs.* (1998) 63 Cal.App.4th 677, 690 [“the timing of an EIR is committed to the discretion and judgment of the agency”].) To the extent these opinions contradict our determination that postponement of an EIR until after project approval constitutes procedural error that is independently reviewable, we disapprove them.

applicable requirements of CEQA having been satisfied. City and Laurel Place contend such a CEQA compliance condition on an agreement to convey or develop property eliminates the need for preparation of an EIR (or any other CEQA document) before an agency approves the agreement. In contrast, *Save Tara*, quoting the Court of Appeal, maintains that permitting a CEQA compliance condition to postpone environmental review until after an agreement on the project has been reached would render the EIR requirement a “dead letter.” We adopt an intermediate position: A CEQA compliance condition can be a legitimate ingredient in a preliminary public-private agreement for exploration of a proposed project, but if the agreement, viewed in light of all the surrounding circumstances, commits the public agency as a practical matter to the project, the simple insertion of a CEQA compliance condition will not save the agreement from being considered an approval requiring prior environmental review.

As previously noted, the CEQA Guideline defining “approval” states that “with private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.” (Cal. Code Regs., tit. 14, § 15352, subd. (b).)¹¹ On its face, this regulatory definition suggests a public agency’s execution of a contract to convey a property for development would constitute approval of the development project. City and Laurel Place rely on two decisions holding

¹¹ The guideline derives in part from Public Resources Code section 21065, which defines “project” as including a private activity supported by public contracts, grants, or other assistance, or requiring issuance of a public permit, license, or other entitlement. (*Id.*, subds. (b), (c).)

agreements not to be approvals for CEQA purposes when conditioned on later CEQA compliance.

In *Stand Tall on Principles v. Shasta Union High Sch. Dist.*, *supra*, 235 Cal.App.3d 772 (*Stand Tall*), a school district board passed resolutions choosing the site for a new high school from a group of finalists and authorizing the district administration to purchase the property; any offer to purchase “was to be made contingent upon completion of the EIR process and final state approval.” (*Id.* at p. 777.) The appellate court rejected a claim the EIR should have been done before selecting the preferred school site, reasoning that “the Board’s resolutions regarding the site selection do not constitute an ‘approval’ under CEQA because they do not commit the District to a definite course of action since they are expressly made contingent on CEQA compliance.” (*Id.* at p. 781.)

In *Concerned McCloud Citizens v. McCloud Community Services Dist.* (2007) 147 Cal.App.4th 181 (*McCloud*), a district executed an agreement with a commercial spring water bottler for exclusive rights to bottle and sell water from the district’s sources, contingent on, among other things, the district and the bottler “ ‘completing, during the Contingency Period, proceedings under CEQA in connection with the Project, and the expiration of the applicable period for any challenge to the adequacy of District’s and [the bottler’s] compliance with CEQA without any challenge being filed.’ ” (*Id.* at p. 188.) Relying in part on *Stand Tall*, the *McCloud* court held no EIR was required before the district executed the contingent bottling agreement. The agreement was subject to several “ ‘ifs,’ ” the court reasoned, continuing: “The biggest ‘if’ in the agreement however is *if* all discretionary permits, expressly defined as including CEQA documentation, review and approvals, along with the final adjudication of any legal challenges based on CEQA, are secured and all environmental, title, physical, water quality and economic aspects of the project are assessed.” (*McCloud*, at p. 193.)

Without questioning the correctness of *Stand Tall* and *McCloud* on their facts, we note that each case involved particular circumstances limiting the reach of its logic; neither convinces us a broad rule exists permitting EIR preparation to be postponed in all circumstances by use of a CEQA compliance condition.

In *McCloud*, the court relied in part on the agreement's lack of information as to the springs that would be exploited, the site of the bottling plant, how the water would be transported, and other details essential to environmental analysis of the project. Without that information, the court concluded, "preparation of an EIR would be premature. Any analysis of potential environmental impacts would be wholly speculative and essentially meaningless." (*McCloud, supra*, 147 Cal.App.4th at p. 197.) In the terms used by the CEQA Guidelines to define "approval" — "the decision by a public agency which commits the agency to a definite course of action" (Cal. Code Regs, tit. 14, § 15352, subd. (a)) — *McCloud* thus speaks as much to *definiteness* as to commitment and does not establish that a conditional agreement for development never constitutes approval of the development.

Stand Tall, supra, 235 Cal.App.3d 772, involved an agreement to purchase property, an activity that, as a practical matter in a competitive real estate market, may sometimes need to be initiated before completing CEQA analysis. The CEQA Guidelines accommodate this need by making an exception to the rule that agencies may not "make a decision to proceed with the use of a site for facilities which would require CEQA review" before conducting such review; the exception provides that "agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance." (Cal. Code Regs., tit. 14, § 15004, subd. (b)(2)(A).) The Guidelines' exception for land purchases is a reasonable interpretation of CEQA, but it should not swallow the general rule

(reflected in the same regulation) that a development decision having potentially significant environmental effects must be *preceded*, not *followed*, by CEQA review. (See *Laurel Heights I, supra*, 47 Cal.3d at p. 394 [“A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved”].)

City and Laurel Place apparently would limit the “commit[ment]” that constitutes approval of a private project for CEQA purposes (Cal. Code Regs., tit. 14, § 15352, subd. (a)) to unconditional agreements irrevocably vesting development rights. In their view, “[t]he agency commits to a definite course of action . . . by agreeing to be legally bound to take that course of action.” (*City of Vernon v. Board of Harbor Comrs., supra*, 63 Cal.App.4th at p. 688.) On this theory, any development agreement, no matter how definite and detailed, even if accompanied by substantial financial assistance from the agency and other strong indications of agency commitment to the project, falls short of approval so long as it leaves final CEQA decisions to the agency’s future discretion.

Such a rule would be inconsistent with the CEQA Guidelines’ definition of approval as the agency’s “*earliest* commitment” to the project. (Cal. Code Regs., tit. 14, § 15352, subd. (b), italics added.) Just as CEQA itself requires environmental review before a project’s approval, not necessarily its *final* approval (Pub. Resources Code, §§ 21100, 21151), so the guideline defines “approval” as occurring when the agency *first* exercises its discretion to execute a contract or grant financial assistance, not when the *last* such discretionary decision is made.

Our own decisions are to the same effect: we have held an agency approved a project even though further discretionary governmental decisions would be needed before any environmental change could occur. (See *Muzzy*

Ranch Co. v. Solano County Airport Land Use Com., *supra*, 41 Cal.4th at p. 383 [adoption of airport land use plan held to be a project even though it directly authorized no new development]; *Fullerton*, *supra*, 32 Cal.3d at p. 795 [adoption of school district succession plan held to be a project even though “further decisions must be made before schools are actually constructed”]; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 279, 282 [regional agency’s approval of annexation by city held to be a project even though further approvals, including zoning changes, would be needed for property development to occur].) Though these decisions framed the question as whether certain agency steps constituted projects, rather than whether the agency had approved a project, they stand for the principle that CEQA review may not always be postponed until the last governmental step is taken.

Moreover, limiting approval to unconditional agreements that irrevocably vest development rights would ignore what we have previously recognized, that postponing environmental analysis can permit “bureaucratic and financial momentum” to build irresistibly behind a proposed project, “thus providing a strong incentive to ignore environmental concerns.” (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 395.)

A public entity that, in theory, retains legal discretion to reject a proposed project may, by executing a detailed and definite agreement with the private developer and by lending its political and financial assistance to the project, have as a practical matter committed itself to the project. When an agency has not only expressed its inclination to favor a project, but has increased the political stakes by publicly defending it over objections, putting its official weight behind it, devoting substantial public resources to it, and announcing a detailed agreement to go forward with the project, the agency will not be easily deterred from taking whatever steps remain toward the project’s final approval.

For similar reasons, we have emphasized the practical over the formal in deciding whether CEQA review can be postponed, insisting it be done early enough to serve, realistically, as a meaningful contribution to public decisions. (See *Fullerton, supra*, 32 Cal.3d at p. 797 [“as a practical matter,” school district succession plan was a project requiring review]; *No Oil, Inc., supra*, 13 Cal.3d at p. 77, fn. 5 [“ ‘Statements must be written . . . early enough so that whatever information is contained can practically serve as an input into the decision making process’ ”]; see also *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199, 1221 [CEQA review should not be delayed to the point where it would “call for a burdensome reconsideration of decisions already made”].) The full consideration of environmental effects CEQA mandates must not be reduced “ ‘to a process whose result will be largely to generate paper, to produce an EIR that describes a journey whose destination is already predetermined.’ ” (*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271.)

We note as well that postponing EIR preparation until after a binding agreement for development has been reached would tend to undermine CEQA’s goal of transparency in environmental decisionmaking. Besides informing the agency decision makers themselves, the EIR is intended “to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions.” (*No Oil, Inc., supra*, 13 Cal.3d at p. 86; accord, *Laurel Heights I, supra*, 47 Cal.3d at p. 392.) When an agency reaches a binding, detailed agreement with a private developer and publicly commits resources and governmental prestige to that project, the agency’s reservation of CEQA review until a later, final approval stage is unlikely to convince public observers that before committing itself to the project the agency fully considered the project’s environmental consequences. Rather than a “document of

accountability” (*Laurel Heights I*, at p. 392), the EIR may appear, under these circumstances, a document of post hoc rationalization.

On the other hand, we cannot agree with the suggestion of the Court of Appeal, supported by Save Tara, that any agreement, conditional or unconditional, would be an “approval” requiring prior preparation of CEQA documentation if at the time it was made the project was sufficiently well defined to provide “ ‘meaningful information for environmental assessment.’ ” (*Citizens for Responsible Government v. City of Albany*, *supra*, 56 Cal.App.4th at p. 1221, quoting Cal. Code Regs., tit. 14, § 15004, subd. (b).) On this theory, once a private project had been described in sufficient detail, *any* public-private agreement related to the project would require CEQA review.

This rule would be inconsistent with the CEQA Guidelines’ definition of approval as involving a “commit[ment]” by the agency. (Cal. Code Regs., tit. 14, § 15352, subd. (a).) Agencies sometimes provide preliminary assistance to persons proposing a development in order that the proposal may be further explored, developed or evaluated. Not all such efforts require prior CEQA review. (See, e.g., Cal. Code Regs., tit. 14, § 15262 [conduct of feasibility or planning studies does not require CEQA review].) Moreover, privately conducted projects often need some form of government consent or assistance to get off the ground, sometimes long before they come up for formal approval. Approval, within the meaning of Public Resources Code sections 21100 and 21151, cannot be equated with the agency’s mere interest in, or inclination to support, a project, no matter how well defined. “If having high esteem for a project before preparing an environmental impact statement (EIR) nullifies the process, few public projects would withstand judicial scrutiny, since it is inevitable that the agency proposing a project will be favorably disposed to it.” (*City of Vernon v. Board of Harbor Comrs.*, *supra*, 63 Cal.App.4th at p. 688.)

As amicus curiae League of California Cities explains, cities often reach purchase option agreements, memoranda of understanding, exclusive negotiating agreements, or other arrangements with potential developers, especially for projects on public land, before deciding on the specifics of a project. Such preliminary or tentative agreements may be needed in order for the project proponent to gather financial resources for environmental and technical studies, to seek needed grants or permits from other government agencies, or to test interest among prospective commercial tenants. While we express no opinion on whether any particular form of agreement, other than those involved in this case, constitutes project approval, we take the League’s point that requiring agencies to engage in the often lengthy and expensive process of EIR preparation before reaching even preliminary agreements with developers could unnecessarily burden public and private planning. CEQA review was not intended to be only an afterthought to project approval, but neither was it intended to place unneeded obstacles in the path of project formulation and development.

In addition to the regulatory definition of “approval” quoted earlier (Cal. Code Regs., tit. 14, § 15352, subd. (b)), Save Tara relies on *Citizens for Responsible Government v. City of Albany*, *supra*, 56 Cal.App.4th 1199 (*Citizens for Responsible Government*) for the principle that an EIR must be prepared before a public agency executes a detailed agreement for development. In that case, the city council decided to place before the voters a proposal for development of a gaming facility at a racetrack; included in the proposal was an agreement with the private developer setting out details of the proposed facility and its operation. (*Id.* at p. 1206.) Although the agreement called for the developer to submit any studies needed “ ‘to address any potential adverse environmental impact of the Project’ ” and provided that “ ‘[a]ll reasonably feasible mitigation measures shall become conditions’ ” of the city’s implementation agreement (*id.* at pp. 1219-1220), the

appellate court held the city council had approved the project, for CEQA purposes, by putting it on the ballot, and thus the agreed-to environmental analysis came too late: “[T]he appropriate time to introduce environmental considerations into the decision making process was during the negotiation of the development agreement. Decisions reflecting environmental considerations could most easily be made when other basic decisions were being made, that is, during the early stage of ‘project conceptualization, design and planning.’ Since the development site and the general dimensions of the project were known from the start, there was no problem in providing ‘meaningful information for environmental assessment.’ At this early stage, environmental review would be an integral part of the decisionmaking process. Any later environmental review might call for a burdensome reconsideration of decisions already made and would risk becoming the sort of ‘*post hoc* rationalization[] to support action already taken,’ which our high court disapproved in [*Laurel Heights I*].” (*Citizens for Responsible Government*, at p. 1221.)

Again, without questioning the correctness of this decision on its facts, we find it falls short of demonstrating a general rule against use of conditional agreements to postpone CEQA review. The development agreement in *Citizens for Responsible Government*, once approved by the voters, vested the developer with the right to build and operate a card room within particular parameters set out in the agreement. The city had thus “contracted away its power to consider the full range of alternatives and mitigation measures required by CEQA” and had precluded consideration of a “no project” option. (*Citizens for Responsible Government, supra*, 56 Cal.App.4th at pp. 1221-1222.) “Indeed, the purpose of a development agreement is to provide developers with an assurance that they can complete the project. After entering into the development agreement with [the

developer], the City is not free to reconsider the wisdom of the project in light of environmental effects.” (*Id.* at p. 1223.)¹²

Desirable, then, as a bright-line rule defining when an approval occurs might be, neither of those proposed — the execution of an *unconditional* agreement irrevocably vesting development rights, or of *any* agreement for development concerning a well-defined project — is consistent with CEQA’s interpretation and policy foundation. Instead, we apply the general principle that before conducting CEQA review, agencies must not “take any action” that significantly furthers a project “in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.” (Cal. Code Regs., tit. 14, § 15004, subd. (b)(2)(B); accord, *McCloud*, *supra*, 147 Cal.App.4th at p. 196 [agreement not project approval because, inter alia, it “did not restrict the District’s discretion to consider any and all mitigation measures, including the ‘no project’ alternative”]; *Citizens for Responsible Government*, *supra*, 56 Cal.App.4th at p. 1221 [development agreement was project approval because it limited city’s power “to consider the full range of alternatives and mitigation measures required by CEQA”].)

In applying this principle to conditional development agreements, courts should look not only to the terms of the agreement but to the surrounding

¹² *Citizens for Responsible Government*’s references to a “development agreement” were to development agreements as described in Government Code section 65865.2, which allows for only such conditions as “shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement.” The purpose of such agreements is to give “[a]ssurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations” (Gov. Code, § 65864, subd. (b); see *Citizens for Responsible Government*, *supra*, 56 Cal.App.4th at pp. 1213-1214.)

circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. (See Cal. Code Regs, tit. 14, § 15126.6, subd. (e).) In this analysis, the contract’s conditioning of final approval on CEQA compliance is relevant but not determinative.

A frequently cited treatise on CEQA (Remy et al., Guide to the Cal. Environmental Quality Act (CEQA) (11th ed. 2006)) summarizes this approach in a useful manner. “First, the analysis should consider whether, in taking the challenged action, the agency indicated that it would perform environmental review before it makes any further commitment to the project, and if so, whether the agency has nevertheless effectively circumscribed or limited its discretion with respect to that environmental review. Second, the analysis should consider the extent to which the record shows that the agency or its staff have committed significant resources to shaping the project. If, as a practical matter, the agency has foreclosed any meaningful option to going forward with the project, then for purposes of CEQA the agency has ‘approved’ the project.” (*Id.* at p. 71.) As this passage suggests, we look both to the agreement itself and to the surrounding circumstances, as shown in the record of the decision, to determine whether an agency’s authorization or execution of an agreement for development constitutes a “decision . . . which commits the agency to a definite course of action in regard to a project.” (Cal. Code Regs., tit. 14, § 15352.)

Our analysis does not require CEQA analysis before a definite project has been formulated and proposed to the agency. An agency cannot be deemed to have approved a project, within the meaning of Public Resources Code sections 21100 and 21151, unless the proposal before it is well enough defined “to provide

meaningful information for environmental assessment.” (Cal. Code Regs., tit. 14, § 15004, subd. (b).) Moreover, when the prospect of agency commitment mandates environmental analysis of a large-scale project at a relatively early planning stage, before all the project parameters and alternatives are reasonably foreseeable, the agency may assess the project’s potential effects with corresponding generality. With complex or phased projects, a staged EIR (Cal. Code Regs., tit. 14, § 15167) or some other appropriate form of tiering (see *In re Bay-Delta et al.* (2008) 43 Cal.4th 1143, 1170; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at p. 431) may be used to postpone to a later planning stage the evaluation of those project details that are not reasonably foreseeable when the agency first approves the project.

IV. Application to City’s Decisions

We turn finally to whether the city council’s approval of the draft agreement on May 3, 2004, and the city manager’s execution of the revised agreement on August 9 of the same year constituted approval of the 1343 Laurel project for purposes of sections 21100 and 21151. From the agreements and the surrounding circumstances, we conclude City did approve the 1343 Laurel project in substance, though it reserved some of the project’s design details for later environmental analysis and final decision.

The contract between City and Laurel Place demonstrates City’s commitment to the project. Both the May 3 draft and the August 9 executed agreements forthrightly stated their purpose was to “cause the reuse and redevelopment” of 1343 Laurel in accordance with the project as outlined in the agreements and in the earlier HUD grant application. The city council’s May 3

resolution, similarly, stated the intent to “facilitate development of the project” — while allowing further public input on “the design of project elements.”

In both versions of the agreement, moreover, City agreed to initially lend the developer nearly half a million dollars, a promise *not* conditioned on CEQA compliance. This predevelopment portion was to be advanced in the first phase of the agreement’s performance, before EIR approval and issuance of other final approvals, and was to be repaid from project receipts over a period of up to 55 years. If City did not give final approval to the project, therefore, it would not be repaid. For a relatively small government like City’s, this was not a trivial outlay, and it would be wasted unless City gave final approval to the project in some form.

While both versions of the agreement conditioned conveyance of the property and disbursement of the second half of the loan on CEQA compliance, among other conditions, the May 3 draft agreement significantly circumscribed City’s remaining authority in this regard. Under the draft agreement, whether CEQA requirements had been met was to be “reasonably determined by the City Manager,” language that could have left City open to charges it acted unreasonably, had it ultimately declined to certify the EIR or make any needed CEQA findings.

In addition, the May 3 draft agreement, in setting the condition that all “requirements of CEQA” be “satisfied,” arguably left open the question whether City remained free to find that the EIR was legally adequate and yet to reject the project on substantive environmental grounds. An EIR that “satisfies” CEQA “requirements” may nonetheless demonstrate the project carries with it significant immitigable adverse effects. The May 3 draft agreement’s condition does not clearly encompass the possibility that in such a situation City could decline to find,

pursuant to section 21081, subdivision (b), that the project's benefits outweigh such immitigable effects.

Finally, the May 3 draft agreement had no provision for appealing to the city council the city manager's decision on, or waiver of, CEQA compliance. Such a delegation of the council's authority was itself an impermissible attempt to approve the project without prior CEQA review. (See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 [permit condition requiring applicant to submit environmental study to the planning commission and adopt any mitigation measures formulated by commission staff was an improper delegation of CEQA responsibility to staff and an impermissible postponement of environmental review].)

After Save Tara sued, alleging some of these same flaws in the May 3 draft agreement, City staff revised the agreement to repair them. Under the August 9 executed agreement, the city manager no longer had authority to determine or waive CEQA compliance, and City's "complete discretion" over CEQA matters was expressly acknowledged. But the city council had already approved the May 3 draft agreement, by which it had shown a willingness to give up further authority over CEQA compliance in favor of dependence on the city manager's determination. Given that history, as well as the other circumstances discussed below, City's "apprehensive citizenry" (*No Oil, Inc., supra*, 13 Cal.3d at p. 86) could be forgiven if they were skeptical as to whether the city council would give adverse impacts disclosed in the EIR full consideration before finally approving the project.

Circumstances surrounding City's approval of the agreements confirm City's commitment to the 1343 Laurel project. In aid of Laurel Place's HUD grant application, the city manager told the federal agency City "has approved the sale of the property" and "will commit" up to \$1 million in financial aid. Once the

grant was awarded, City's mayor announced it "will be used" for Laurel Place's project, and the City newsletter stated that, using the grant, City and Laurel Place "will redevelop the property." City officials told residents who opposed the project that while "variations" on the proposal would be entertained, City "must continue on a path that fulfills this obligation" to redevelop the property for senior housing. Similarly, at the May 3, 2004, city council meeting, City's housing manager stated that while there were "options to consider" regarding project design, options for other uses of the property (as a park, library, or cultural center) had already been ruled out.¹³

Finally, City proceeded with tenant relocation on the assumption the property would be redeveloped as in the proposed project. After HUD awarded the grant, City's housing manager told a tenant that she would be relocated, though not for a year or so. Around the same time, other tenants reported being contacted by relocation consultants, who told them they would soon be given one-year notices. As part of its May 3, 2004, resolution, the city council authorized the predevelopment loan in order to, among other things, "begin the process of working with tenants to explore relocation options." The May 3 draft and

¹³ At oral argument, counsel for City and Laurel Place urged strenuously that expressions of enthusiasm for a project by an agency's staff members should not be confused with official approval of a project. We agree. In isolation, such statements could rarely, if ever, be deemed approvals for CEQA purposes. Here, of course, we weigh statements by City officials not in isolation but as one circumstance shedding light on the degree of City's commitment when it approved the May 3 and August 9 agreements. It bears noting, as well, that one of the statements upon which we rely was a communication from City's mayor, another appeared in an official City newsletter, and others were from City's housing manager, who, having been named in the mayor's announcement as the contact person for residents with questions about the proposed development, had apparent authority to speak for City on this topic.

August 9 executed agreements provided that Laurel Place would “complete the relocation of tenants” in the agreement’s first performance phase, that is, *before* final project approval was given and the property conveyed to Laurel Place. A staff report on the May 3 draft agreement stated that relocation notices, with a one-year period, would be sent shortly after the agreement was executed. The August 9 executed agreement further specified the process was to begin within 30 days.

Relocation of tenants is a significant step in a redevelopment project’s progress, and one that is likely to be irreversible. City’s willingness to begin that process as soon as the conditional development agreement was executed, and to complete it before certifying an EIR and finally approving the project, tends strongly to show that City’s commitment to the 1343 Laurel project was not contingent on review of an EIR.

In summary, City’s public announcements that it was determined to proceed with the development of low-income senior housing at 1343 Laurel, its actions in accordance with that determination by preparing to relocate tenants from the property, its substantial financial contribution to the project, and its willingness to bind itself, by the May 3 draft agreement, to convey the property if the developer “satisfied” CEQA’s “requirements, as reasonably determined by the City Manager,” all demonstrate that City committed itself to a definite course of action regarding the project before fully evaluating its environmental effects. That is what sections 21110 and 21151 prohibit.

CONCLUSION

For the reasons given above, we agree with the Court of Appeal that City must be ordered to “declare void its approval of the May and August 2004 Agreements” and to reconsider those decisions in light of a legally adequate EIR for the project. (See § 21168.9, subd. (a)(1).) If that reconsideration leads to

approval of the project, City must make any appropriate findings under section 21081.

Unlike the Court of Appeal, however, we do not believe City necessarily must prepare a new EIR before reconsidering its approval of the project. The parties agree City certified a final EIR for the project in 2006, during pendency of this appeal, and Save Tara did not judicially challenge that EIR's legal adequacy. Under section 21167.2, the 2006 EIR is conclusively presumed to comply with CEQA's standards unless a subsequent or supplemental environmental EIR is needed for any of the reasons set out in section 21166 (discussed below).

The 2006 EIR was prepared after City approved the May 3 and August 9, 2004, agreements, which approvals must be now vacated. To the extent the 2006 EIR's discussion of project alternatives and mitigation measures was premised on City's 2004 approvals, that discussion may need revision. Moreover, by the time of our remand more than two years will have passed since the EIR was certified in October 2006. Because of both these factors, it is possible that "[s]ubstantial changes [have] occur[red] with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report" or that "[n]ew information, which was not known and could not have been known at the time the environmental impact report was certified as complete, [has] become[] available." (Pub. Resources Code, § 21166, subs. (b), (c); see also Cal. Code Regs., tit. 14, §§ 15162, 15163 [subsequent and supplemental EIR's].) Whether this is so must be decided in the first instance by City and reviewed by the superior court on a substantial evidence standard. (See *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 704.)

This matter must therefore be returned to the superior court for that court (1) to order City to set aside its prior approval of the project; (2) if City decides no subsequent or supplemental EIR is required under section 21166, to review that decision; and (3) to make any other order necessary and proper under section 21168.9.

DISPOSITION

The judgment of the Court of Appeal is affirmed in part and reversed in part. The matter is remanded to the Court of Appeal for further proceedings consistent with our opinion.

WERDEGAR, J.

WE CONCUR:

GEORGE, C. J.

KENNARD, J.

BAXTER, J.

CHIN, J.

MORENO, J.

CORRIGAN, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion Save Tara v. City of West Hollywood

Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 147 Cal.App.4th 1091
Rehearing Granted

Opinion No. S151402
Date Filed: October 30, 2008

Court: Superior
County: Los Angeles
Judge: Ernest M. Hiroshige

Attorneys for Appellant:

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Law Offices of Michael W. Stamp and Michael W. Stamp for Save Our Carmel River and The Open Monterey Project as Amici Curiae on behalf of Plaintiff and Appellant.

Frank G. Wells Environmental Law Clinic, Sean B. Hecht; Neighborhood Legal Services of Los Angeles County, David Pallack and Joshua Stehlik for Lincoln Place Tenants Association, People for Parks, Sierra Club and Trudy Saposhnek as Amicus Curiae on behalf of Plaintiff and Appellant.

Shute, Mihaly & Weinberger, Rachel B. Hooper, Amy J. Bricker, Michelle W. Anderson; Law Offices of Donald B. Mooney and Donald B. Mooney for Environmental Defense Center, California Preservation Foundation, Planning and Conservation League and Natural Resources Defense Council as Amici Curiae on behalf of Plaintiff and Appellant.

Attorneys for Respondent:

Jenkins & Hogin, Michael Jenkins, John C. Cotti and Christi Hogin for Defendant and Respondent.

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Truman & Elliott, Kathleen O'Prey Truman and Todd Elliott for Housing California and Southern California Association of Nonprofit Housing as Amici Curiae on behalf of Defendant and Respondent.

Latham & Watkins, James L. Arnone, Stephanie E. Ord, Ernest J. Hahn and Benjamin J. Hanelin for Real Parties in Interest and Respondents.

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 12

DESK ITEM

DATE: December 1, 2020

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803):

- a. Authorize the Town Manager to Negotiate and Execute a Measure B Funding Agreement with the Santa Clara Valley Transportation Authority (Attachment 1) to Accept a Measure B Grant in the Amount of \$2,754,990 for the Highway 17 Bicycle and Pedestrian Overcrossing Project Final Design Phase;
- b. Authorize Revenue and Expenditure Budget Increases in the Total Amount of \$3,701,200 (\$2,754,990 in Grant Fund and \$946,210 in General Fund Appropriated Reserve) in the Fiscal Year 2020/21 – 2024/25 Capital Improvement Program (CIP) Budget for the Highway 17 Bicycle and Pedestrian Overcrossing Project to Recognize the Receipt of Grant Funds in FY 2020/21;
- c. Authorize the Release of a Request for Proposals (Attachment 2) for the Highway 17 Bicycle and Pedestrian Overcrossing Design Project;
- d. Authorize the Town Manager to Negotiate and Execute a Consultant Agreement with the Highest Ranked Firm in an Amount Not to Exceed \$3,000,000; and
- e. Approve the Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan (Attachment 3).

REMARKS:

Attachment 7 reflects public comments received from 11:01 a.m., Monday, November 30, 2020 through 11:00 a.m., Tuesday, December 1, 2020.

In addition, the following question was received from a Councilmember.

Is there a deadline to accept the Measure B funds?

PREPARED BY: Ying Smith
Transportation and Mobility Manager

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

PAGE 2 OF 2

SUBJECT: Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803)

DATE: December 1, 2020

REMARKS (continued):

Staff Response: There is no immediate deadline to accept the funds, although some dynamics playing out with Measure B and the need for BART funding makes delaying any project risky. There is a need for additional funding to keep the project moving - the current phase is complete and the next step will be an RFP to get the next consultant on board so that the environmental work and then the next phase of design can begin.

Attachments Previously Received with Staff Report:

1. Draft Measure B Funding Agreement with the Santa Clara Valley Transportation Authority.
2. Draft Request for Proposals for Professional Engineering Design Services.
3. Draft Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan.
4. Highway 17 Bicycle and Pedestrian Overcrossing Project Background.
5. Public Comment Received.

Attachment Previously Received with Addendum:

6. Public Comment Received from 11:01 a.m., Wednesday, November 25, 2020 through 11:00 a.m., Monday, November 30, 2020.

Attachment Received with this Desk Item:

7. Public comment received from 11:01 a.m., Monday, November 30, 2020 through 11:00 a.m., Tuesday, December 1, 2020.

From: Dean strausl
Sent: Tuesday, December 1, 2020 8:59 AM
To: Council <Council@losgatosca.gov>
Cc: john@bikesiliconvalley.org
Subject: Blossom Hill Bike & Ped Bridge

Town Council

Of course access is a major factor in considering this crossing. As the community (regrettably) expands links to the town's many physical assets can become a means of integrating rather than simply housing the new. I have lived three years on the east side of 17 after 20 on the west side. I drove my daughter to Fisher and LGHS and still watch as kids stream across. Let's make it easier and safer.

Dean Strausl

From: Paul Brennan
Sent: Tuesday, December 1, 2020 8:16 AM
To: Council <Council@losgatosca.gov>; Town Manager <Manager@losgatosca.gov>
Cc: Patty Charles < Leah Angulo <; Mary Lonhart < Clare Vickers < >
Subject: Highway 17 bicycle & pedestrian bridge

Dear Town Council members,

On behalf of R.J. Fisher Middle School I wanted to express our support for the Highway 17 bicycle and pedestrian bridge project. The Safe Routes to School program has done a fantastic job encouraging students to walk or roll (bike, scooter or skateboard) to school. During normal times, both before and after school, one would find hundreds of Fisher students traveling down Blossom Hill road. We hope that the Town can do whatever it takes to make this passageway as safe as possible.

Sincerely yours,

From: Scott, Marty
Sent: Monday, November 30, 2020 8:57 PM
To: Council <Council@losgatosca.gov>
Subject: Blossom Hill - 17 Pedestrian/Cycling Bridge .. YES

As a longtime Los Gatos resident, avid cyclist, mother of two daughters who ride bikes and grandmother to several grandchildren who rides bikes (to school when they can, and around town for fun!) ...

PLEASE build this bridge.

Thank you for your consideration!
Marty Scott

ATTACHMENT 7

From: Mr Irvine
Sent: Monday, November 30, 2020 8:41 PM
To: PublicComment <PublicComment@losgatosca.gov>
Subject: Public Comment Item #12

As a 10 year Los Gatos resident and lifelong Santa Clara county cyclist I strongly support infrastructure to improve cycling and pedestrian safety and increase participation in these activities. While my two boys attended Fisher I strongly encouraged them to ride bicycles to school, riding through Vasona and up Blossom Hill road to the school. While the Blossom Hill / Highway 17 overpass appears safe on an early Saturday morning ride it can become quite congested with pedestrians, scooter riders, cyclists and cars during the busy morning commute. The proposed bicycle and pedestrian bridge would greatly expand capacity for traffic in this critical area and would be a great asset to the community.

--

Tim Irvine

From: Yi, Sooky
Sent: Monday, November 30, 2020 8:11 PM
To: Council <Council@losgatosca.gov>
Cc: john@bikesiliconvalley.org
Subject: blossom hill footbridge

yes. and yes.

A bridge would be an asset to the town. Connecting east and west will only create a stronger sense of community.

As a long time resident who has run, walked, and biked every inch of Los Gatos, I assure you a bridge would be an amazing improvement. If we create a bridge they will come. People will walk, run and ride more! Just Do it.

Sooky Yi
Marchmont Dr.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 13

DATE: November 25, 2020
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Approval of Proposed Settlement Agreement between the Town of Los Gatos and SummerHill Homes LLC to Resolve the Damage Claim filed By SummerHill Regarding the Denial of SummerHill's Application to Remove Underground Parking from the North 40 Phase 1 Construction of the Market Hall

RECOMMENDATION:

Staff recommends that the Town Council approve the proposed settlement agreement between the Town of Los Gatos and SummerHill Homes LLC to resolve the damage claim filed by SummerHill regarding the denial of SummerHill's application to remove underground parking for the North 40 Phase 1 construction of the Market Hall.

BACKGROUND:

The application for a modification to the existing Architecture and Site application to remove underground parking for construction of the market hall (S-20-012) was considered by the Planning Commission on August 26, 2020, September 9, 2020, September 23, 2020, and September 28, 2020. On September 28, 2020 the Planning Commission received the staff report, opened the public hearing, and considered testimony from the applicant and the public. After asking questions, the Planning Commission closed the public hearing and discussed the project. After completing its deliberations, the Commission denied the application.

The decision of the Planning Commission was appealed on October 1, 2020 by SummerHill. The appellant provided the reasons for the appeal to the Town Council, wherein the Planning Commission's decision was an error or abuse of discretion and was not supported by substantial evidence in the record.

PREPARED BY: ROBERT SCHULTZ
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, Community Development Director and Parks and Public Works Director

BACKGROUND (cont.):

On October 20, 2020 the Town Council heard the appeal filed by SummerHill. The Town Council received the staff report, opened the public hearing, and considered testimony from the applicant and the public. After asking questions, the Town Council closed the public hearing and discussed the project. After completing its deliberations, the Town Council denied SummerHill's appeal of the Planning Commission's decision the application.

On November 11, 2020, SummerHill filed a claim against the Town pursuant to the Government Claims Act for damages arising from the Town's denial of the Application to remove underground parking for construction of the Market Hall (Attachment 1). The claim alleges the denial of the Application was wrongful, in that it violated a number of laws, including the Housing Accountability Act, the Housing Element Law, State and Federal Constitutional requirements, and the Federal Civil Rights Act. The Claim further alleges that as proximate result of the Town's unlawful denial of the Application, SummerHill would suffer damages in excess of Five Million Dollars (\$5,000,000).

DISCUSSION:

After the Town received the Government Claim seeking damages from SummerHill, the Town Attorney met in closed session with Town Council on November 15, 2020 and November 24, 2020 to discuss the merits of the claim and potential settlement. Pursuant to Council direction, the Town Attorney with support from Town staff, has been negotiating with SummerHill a settlement that would address all parties' concerns. If the parties reach tentative agreement prior to the December 1 Council meeting, staff will provide an Addendum or Desk Item with the proposed settlement agreement for Council's consideration.

COORDINATION:

The Town Attorney coordinated with the Community Development Department, Parks and Public Works Department, and the Town Manager in the review of the proposed settlement agreement.

ENVIRONMENTAL ASSESSMENT:

An Environmental Impact Report (EIR) was prepared and certified for the North 40 Specific Plan on January 5, 2015. No further environmental analysis is required for the approval of the proposed settlement agreement.

Attachments:

1. Government Claim filed by SummerHill



ANDREW L. FABER
PEGGY L. SPRINGGAY
SAMUEL L. FARB
JAMES P. CASHMAN
STEVEN J. CASAD
NANCY J. JOHNSON
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NANCY L. BRANDT
LESLIE KALIM MCHUGH
BRADLEY HEBERT

November 11, 2020

VIA E-MAIL & U.S. MAIL

Laurel Prevetti, Town Manager
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
manager@losgatosca.gov

Re: Notice of Government Claims Act claim – Unlawful denial of SummerHill Homes LLC’s application for modification (S-20-012) of North 40 Architecture and Site Approval (S-13-90)

Dear Ms. Prevetti:

This firm, along with the firm of Sheppard, Mullin, Richter & Hampton, represent SummerHill Homes LLC (“Applicant” or “SummerHill”), the applicant for the above-entitled modification (“Application”).

The purpose of this letter is to formally notify the Town that SummerHill is presenting a claim (the “Claim”) to the Town under the Government Claims Act for damages resulting from the unlawful denial by the Town Council of the Application (the “Denial”).

As will be explained more extensively in the Claim, the Denial was wrongful, in that it violated a number of laws, including the Housing Accountability Act, the Housing Element Law, State and Federal Constitutional requirements, and the Federal Civil Rights Act.

As a direct result of the Denial, the Applicant will suffer damages according to proof, but estimated now to be in excess of Five Million Dollars (\$5,000,000). These damages arise primarily

Laurel Prevetti, Town Manager
November 11, 2020

from three sources: (a) the extra cost of construction of the garage with the unneeded basement level; (b) delays to the Project caused by the extra time that will be needed to construct the garage with the unneeded basement level; and (c) the delay that this extra construction will cause to the ability to complete the Market Hall part of the Project, and thus to comply with Architecture and Site Permit Condition of Approval Number 7, adopted by Council Resolution 2017-045 on August 1, 2017, stating: "The proposed BMP units must be available and/or occupied prior to final occupancy issuance for the 187th market rate unit." Because of this condition, a number of market rate units will not be able to be sold when completed due to the delay the Denial will cause in the completion of the Market Hall part of the Project.

Unfortunately, the Project is in the middle of construction at this time. In order to remain on schedule, I am informed that the Applicant must begin construction of the full garage, including the unneeded basement level, no later than January 4, 2021. There is not time to have this matter adjudicated in a court of law prior to that date. Thus, we are putting the Town on notice, that unless the Town is able to take some action to reverse the Denial and/or ameliorate the effect of Condition of Approval Number 7, these damages will begin to be incurred, and there will be no way to reduce or eliminate the damages as construction continues.

If the damages mentioned above and in the Claim are incurred, SummerHill intends to look to the Town for payment in full, plus attorneys' fees and costs and any other remedy allowed by law.

If you need further information or wish to discuss this matter further, please contact the undersigned.

Very Truly Yours,

BERLINER COHEN



ANDREW L. FABER

Email: Andy.Faber@berliner.com

ALF

cc: Mayor Jensen and Councilmembers
Robert Schultz, Esq., Town Attorney
Shelly Neis, Town Clerk
Art Friedman, Esq.
Robert Freed
Mike Keaney

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PROOF OF SERVICE

I, Donna Olson, declare under penalty of perjury under the laws of the State of California that the following facts are true and correct:

I am a citizen of the United States, over the age of eighteen years, and not a party to the within action. I am an employee of Berliner Cohen, LLP, and my business address is Ten Almaden Boulevard, Eleventh Floor, San Jose, California 95113-2233. On November 11, 2020, I served the following document(s):

LETTER TO LOS GATOS TOWN MANAGER, LAUREL PREVETTI

in the following manner:

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Jose, California addressed as set forth below.
- by overnight mail by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by e-mail or electronic transmission. Pursuant to Emergency Rule 12 of the CRC I caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below.

E-MAIL Manager@LosGatosCA.gov

Laurel Prevetti
Town Manager
Town of Los Gatos
110 East Main Street
Los Gatos, CA 95030

I am readily familiar with my firm’s practice for collection and processing of correspondence for mailing with the United States Postal Service/Express Mail, Federal Express and other overnight mail services, to wit, that correspondence will be deposited with the United States Postal Service/overnight mail service this same day in the ordinary course of business.

Executed on November 11, 2020, at San Jose, California.



DONNA OLSON

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GUIDELINES

FILING A CLAIM AGAINST TOWN OF LOS GATOS

1. If this claim relates to the death or injury of a person, or damage to personal property or to growing crops, this claim must be presented to the Town of Los Gatos NOT LATER THAN SIX MONTHS after the accrual of the cause of action.
2. If this claim relates only to another cause of action, it must be presented NOT LATER THAN ONE YEAR after its accrual.
3. Complete the form as accurately and completely as possible and attach any invoices, photographs or estimates that support the claim for damages. This will assist the Town in processing the claim promptly. The Town will not return supporting documents or photographs, so it is recommended that you retain copies of everything sent to the Town in conjunction with the claim.
4. Filing a claim with the Town is accomplished by delivering or mailing the original of the claim, by the last day of the applicable time period to:

Clerk Administrator
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

In order to protect your rights under state law, it is recommended that you have the claim delivered in person and obtain an endorsed copy, or mail the claim by certified mail, return receipt requested.

5. The Claim may be amended at any time before the Town takes action. Any amendment shall be considered a part of the original claim for all purposes.
6. These guidelines explain only a few of your rights and obligations under state law regarding claims against public agencies. The complete law is found in the Torts Claim Act (California Government Code section 810, *et. seq.*). Books in the Santa Clara Law Library, located at 360 N. First Street, San Jose may be helpful, or you may consult an attorney of your own choosing.



TOWN OF LOS GATOS

CLAIM FOR DAMAGES

Clerk Department

110 E. Main Street, Los Gatos, CA 95030

Type or print all information, adding additional sheets as necessary.

CLAIMANT NAME SummerHill Homes LLC		BIRTH DATE	
CLAIMANT ADDRESS 777 California Avenue	CITY Palo Alto	STATE CA	ZIP CODE 94304
HOME PHONE	WORK PHONE 650-842-2245	DRIVER'S LICENSE STATE AND NUMBER	
CLAIMANT EMAIL		OCCUPATION	
<p>SEND NOTICES REGARDING THIS CLAIM TO: (List name, mailing address, and phone number if different from above.) Arthur Friedman, Esq., Sheppard Mullin Richter Hampton, Four Embarcadero Center, 17th Floor San Francisco, CA 94111, (415) 434-9100, afriedman@sheppardmullin.com and Andrew Faber, Esq., Berliner Cohen LLP, Ten Almaden Blvd., 11th Floor, San Jose, CA 95113-2233, (408) 286-5800, Andy.Faber@berliner.com</p>			
DATE AND TIME OF INCIDENT October 20, 2020		LOCATION (Specific address of incident.) Town Council public hearing	
<p>CIRCUMSTANCES Please specify the occurrence, event, act, or omission which you claim caused the injury or damage for which you are submitting this claim.</p> <p>On October 20, 2020, the Town Council unlawfully affirmed the Planning Commission's denial of claimant's application for modification (S-20-012) of North 40 Architecture and Site Approval (S-13-90) to eliminate basement level garage parking attached to the Market Hall building ("Application"). Because the Town Council acted unreasonably in failing to comply with its mandatory duty to approve the Application, the Town is liable for claimant's resulting damages under Government Code section 815.6. Additionally, because the Town violated claimant's rights to substantive and procedural due process, the Town is liable for claimant's resulting damages pursuant to 42 U.S.C. section 1983. See attached claims notice letter dated November 11, 2020 for additional details.</p> <p>If your claim is the result of an act by a Town employee, please specify the employee's name:</p>			
<p>DESCRIPTION OF INJURY, PROPERTY DAMAGE, OR LOSS (If there were no injuries, state "NO INJURIES".)</p> <p>As a proximate result of the Town's unlawful denial of the Application, the Applicant will suffer damages according to proof, but estimated now to be in excess of Five Million Dollars. These damages arise primarily from three sources: (a) the extra cost of construction of the garage with the unneeded basement level; (b) delays to the Project caused by the extra time that will be needed to construct the garage with the unneeded basement level; and (c) the delay that this extra construction will cause to the ability to complete the Market Hall, and thus to comply with Architecture and Site permit condition of approval number 7. See attached claims notice letter dated November 11, 2020 for additional details.</p>			

OTHER INJURED PERSONS (List names and addresses.)

DAMAGES CLAIMED

Items	
_____	\$ _____
_____	\$ _____
_____	\$ _____

Amount claimed as of this date: \$ _____

Estimated amount of future costs: \$ _____

Total amount claimed: \$ _____

Government code Section 910 requires that if the claim is for less than \$10,000, the amount of the claim shall be entered. If the claim is more than \$10,000, no dollar amount need be entered, but the claim must indicate whether the claim would be a ___ limited or X unlimited civil case.

Basis for computation of amounts claimed (Include copies of bills, invoices, estimates, etc.):

See Description of Injury above and attached claims notice letter dated November 11, 2020.

WITNESSES, HOSPITALS, DOCTORS, ETC. (List names and addresses.)

All persons who attended or observed the October 20, 2020 public hearing before the Town Council, including, without limitation: Mayor Jensen and the Town Council, the Planning Commission, Town Attorney Robert Schultz, the Town's Planning Staff, Town Manager Laurel Prevetti, Michael Keaney, Robert Freed, and Jason Biggs.

WARNING! IT IS A CRIMINAL OFFENSE TO INTENTIONALLY FILE A FALSE CLAIM (Penal Code Section 72)

I have read the matters and statements made in the above claim, and I know the same to be true of my own knowledge, except to those matters stated upon information or belief and as to such matters I believe the same to be true. I certify under penalty of perjury that the foregoing is TRUE and CORRECT.

Signed this 10th day of November, 2020

Claimant's Signature 

Jason Biggs
Sr. Vice President and Secretary

Please submit this claim to Town of Los Gatos, Clerk Department, 110 East Main Street, Los Gatos, CA 95030

Claimant is advised to consult with an attorney concerning any questions regarding rights, duties, or pertaining to the manner or time of submitting a claim.

In compliance with the *Americans with Disabilities Act*, if you need special assistance to complete this form please call (408) 354-6880 or email Clerk@LosGatosCa.gov.

November 11, 2020

File Number: 41WE-324686

**Via – U.S. MAIL and
E-MAIL Clerk@LosGatosCA.gov**

Shelley Neis
Town Clerk
Town of Los Gatos
110 East Main Street
Los Gatos, CA 95030

Re: Government Claims Act claim – Unlawful denial of SummerHill Homes LLC’s application for modification (S-20-012) of North 40 Architecture and Site Approval (S-13-90)

Dear Ms. Neis:

This firm along with Berliner Cohen LLP represent SummerHill Homes LLC (“Applicant” or “SummerHill”), the applicant for the above-entitled modification (“Application”). On October 20, 2020, the Town Council unlawfully denied Applicant’s appeal of the Planning Commission’s unlawful denial of the Application. On behalf of the Applicant, we submit a claim pursuant to the Government Claims Act for damages against the Town arising from the Town’s unlawful denial of the Application.

Pursuant to Gov. Code section 910, the following is the required information regarding this claim.

Name and address of Claimant (Gov. Code § 910(a).)	SummerHill Homes LLC Attention: Jason Biggs Senior Vice President and General Counsel 777 California Avenue Palo Alto, CA 94304 Phone (650) 842-2245 Fax (650) 494-1400
Post office address to which the person presenting the claim desires notices to be sent. (Gov. Code § 910(b).)	Arthur Friedman, Esq. Sheppard Mullin Richter Hampton Four Embarcadero Center, 17 th Floor San Francisco, CA 94111 (415) 434-9100 afriedman@sheppardmullin.com

	<p>and</p> <p>Andrew Faber, Esq. Berliner Cohen LLP Ten Almaden Blvd., 11th Floor San Jose, CA 95113-2233 (408) 286-5800 Andy.Faber@berliner.com</p>
<p>Date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted. (Gov. Code § 910(c).)</p>	<p>October 20, 2020. The Town Council denied the Applicant's appeal of the Planning Commission's September 28, 2020 denial of the Application, thus confirming the Town's unlawful denial of the Application.</p>
<p>A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of the presentation of the claim. (Gov. Code § 910(d).)</p>	<p>The Town's review of the Application is subject to the requirements of California's Housing Accountability Act ("HAA"), "by-right" development under the Town's Housing Element, and other applicable land use policies and regulations. The Town therefore may only apply objective standards under the Town's General Plan, the North 40 Specific Plan and the Town's Code in determining whether to grant or deny the Application.</p> <p>The Town Council therefore had a mandatory duty to approve the Application because the Application is fully consistent with all applicable objective standards. Nonetheless, as set forth below, the Town Council knowingly and deliberately violated this mandatory legal duty by disregarding the legal and professional advice of its Town Attorney and Planning Staff in affirming the Planning Commission's denial of the application based on pretextual and legally erroneous claims.</p> <p>As the Town acted unreasonably in violating mandatory legal duties, Applicant may recover all resulting damages under Government Code section 815.6.</p>

	<p>Applicant may additionally recover damages under 42 U.S.C. § 1983 resulting from the Town’s knowing and deliberate violation of Applicant’s right to substantive and procedural due process as guaranteed under the United States and California Constitutions.</p> <p>See also details of Claim below.</p>
<p>The name or names of the public employee or employees causing the injury, damage, or loss, if known. (Gov. Code § 910(e).)</p>	<p>The Town Council. Councilmembers Marico Sayoc, Barbara Spector and Mayor Marcia Jensen.</p>
<p>Amount claimed if less than \$10,000, or identification of whether litigation would be limited or unlimited civil cases. (Gov. Code § 910(f).)</p>	<p>Unlimited. As a proximate result of the Town’s unlawful denial of the Application, the Applicant will suffer damages according to proof as described below, currently estimated to be well in excess of Five Million Dollars (5,000,000)</p>

FACTUAL BACKGROUND

On November 14, 2014, SummerHill, Grosvenor USA Limited and Eden Housing, Inc. (“Joint Applicants”) submitted an application to the Town for Architecture and Site (“A&S”) review and Vesting Tentative Map (“VTM”) approvals to develop as Phase 1, 20.7 acres of the 44-acre North 40 Specific Plan area (“Project”). The Project includes 320 (market and senior/affordable) residential units and neighborhood-serving retail stores and restaurants. It also includes a multi-level mixed use Market Hall building with senior/affordable residential units.

Following the Town Council’s denial of the Project on September 1, 2016, Joint Applicants filed a petition for writ of mandate with the Santa Clara County Superior Court to compel the Town to approve the Project pursuant to the mandates of the HAA, the Town’s Housing Element, and the Density Bonus Law (“Petition”). On June 9, 2017, the Court granted the Petition, directing the Town to set aside its Resolution denying the Project. The Court held in part that because the Project is subject to the mandates of the HAA, in the course of reconsideration the Town must make findings regarding the Project’s compliance with applicable, objective general plan and zoning standards and criteria.

On August 1, 2017, the Town Council approved the A & S (S-13-090) and VTM (M-13-014) applications for the Project. Relevant here, the Project includes a Market Hall building with 50 senior/affordable residential units constructed above the Market Hall. As

approved, the Market Hall building has an attached garage with 303 total parking spaces across four garage levels; three above ground with a combined 174 parking spaces, and one basement level containing 129 spaces. Grosvenor originally designed the basement level with the intent to use excess parking for Phase II of North 40. However, Grosvenor is no longer involved with the Project and the Applicant has no need nor interest in constructing excess parking spaces beyond what is required by the Town's Code and the Specific Plan.

In order to reduce the environmental impacts and the costs of the unneeded basement level for the garage, the Applicant submitted its Application to modify its Project approvals to remove the Market Hall building's basement level excess parking. As the Court previously held that the Project falls within the scope of the HAA, the same is true for any applications to modify the Project. Under the HAA, the Town must review the Application for consistency with *objective* general plan, zoning and subdivision standards and criteria in effect at the time the Application was deemed complete. Gov. Code § 65589.5(j)(1). The HAA clarifies the meaning of "objective" as follows:

'Objective' means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.

(Gov. Code § 65589.5(h)(8).)

Section 2.5.8 of the Specific Plan specifies the following parking requirements for the Project.

Parking provided within the Specific Plan Area shall adhere to the standards provided in Division 4 of the Zoning Ordinance.

Number of Off-Street Spaces Required:

a. Non-Residential Use: The number of off-street parking spaces shall be consistent with parking required in Downtown as required within Division 4 of the Zoning Ordinance.

b. Residential Use: Parking provided within the Specific Plan Area shall be as follows:

[Table 2-4:
Senior/affordable: .5 +.5 guest
1 br: 1 + .5 guest
2+ br: 2 + .5 guest]

On April 3, 2018, the Town Council adopted Ordinance 2272, amending Section 29.10.150(b) of the Town Code, which is the section contained in Division 4 of the Zoning Ordinance that is referred to in Specific Plan Section 2.5.8. This change reduced the amount of parking required for restaurants and commercial spaces in Downtown, and thus, because of the

requirement in in the Specific Plan, also in the North 40 Project. Under the Town's revised parking requirements, the Market Hall building requires 62 parking spaces for the Market Hall space, 7 spaces for the proposed bakery, 5 for the community room, and 50 for the Eden residential units, for a total of 124 parking spaces; or 179 fewer spaces than currently required by the Project's approval. Thus, even with the elimination of the 129 parking spaces from the basement level, the Market Hall building would retain 176 parking spaces, which is 52 spaces in excess of the Town's current parking requirements.

The Applicant submitted substantial evidence demonstrating that removal of the underground parking level would have numerous benefits. Construction of the underground parking level would require the off-haul, per the grading plans, of at least 18,200 cubic yards of soil, involving approximately 1,700 truck trips to remove material from the site and 400 inbound truck-loads of concrete. The current design additionally requires three additional months of construction, needlessly delaying completion and occupancy of the senior/affordable housing. Eden Housing additionally submitted evidence that construction of the garage basement would be detrimental to its senior citizen residents by adding unnecessary vehicular traffic. Eden further demonstrated that the requirement for excess parking spaces unnecessarily burdens it with higher property maintenance and upkeep expenses, diverting resources needed for its senior residents. Eden further objected to the substantial and unnecessary delay to the completion of its residential units resulting from construction of the garage basement.

The Planning Commission considered the Application on August 26, September 9, September 23 and September 28, 2020. In response to the Planning Commission's request during its September 9 meeting, Town Attorney Robert Schultz submitted a memorandum on September 18, 2020 clarifying that the HAA applies to the Application, and therefore the Town's review is limited to objective standards. Mr. Schultz advised the Planning Commission as follows:

Since the Decision and Judgment required the Town to consider the Phase 1 Project under the HAA, the HAA would certainly apply to any modifications to the Phase 1 Project. Therefore, in order to deny the Phase 1 Modification Application, the Planning Commission must cite to specific written objective identified Town Standards and Policies and cannot deny the Phase 1 Modification Application for subjective criteria.

Mr. Schultz additionally determined that the Town's Housing Element further constrains the Town's review of the Application to objective standards. He advised the Planning Commission in this regard as follows:

Based upon the Town's Housing Element, the approval of the Phase 1 Project and now this Phase 1 Modification Application are entitled to 'by right' development. This means that pursuant to our Housing Element, the Planning Commission must only apply objective standards in its review, analysis and determination on whether to approve or deny the Phase 1 Modification Application. These are the same legal principles that are set forth under the HAA and are adopted in the Court's Decision and Judgment and restrict the Planning

Commission from using subjective criteria and findings to condition or deny this Phase 1 Modification Application.

On September 28, 2020, the Planning Commission denied the Application based upon various subjective claims and criteria and an erroneous analysis of parking requirements prepared by Commissioner Matthew Hudes that was first disclosed after the close of the public hearing and without an opportunity for the Applicant to review or comment, in violation of Applicant's fundamental right to due process.

On October 1, 2020, Applicant appealed the Planning Commission's decision to the Town Council. Planning Commission Chair Melanie Hanssen and Vice-Chair Kathryn Janoff submitted an 8-page dissenting opinion to the Planning Commission's decision ("Dissent") which included detailed evidence supporting their conclusion that "the Planning Commission motion for denial was based on incorrect and misleading application of Town objective standards as well as confusing and incorrect analysis in the form of spreadsheet tables by the maker of the motion during the meeting after public discussion was closed."

On October 15, 2020, the Town's Planning Staff, which normally would recommend that the Council affirm the Planning Commission's determination, recommended that the Town Council grant Applicant's appeal based on the Planning Commission's failure to comply with governing objective standards as required under the HAA and the Town's Housing Element. Planning Staff's recommendation to the City Council stated as follows:

Staff originally recommended approval of the application to the Planning Commission because the proposal is consistent with the objective standards of the North 40 Specific Plan. As Secretary to the Commission, staff would typically recommend that the Town Council uphold the decision of the Planning Commission and adopt a resolution denying the appeal and denying the application (Attachment 18). However, given the applicability of the HAA and Housing Element Law requirements to rely on objective standards and by-right findings, respectively, staff recommends that the Town Council take the following action:

Adopt a resolution granting the appeal and approving the application with the required Findings and Considerations (Attachment 20, Exhibit A) and recommended Conditions of Approval (Attachment 20, Exhibit B), determining that the Planning Commissions' decision should be reversed or modified, and finding one or more of the following in accordance with Town Code Section 29.20.275:

- a. There was an error or abuse of discretion by the Planning Commission; or
- b. The Planning Commission's decision is not supported by substantial evidence in the record.

On October 19, 2020, the Planning Staff responded to a Council Member's request for an analysis of the Dissent with regards to the interpretation of the Town Code as relates to the Application. Planning Staff informed the Council that it concurs with the Dissent and rejects the Planning Commission's determinations as inconsistent with the Town's current and governing objective parking code requirements.

The Applicant's appeal came before the Town Council on October 20, 2020. During that public hearing, Town Attorney Schulz and the Planning Staff strongly recommended that the Council grant the appeal and approve the Application based on the Town's current and governing objective parking code requirements. Both the Town's Attorney and its Planning Staff reiterated that the Planning Commission's denial of the Application violated governing legal requirements mandating the Town to approve the Application. Unfortunately, the Town Council by a 3-1 vote disregarded the advice of its professional staff and denied Applicant's appeal. The sole basis for the majority's decision is the claim that the parking requirements in existence under the zoning code at the time of the Project's original approval on August 1, 2017 remain in effect. Mayor Jensen and Councilmember Spector announced after the close of the public hearing, and without providing the Applicant an opportunity to respond, that they rejected the legal and professional advice of the Town's Attorney and the Planning Staff based on their own independent "research." However, neither Mayor Jensen nor Councilmember Spector explained their findings or the basis for rejecting the advice of the Town's Attorney and Planning Staff. Councilmember Sayoc likewise joined with Mayor Jensen and Councilmember Spector in denying the appeal, without explanation or stated justification. The Town Council majority's decision, however, is legally erroneous and arbitrary and capricious for several reasons.

First, as there is no dispute that the Project as initially approved was subject to the HAA and by right development under the Town's Housing Element, any application to modify those approvals, which necessarily "opens up" the initial approvals for further consideration and conditions of approval, likewise must be subject to the HAA and the Town's Housing Element. The Town therefore must review the Application for consistency with the objective standards and criteria in effect at the time the Application was deemed complete. Gov. Code § 65589.5(j)(1). The Specific Plan states that the commercial space within Phase 1 shall comply with the Downtown parking requirements contained in the Zoning Ordinance, i.e., in Town Code section 29.10.150(b). There is no dispute that the Application is consistent with the Town's parking requirements under Section 29.10.150(b) at the time the Application was deemed complete and at the time of the Council's denial of the Application.

Second, the Town Council implicitly conceded that the Application is governed by the Town's current objective standards. During the Town Council's October 20 hearing, the Town Council, Town Attorney and Planning Staff repeatedly acknowledged that the Application "opened up" the entire Project, and thus authorized the Town Council to apply new conditions regarding any aspect of Phase 1 if supported by current objective standards, subject to the Applicant's vested rights based on its commencement of construction. Consistent with this view, the Council considered but rejected a motion by Councilman Rennie to grant the Application, but also to add a new requirement that the Applicant replace three market-based residential units with three affordable residential units, in accordance with the Town's current

Below Market Price (“BMP”) standards that were amended subsequent to the Town’s initial approval of the Project.

Third, the Town waived its claim that the Application was not consistent with governing objective standards under the Specific Plan or Town Code by failing to timely notify Applicant of any such alleged inconsistency or nonconformity as required under section 65589.5(j)(2)(A)(ii) of the HAA.

Finally, the Town Council’s Resolution denying the appeal contains no findings that bridge the analytical gap between the raw evidence and ultimate decision, in violation of the legal requirements set forth in *Topanga Assn. for a Scenic Community v. County of Los Angeles*, (1974) 11 Cal. 3d 506, 516. For example, the Town’s Resolution does not address the Town’s compliance with the HAA or its Housing Element, and provides no explanation for the Town Council’s rejection of the legal and professional advice of its Town Attorney and Planning Staff.

As explained in Andrew Faber’s letter of even date herewith to the Town Manager, as a result of Architecture and Site Condition of Approval Number 7, coupled with internal and external loan conditions and equity investor obligations requiring diligent adherence to Project construction schedules, Applicant must commence construction of the Market Hall by no later than January 4, 2021.

Consequently, as a proximate result of the Town’s unlawful denial of the Application, the Applicant will suffer damages according to proof, but estimated now to be in excess of Five Million Dollars (\$5,000,000). These damages arise primarily from three sources: (a) the extra cost of construction of the garage with the unneeded basement level; (b) delays to the Project caused by the extra time that will be needed to construct the garage with the unneeded basement level; and (c) the delay that this extra construction will cause to the ability to complete the Market Hall part of the Project, and thus to comply with A & S Permit Condition of Approval Number 7, adopted by Council Resolution 2017-045 on August 1, 2017, stating: “The proposed BMP units must be available and/or occupied prior to the final occupancy issuance for the 187th market rate unit.” Because of this condition, a number of market rate units will not be able to be sold when completed due to the delay the denial of the Application will cause in the completion of the Market Hall part of the Project.

Applicant additionally will seek to recover against the Town all attorneys’ fees and costs incurred to enforce its rights as authorized under the HAA and Code of Civil Procedure section 1021.5, along with any other damages allowed by law.

APPLICANT'S CLAIMS FOR DAMAGES

FIRST CAUSE OF ACTION

(Violation of Mandatory Duties
Government Code § 815.6, the HAA and Housing Element)

The Town denied the Application based on legally erroneous, pretextual and other subjective considerations, in knowing and deliberate disregard of the Town's governing objective parking requirements under the Specific Plan and Town Code. The Town therefore once again violated its mandatory duty to apply only objective standards in reviewing the Project under the HAA and by-right development under the Town's Housing Element. (Gov. Code §§ 65589.5(h)(8) and (j); 65589.6, 65583, Housing Element, (Action Item- HOU-1.7).)

The Applicant may recover all damages resulting from the Town's violation of its mandatory duties under Government Code section 815.6, which states as follows:

Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for any injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

Here, the Town cannot satisfy its burden of proving that it exercised "reasonable diligence" to discharge its duty. The Planning Commission and Town Council knowingly and deliberately disregarded the consistent legal and planning advice of its Town Attorney and Planning Staff in denying the Application, in violation of clear mandatory legal duties. As summarized above, the Planning Commission denied the Application based on an erroneous analysis of parking requirements prepared by Commissioner Hudes, first disclosed after the close of the public hearing and without providing the Applicant an opportunity to review or comment, in violation of the Applicant's fundamental right to due process.

The Planning Staff thereafter, which normally would recommend that the Town Council affirm the decision of the Planning Commission, recommended that the Town Council grant the Applicant's appeal on the grounds that the Planning Commission's decision was legally erroneous and unsupported by substantial evidence. The Town Council majority, however, likewise knowingly violated its mandatory legal duty to approve the Application by disregarding the advice of its Town Attorney and Planning Staff. The Town Council affirmed the Planning Commission's denial of the Application in clear violation of the Town's governing objective parking requirement and its mandatory duty under the HAA and Housing Element to apply only objective standards in considering the Application.

SECOND CAUSE OF ACTION

(Violation of Substantive Due Process
42 U.S.C. § 1983)

The Town's actions additionally violated Applicant's right to substantive due process as guaranteed under the United States and California Constitutions, subjecting the Town to liability for the Applicant's damages under 42 U.S.C. section 1983. "The Due Process clause is intended, in part, to protect the individual against 'the exercise of power without any reasonable justification in the exercise of a legitimate governmental objective.'" (*Lingle v. Chevron*, 54 U.S. 528, 542 (2005)). To state a due process claim, a party must demonstrate the existence of a property interest along with facts showing that the agency's action was arbitrary and capricious. Both elements exist here.

First, the mandatory conditions under the HAA limiting a City's discretion to deny a permit create a reasonable expectation of entitlement sufficient to support a property interest for purposes of a substantive due process claim. (*North Pacifica LLC v. City of Pacifica*, 214 F. Supp. 2d 1053, 1059-1061 (N.D. Cal. 2002.)) Applicant's reasonable expectation of a property interest are even greater than the facts in *North Pacifica* in light of Applicant's "by-right" development under the Town Housing Element, the Court's previous Judgment and Writ of Mandate confirming that the Town may only apply objective standards in reviewing the Project, and because of Applicant's vested rights obtained through substantial on-site and off-site Project construction.

Second, the Town's denial of the Application was arbitrary and capricious in violation of controlling objective legal requirements. Here, the Town's Attorney and Planning Staff specifically advised the Town Council that it must apply the Town's current objective standards in deciding whether to approve or deny the Application. The Town Council therefore knowingly and deliberately violated mandatory legal duties in denying the Application based on clearly pretextual and legally erroneous invented claims. Courts have recognized the following conduct in the context of an agency's denial of land use approvals as supportive of a claim for violation of substantive due process: (1) disregard of professional planning staff advice; (2) pretext; (3) invention of an illegitimate basis for denial. (*Del Monte Dunes at Monterey Ltd. v. City of Monterey*, 920 F.2d 1496 (9th Cir. 1990); *Shanks v. Dressel*, 540 F.3d 1082 (9th Cir. 2008); *Simi Inv. Co. v. Harris County, Tex.*, 236 F.3d 240 (5th Cir. 2000)). As summarized above, each of these factors support Applicant's due process claims here.

THIRD CAUSE OF ACTION

(Violation of Procedural Due Process
42 U.S.C. § 1983)

The Town's actions additionally violated the Applicant's fundamental right to procedural due process as guaranteed under the United States and California Constitutions. "The base requirement of the Due Process Clause is that a person deprived of property be given an opportunity to be heard 'at a meaningful time and in a meaningful manner.'" (*Armstrong v.*

Shelley Neis
November 11, 2020
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Manzo, 380 U.S. 545, 552 (1965).) Procedural due process under the California Constitution is much more inclusive and protects a broader range of interests than under the federal constitution, focusing instead on an individual's due process liberty interest to free from arbitrary adjudicative procedures. (*Ryan v. California Interscholastic Federation – San Diego Section* (2001) 94 Cal. App. 4th 1048, 1068). As explained above, both the Planning Commission and the Town Council violated Applicant's fundamental right to procedural due process in first disclosing their basis for denying the Application after the close of public comment period and without first providing the Applicant the opportunity to respond.

CONCLUSION

Applicant requests that the Town grant this claim and unconditionally agree to compensate Applicant for all resulting damages, including all attorney's fees and costs Applicant incurred to enforce its legal rights as authorized under the HAA and Code of Civil Procedure section 1021.5, along with any other damages allowed by law.

Sincerely,



Arthur J. Friedman
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
SMRH:4821-4373-6272.1



Andrew Faber, Esq.
BERLINER COHEN LLP

cc: Mayor Jensen and Town Council
Laurel Prevetti – Town Manager
Joel Paulson – Community Development Director
Robert Schultz, Esq. – Town Attorney
Robert Freed
Mike Keaney

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PROOF OF SERVICE

I, Donna Olson, declare under penalty of perjury under the laws of the State of California that the following facts are true and correct:

I am a citizen of the United States, over the age of eighteen years, and not a party to the within action. I am an employee of Berliner Cohen, LLP, and my business address is Ten Almaden Boulevard, Eleventh Floor, San Jose, California 95113-2233. On November 11, 2020, I served the following document(s):

**PROOF OF CLAIM OF SUMMERHILL HOMES, LLC and
LETTER TO LOS GATOS TOWN CLERK**

in the following manner:

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Jose, California addressed as set forth below.
- by overnight mail by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by e-mail or electronic transmission. Pursuant to Emergency Rule 12 of the CRC I caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below.

E-MAIL Clerk@LosGatosCA.gov

Shelley Neis
Town Clerk
Town of Los Gatos
110 East Main Street
Los Gatos, CA 95030

I am readily familiar with my firm’s practice for collection and processing of correspondence for mailing with the United States Postal Service/Express Mail, Federal Express and other overnight mail services, to wit, that correspondence will be deposited with the United States Postal Service/overnight mail service this same day in the ordinary course of business.

Executed on November 11, 2020, at San Jose, California.



DONNA OLSON



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 13

ADDENDUM

DATE: November 27, 2020
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Approval of Proposed Settlement Agreement between the Town of Los Gatos and SummerHill Homes LLC to Resolve the Damage Claim filed By SummerHill Regarding the Denial of SummerHill's Application to Remove Underground Parking from the North 40 Phase 1 Construction of the Market Hall

REMARKS:

Pursuant to Council direction, the Town Attorney with support from Town staff, has reached a tentative agreement subject to Town approval. The proposed Settlement Agreement (Attachment 2) for Town Council consideration would resolve SummerHill Homes \$5 Million claim against the Town with modifications to the conditions of approval for the Phase 1 development. The Key Components to the settlement agreement:

1. The agreement upholds the recent Town Council decision to deny SummerHill's appeal and retains the underground parking garage and all other features of the previously approved project.
2. The agreement modifies 9 of the 179 Conditions of Approval for the project. The 9 Conditions of Approval being modified are set forth as Exhibit A to the Settlement Agreement. The 9 Conditions of Approval modifications change the timing of when SummerHill can occupy the Market Rate Units in relationship to the off-site improvements and the construction of Market Hall and the associated Senior Affordable Housing.

Attachment previously received with the Staff Report:

1. Government Claim filed by SummerHill

Attachment received with this Addendum:

2. Settlement Agreement

PREPARED BY: Robert Schultz
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, Community Development Director and Parks and Public Works Director

SETTLEMENT AGREEMENT BETWEEN
THE TOWN OF LOS GATOS AND SUMMERHILL N40 LLC

This Settlement Agreement (“Agreement”) is entered into as of December 1, 2020 (“Effective Date”) by and between the Town of Los Gatos, a California municipal corporation (“Town”), and Summerhill N40 LLC, a California limited liability company (“SummerHill”), which are collectively referred to as the “Parties.”

RECITALS

A. SummerHill (as used herein, “SummerHill” includes predecessor and related entities to SummerHill N40 LLC) is the developer of that certain project known as Phase 1, 20.7 acres of the 44-acre North 40 Specific Plan area in the Town (“Project”). The Project includes 270 market rate residential units (of which 253 are to be built by Summerhill and 17 by others) and neighborhood-serving commercial uses. It also includes a multi-level mixed use building (the “Market Hall”) which includes commercial uses, 50 affordable residential units and an attached garage (the “Market Hall Garage”).

B. On August 1, 2017, the Town Council approved the Architecture and Site Permit (S-13-090) and the Vesting Tentative Map (M-13-014) by adopting Resolution 2017-045 (the “Resolution”). The Resolution contains 179 separately numbered “Conditions of Approval for Architecture and Site” (the “A&S COAs”).

C. As approved, the Market Hall Garage is a four-story structure with one below-grade and three above-grade parking levels. In or about February 2020, SummerHill filed an application requesting that the approval be modified to remove the below-grade parking level (the “Garage Application”). The rationale for the Garage Application was that even with the below-grade level eliminated, the Market Hall would have more parking than required by the Town’s parking standards, and that there were environmental benefits to eliminating that extra construction.

D. The Garage Application was denied by the Planning Commission. SummerHill appealed the denial to the Town Council, which on October 20, 2020 denied the appeal (the “Denial”).

E. On November 11, 2020, Summerhill filed a claim with the Town under the Government Claims Act pursuant to Government Code Section 910 (the “Claim”). The Claim alleges that the Denial was wrongful and in violation of law for several reasons, and seeks unspecified damages estimated to be in excess of Five Million Dollars.

F. The Parties wish to provide for a settlement of the Claim by entering into this Agreement and modifying certain of the A&S COAs as specified herein. Conditions 1 and 42 of the A&S COAs give authority to the Town Community Development Director and the Parks and Public Works Director to modify said conditions. The modifications proposed herein do not affect the scope or magnitude of the improvements, but only potentially the construction timing thereof. No conditions are added or eliminated.

ATTAHJMENT 2

SETTLEMENT AGREEMENT TERMS

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Council Action. The Town Council agrees that certain specific A&S COAs contained in the Resolution shall be replaced in totality with modified versions of said conditions, as attached hereto as Exhibit A and incorporated herein by this reference; and (b) in all other respects the Resolution would remain in full force and effect. The Community Development Director and the Parks and Public Works Director are authorized to take all appropriate actions to effectuate and confirm such changes, consistent with their authority under the Resolution. The Town and SummerHill agree that all references in Exhibit A to market rate unit thresholds apply solely with respect to SummerHill's 253 market rate units.

2. Mutual Release.

2.1 Tolling of the Claim. Any and all statutes of limitation or other time limitations or deadlines to file suit under Federal, State or local law that may apply to any allegation, claim or cause of action that Summerhill may assert relating to or arising from the Denial shall be tolled from the Effective Date until March 31, 2021 ("Initial Tolling Period"). In the event that any lawsuit or other legal challenge to the Town Council's approval of this settlement ("Litigation") or the modification of the A&S COAs authorized herein is filed during the Initial Tolling Period, the Initial Tolling Period shall automatically extend and remain in effect until complete and final resolution of all Litigation, including resolution and exhaustion of any appeals if applicable ("Extended Tolling Period.")

2.2 Trigger of Releases. Upon the expiration of the Initial Tolling Period or the Extended Tolling Period if applicable, the Parties agree as follows: Each party hereto, and its respective employees, representatives, agents, related entities, officers, directors, shareholders, members, partners, predecessors, insurers, attorneys, administrators, successors and assigns, does hereby fully and forever completely release, acquit and discharge the other party and its respective employees, representatives, agents, related entities, officers, directors, shareholders, members, partners, predecessors, insurers, attorneys, administrators, successors and assigns, from any and all damages, claims, actions, disputes, demands, losses, liens, written contracts, costs, expressed and/or implied warranty obligations, attorneys' fees, costs, actions, causes of action, and liabilities of whatever kind and nature arising from or related to, the Denial, including the filing of the Claim, and the allegations contained in the Claim. This release does not extend to any claims the Parties may have in the future relating to construction of the Project or public improvements by SummerHill as part of the Project.

3. Town Discretion. Nothing in this Agreement shall be deemed to constrain or otherwise limit the discretion of the Town Council with respect to the Project.

4. Scope of Agreement. This Agreement only applies to the Denial. The Parties anticipate that SummerHill or a successor in interest may seek future approvals of other parts of the Project. The Parties acknowledge that any such future approvals shall be

subject to the Town's lawful ordinances, permits, codes and/or regulations, as well as state and federal law that may apply.

5. Entire Agreement. The Agreement constitutes the full and entire agreement between the Parties with respect to the subject matter hereof, superseding all prior agreements, negotiations and discussions among the Parties related to the Denial, and the Parties acknowledge that there is no other agreement, oral or written, regarding the subject matter of the Agreement. The Agreement may not be modified, except by a written instrument executed by each of the Parties.

6. Final Agreement. The Parties acknowledge that: (a) the Agreement and its reduction to final form is the result of good faith negotiations among the Parties through their respective counsel; (b) the Parties' counsel have reviewed and examined the Agreement before execution; and (c) this Agreement is the result of joint draftsmanship and that should any of the provisions hereof be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague or ambiguous, such provisions shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each party to this Agreement waives the effect of such statute.

7. No Admission. This Agreement is the result of a compromise and shall not be considered as an admission of liability or responsibility on the part of any party herein released, nor shall the release of any claims or waiver of costs in consideration of the execution of the Agreement constitute or be construed as an admission of any liability whatsoever by any party herein released.

8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, assigns and transferees.

9. Severability. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the court is authorized and instructed to modify this Agreement, if possible, to effectuate the original intent of the parties. However, in no event shall the releases be effective unless the Modification Resolution is adopted and remains in effect, without becoming a subject of litigation.

10. Execution in Counterparts. This Agreement may be executed electronically and in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

<p>TOWN OF LOS GATOS, A municipal corporation</p> <hr/> <p>By: Laurel Prevetti, Town Manager</p>	<p>SUMMERHILL N40 LLC, a California Limited Liability Company</p> <p>By: SummerHill Homes LLC, its manager</p> <hr/> <p>By</p> <p>Its: _____</p> <hr/> <p>By</p> <p>Its: _____</p> <hr/>
<p>Approved as to Form:</p> <hr/> <p>By: Robert Schultz, Town Attorney</p> <hr/>	

EXHIBIT A

MODIFIED CONDITIONS OF APPROVAL

1. Condition 7: BMP UNITS: BMP applicants shall be qualified by the Santa Clara Housing Authority. The affordable units shall be required to be maintained for the term required under State Density Bonus law or for the life of the buildings, whichever is longer. The developer shall enter into an Affordable Housing agreement with the Town prior to issuance of building permits. The proposed BMP units must be available and/or occupied prior to final occupancy issuance for the 225th market rate unit or when the Community Development Director determines, at his/her sole discretion, that the BMP units are substantially completed and there would be no health and safety concerns with allowing for the certificate of occupancy of the market rate units before the final completion and acceptance of the BMP units. Construction of the Market Hall and BMP units will commence in January 2021 and be diligently pursued to completion of the Market Hall and BMP units with a projected end date of February 2023.
2. Condition 63: GRADING ACTIVITY SEQUENCING: On-site grading activity may be done concurrently with the off-site public improvements.
3. Condition 82. PUBLIC IMPROVEMENTS: The following improvements shall be installed by the Developer. Plans for those improvements shall be prepared by a California registered civil engineer, reviewed and approved by the Town of Los Gatos, and guaranteed by contract, Faithful Performance Security and Labor & Materials Security before the issuance of a building permit or the recordation of a map. The improvements must be substantially completed, as determined by the Public Works Director, at his/her sole discretion, prior to the final occupancy issuance for the 187th market rate unit.
 - a. Los Gatos Boulevard:
 - i. Provide new curb, gutter, and sidewalk with landscaped planting strip, street lights, signing, striping, new traffic signals or traffic signal modifications and storm drainage along the Phase 1 frontages as directed by the Parks and Public Works Director. All improvements shall be constructed per Town Standard details.
 - ii. The existing street section of Los Gatos Boulevard from Lark Avenue to Burton Road shall be removed and a traffic-appropriate engineered structural pavement section for the full-width shall be constructed and subsequently re-striped, as directed by the Parks and Public Works Director. Final grind and overlay shall be completed when the Parks and Public Works Director determines, at his/her sole discretion, that final grind and overly shall be completed (not tied to issuance of certificates of occupancy).
 - iii. A multi-use path shall be installed along the project's Phase 1 Los Gatos Boulevard frontage, as directed by the Parks and Public Works Director.
 - iv. Center median islands for prohibiting left turn movements from northbound and southbound Los Gatos Boulevard shall be installed, except at Neighborhood Street, between Lark Avenue and the northern limits of Phase 1.
 - b. Lark Avenue:
 - i. Provide new curb, gutter, and sidewalk with landscaped planting strip, street lights, signing, striping, new traffic signals or traffic signal modifications, and storm drainage along the northern side of Lark Avenue from the California State Route 17

northbound on-ramp to Los Gatos Boulevard as directed by the Town Engineer. All improvements shall be constructed per Town of Los Gatos Standard Details.

ii. A multi-use path shall be installed along the north side of Lark Avenue from Los Gatos Boulevard to the California State Route 17 northbound ramps.

iii. The existing street section of Lark Avenue from the California State Route 17 northbound on-ramp to Los Gatos Boulevard shall be removed and a traffic appropriate engineered structural pavement section for the full-width shall be constructed and subsequently re-stripped, as directed by the Parks and Public Works Director. Final grind and overlay shall be completed when the Parks and Public Works Director determines, at his/her sole discretion, that final grind and overlay shall be completed (not tied to issuance of certificates of occupancy).

4. **CONDITION 84. FRONTAGE IMPROVEMENTS:** The Applicant shall be required to improve the project's public frontages to the current Town of Los Gatos Standards. These improvements may include, but are not limited to:
- a. Curb
 - b. Gutter
 - c. Sidewalk
 - d. Driveway approach(es)
 - e. Curb ramp(s)
 - f. Street lighting (upgrade and/or repair)
 - g. Traffic signal(s)

The improvements must be substantially completed, as determined by the Public Works Director, at his/her sole discretion, prior to the final occupancy issuance for the 187th market rate unit.

5. **CONDITION 85. FRONTAGE IMPROVEMENTS (INTERSECTION OF LARK AVENUE AND LOS GATOS BOULEVARD):** The Applicant shall upgrade the existing traffic signal to current Town of Los Gatos standards. These improvements include, but may not be limited to:
- a. signal controller cabinet assembly
 - b. signal service pedestal
 - c. update of non-LED signal indication to LEDs
 - d. LED safety lights
 - e. update of non-ADA compliant pedestrian pushbuttons to ADA compliance
 - f. eight (8) inch signal heads to twelve (12) inch
 - g. installation of pedestrian count down signals where non-pedestrian count down signals are currently located
 - h. fire preemption
 - i. video detection system
 - j. signal interconnection
 - k. fiber optic connection
 - l. communication modem and switches

As directed by the Parks and Public Works Director. The improvements must be substantially completed as determined by the Public Works Director, at his/her sole discretion, prior to the final occupancy issuance for the 125th market rate unit.

6. **Condition 88: LARK AVENUE BIKE LANES:** A 10-foot multi-use trail will be installed on the project's Lark Avenue frontage. The Applicant shall install from this multi-use trail a Class II or better bike lane extending west to the connection point with the Los Gatos Creek Trail. Applicant will install a Class II or better bike lane on the

east side of Lark Avenue from the intersection of Los Gatos Boulevard to the Los Gatos Creek Trail. The Lark Avenue roadway along this section shall be slurry sealed prior to final striping. The improvements must be substantially completed, as determined by the Public Works Director, at his/her sole discretion, prior to the final occupancy issuance for the 187th market rate unit.

- 7.. Condition 89: GREEN BICYCLE FACILITIES: The Applicant shall install green bike lanes and bike boxes in all directions of improved streets and intersections as directed by the Town Engineer. The improvements must be substantially completed, as determined by the Public Works Director, at his/her sole discretion, prior to the final occupancy issuance for the 187th market rate unit.
8. Condition 90: MULTI-MODAL PATH: The Applicant shall construct and install a multi-use path system that complies with the direction provided by Town Council at a Special Meeting conducted on June 17, 2015. During said meeting, a motion passed unanimously stating “All projects for development shall include multi-modal paths, physically separated from vehicle roadways running from north to south and providing connectivity to perimeter paths at both the north and south ends.” Said paths shall:
 - a. Extend through the development and along the project frontage.
 - b. Connect to northern and southern ends of the development.
 - c. Connect the intersections of:
 - i. Lark Avenue and the northbound California State Route 17 on-ramps.
 - ii. Lark Avenue and Los Gatos Boulevard.
 - iii. Neighborhood Street and Los Gatos Boulevard.

Connections to the above-listed intersections shall be constructed with enhanced amenities, such as textured pavement and adequate waiting areas for pedestrians and bicyclists, to encourage use of the multi-use path. The multi-use path shall be placed within a ten (10) foot easement along Lark Avenue. The multi-use path shall be placed behind the roadway curb along Los Gatos Boulevard and extend into a multi-use path easement. The improvements must be substantially completed, as determined by the Public Works Director, at his/her sole discretion, prior to the final occupancy issuance for the 187th market rate unit.

9. Condition 97: TRENCHING MORATORIUM: Trenching within a newly paved street will be allowed subject to the following requirements:
 - a. The Town standard "T" trench detail shall be used.
 - b. A Town-approved colored controlled density backfill shall be used.
 - c. All necessary utility trenches and related pavement cuts shall be consolidated to minimize the impacted area of the roadway.
 - d. The total asphalt thickness shall be a minimum of three (3) inches, meet Town standards, or shall match the existing thickness, whichever is greater. The final lift shall be 1.5-inches of one-half (1/2) inch medium asphalt. The initial lift(s) shall be of three-quarter (3/4) inch medium asphalt.
 - e. The Contractor shall schedule a pre-paving meeting with the Town Engineering Construction Inspector the day the paving is to take place.
 - f. A slurry seal topping may be required by the construction inspector depending their assessment of the quality of the trench paving. If required, the slurry seal shall extend the full width of the street and shall extend five (5) feet beyond the longitudinal limits of trenching. Slurry seal materials shall be approved by the Town Engineering Construction Inspector prior to placement. Black sand may be required in the slurry mix. All existing striping and pavement markings shall be replaced upon

completion of slurry seal operations. All pavement restorations shall be substantially completed as determined by the Public Works Director, at his/her sole discretion, prior to the final occupancy issuance for the 187th market rate unit.

10. Condition 98: SIDEWALK REPAIR: The Developer shall repair and replace to existing Town of Los Gatos standards any sidewalk damaged now or during construction of this project. All new and existing adjacent infrastructures shall meet Town standards. New curb and gutter shall be constructed per Town Standard Details. New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore. The limits of curb and gutter repair will be determined by the Engineering Construction Inspector during the construction phase of the project. The improvements must be substantially completed as determined by the Public Works Director, at his/her sole discretion, prior to the final occupancy issuance for the 187th market rate unit.
11. Condition 99: CURB AND GUTTER REPAIR: The Developer shall repair and replace to existing Town of Los Gatos standards any curb and gutter damaged now or during construction of this project. All new and existing adjacent infrastructures shall meet Town standards. New curb and gutter shall be constructed per Town Standard Details. New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore. The limits of curb and gutter repair will be determined by the Engineering Construction Inspector during the construction phase of the project. The improvements must be substantially completed as determined by the Public Works Director, at his/her sole discretion, prior to the final occupancy issuance for the 187th market rate unit.
12. Condition 101: CURB RAMPS: The developer shall construct all curb ramps in compliance with ADA Standards which must be substantially completed as determined by the Public Works Director, at his/her sole discretion, prior to the final occupancy issuance for the 187th market rate unit. New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore.