



**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
JUNE 15, 2021
110 EAST MAIN STREET
LOS GATOS, CA**

*Marico Sayoc, Mayor
Rob Rennie, Vice Mayor
Mary Badame, Council Member
Matthew Hudes, Council Member
Marie Ristow, Council Member*

PARTICIPATION IN THE PUBLIC PROCESS

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

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

Deadlines for Public Comment and Presentations are as follows:

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

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

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
JUNE 15, 2021
7:00 PM**

IMPORTANT NOTICE REGARDING THE JUNE 15, 2021 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/87147307206?pwd=MmN0aVFqVEg4NTJjcTI2QVVNbHZhQT09>. Password: 819769. You can also type in 871 4730 7206 in the “Join a Meeting” page on the Zoom website at <https://zoom.us/join>.
- Join by telephone: Dial: 877 336 1839. Conference code: 969184

During the meeting:

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

If you are unable to participate in real-time, you may email to PublicComment@losgatosca.gov the subject line “Public Comment Item #__” (insert the item number relevant to your comment) or “Verbal Communications – Non Agenda Item.” Comments received by 11:00 a.m. the day of the meeting will be reviewed and distributed before the meeting. All comments received will become part of the record.

REMOTE LOCATION PARTICIPANTS

The following Council Members are listed to permit them to appear electronically or telephonically at the Town Council meeting: MAYOR MARICO SAYOC, VICE MAYOR ROB RENNIE, COUNCIL MEMBER MARY BADAME, COUNCIL MEMBER MATTHEW HUDES, and COUNCIL MEMBER MARIA RISTOW. All votes during the teleconferencing session will be conducted by roll call vote.

**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
JUNE 15, 2021
7:00 PM**

MEETING CALL TO ORDER

ROLL CALL

CLOSED SESSION REPORT

COUNCIL / MANAGER MATTERS

CONSENT ITEMS *(Items appearing on the Consent Items are considered routine Town business and may be approved by one motion. Any member of the Council may request to have an item removed from the Consent Items for comment and action. Members of the public may provide input on any or multiple Consent Item(s) when the Mayor asks for public comments on the Consent Items. If you wish to comment, please follow the Participation Instructions contained on Page 2 of this agenda. If an item is removed, the Mayor has the sole discretion to determine when the item will be heard.)*

1. Approve the Special Joint Meeting of the Town Council and Youth Commission Study Session Minutes.
2. Approve Council Meeting Minutes of June 1, 2021.
3. Introduce an Ordinance Amending the Los Gatos Town Code to Include Gender-Neutral Pronouns by Eliminating any Gender Preference Language Within the Los Gatos Town Code and Amending Sections Regarding Grammatical Interpretation to Indicate that Whenever a Gender Neutral Personal Pronoun is Used, it Shall be Deemed to Include the Feminine and Masculine Also.
4. Authorize the Town Manager to Execute an Agreement with All City Management Services, Inc., Los Gatos Union School District, and Union School District for Crossing Guard Services from July 1, 2021 through June 30, 2024.
5. Adopt a Resolution Authorizing Continued Participation in the State Abandoned Vehicle Abatement Program that:
 - a. Extends the Santa Clara County Abandoned Vehicle Abatement Services Authority (AVASA) for another 10-year term beginning May 1, 2022 and ending April 30, 2032 and
 - b. Approves the Town's continued participation in the existing "Agreement for Santa Clara County Abandoned Vehicle Abatement Service Authority" and the collection, by the Department of Motor Vehicles, of one-dollar (\$1.00) vehicle registration fee for this purpose.
6. Adopt a Resolution Expressing Support for the Santa Clara County 2020-2025 Community Plan to End Homelessness.
7. Authorize the Town Manager to Execute an Agreement for Services with the Los Gatos Chamber of Commerce to Manage the Town's Visitors Information Center Including a Visit Los Gatos Website, and Assist with Related Community Vitality Initiatives as Outlined in the Scope of Services in an Amount Not to Exceed \$55,000.

8. Adopt Resolutions Establishing the FY 2020/21 and FY 2021/22 Gann Appropriations Limits for the Town of Los Gatos.
9. Authorize the Town Manager to Amend an Agreement for Employee Safety Compliance and Training Consultant Services with BSI EHS Services and Solutions (West) Inc. (Attachment 1) to:
 - a. Extend the Term of the Agreement through June 2023, and
 - b. Increase the Contract Amount by \$89,361 for a Total Amount not to Exceed \$286,711.
10. Authorize the Town Manager to Execute a Five-year Maintenance Agreement with Accela, Inc. for Cloud Migration, Maintenance, and Support of the Accela Automation Permitting Software System, and Authorize a FY 2021/22 Expenditure Budget Adjustment in the Amount of \$174,093 to Cover the Difference of the Two-year Upfront Payment of \$228,649.
11. Authorize the Town Manager to Execute an Agreement with W. Jeffrey Heid, Landscape Architect, to Provide Services as Landscape Architecture Consultant to the Town.
12. Authorize the Town Manager to Execute an Agreement for Consultant Services with EMC Planning Group Inc. for Preparation of the 2023-2031 Housing Element and Associated Environmental Review Documents.
13. Direct Staff to Add Rainbow Stripes to Two Crosswalks on East Main Street in Front of Town Hall.
14. Authorize the Following Actions:
 - a. Authorize the Town Manager to Negotiate and Execute an Agreement with Los Gatos-Monte Sereno Safe Routes to School in an Amount Not to Exceed \$60,000 for Providing Services Eligible Under 2016 Measure B;
 - b. Establish a New Project Named Measure B Bicycle and Pedestrian Education & Encouragement Program (421-812-0134) in the Fiscal Year 2021/22 Capital Improvement Program (CIP) Budget and Authorize Revenue and Expenditure Budget Adjustments of \$98,344.
15. Authorize the Issuance of a Request for Qualifications for the Americans with Disabilities Act (ADA) Restrooms and Human Resources Offices (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 812-2601) Design Services, and Authorize the Town Manager to Negotiate and Execute a Consultant Services Agreement in an Amount Not-to-Exceed \$100,000.
16. Authorize the Town Manager to Execute a Second Amendment to Extend the Agreement for Services with Elevator Service Company of Central CA, Inc. for Four Months in the Amount of \$7,560, for a Total Agreement Not to Exceed \$66,640.
17. Roadside Fire Fuel Reduction (Project 812-0130):
 - a. Authorize a FY 2021/22 Expenditure Budget Adjustments in the Capital in the Amount of \$75,000 for the Roadside Fire Fuel Reduction Project (411-812-0130); and
 - b. Authorize the Town Manager to Apply for FEMA’s Hazard Mitigation Grant Program, Asking for Funds for Roadside Vegetation Management.

18. Capital Improvement Project 813-0235 Downtown Streetscape Revitalization/
Economic Recovery Efforts:

- a. Approve a Contract Amendment with AP&I Design, Inc in the Amount of \$42,192 for a Total Contract Amount not to Exceed \$92,192; and
- b. Approve an Extension to the Application Deadline for Applications to the Parklet Program to July 29, 2021.

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

PUBLIC HEARINGS *(Applicants/Appellants, their representative, and members of the public may address the Council on any public hearing item consistent with the Participation Instructions contained on Page 2 of this agenda. Applicants/Appellants and their representatives may be allotted up to a total of five minutes maximum for opening statements. Members of the public may be allotted up to three minutes to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of three minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.)*

19. Authorize the Following Actions for Landscape and Lighting Assessment Districts No. 1 and 2:

- a. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Blackwell Drive Benefit Zone.
- b. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Kennedy Meadows Benefit Zone.
- c. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Santa Rosa Heights Benefit Zone.
- d. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 1-Vasona Heights Benefit Zone.
- e. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 1-Hillbrook Drive Benefit Zone.
- f. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 2-Gemini Court Benefit Zone.

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

- [20.](#) Receive the Community Health and Senior Services (CHSSC) Report on Senior Service Provision and Assessment Recommendations.
- [21.](#) Accept the Report and Authorize the Temporary Installation of Traffic Calming Devices for Shannon Road Between Los Gatos Boulevard and Short Road (CIP No. 812-9910 Traffic Calming Projects).
- [22.](#) Provide Direction on the Proposal from Forbes Mill LLC, Requesting a Restaurant Pop-Up at Forbes Mill located at 75 Church Street on Saturdays from June 19 through October 30, 2021.

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

Writings related to an item on the Town Council meeting agenda distributed to members of the Council within 72 hours of the meeting are available for public inspection on the official Town of Los Gatos website.

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.



**Minutes of the Special Joint Meeting
of the Town Council and Youth Commission Study Session
June 1, 2021**

The Town Council of the Town of Los Gatos conducted a special meeting via Teleconference via COVID-19 Shelter in Place Guidelines on Tuesday, June 1, 2021, to hold a Study Session at 5:45 p.m.

STUDY SESSION CALLED TO ORDER AT 5:45 P.M.

ROLL CALL

Present: Mayor Marico Sayoc, Council Member Mary Badame, Council Member Matthew Hudes, Council Member Maria Ristow. (All participating remotely).

Absent: Vice Mayor Rob Rennie

Present: Chair Sasha Ryu, Vice Chair Isabella Debling, Commissioner Sasha Balasingam, Commissioner Silpa Chinnakotla, Commissioner Shreya Desai, Commissioner Kamron Emami, Commissioner Arshia Mathur, Commissioner Adam Moore, Commissioner Lucas Raspe, Commissioner Faris Raza, Commissioner Robert Stanley, Commissioner Quincy Scott, Commissioner Owen Thompson, Commissioner Anjali Vaidya. (All participating remotely).

Absent: Commissioner Esha Bagora, Commissioner Vicky Bai, Commissioner Paula Bernholz, Commissioner Emily Choi, Commissioner Jake Hakim, Commissioner Jack Noymer.

VERBAL COMMUNICATIONS

No one spoke.

STUDY SESSION

1. Review and Discuss the Youth Commission Accomplishments and Goals.

Chair Ryu described the Youth Commission workplan and addressed the goals of the Youth Commission outlined in the staff report.

Vice Chair Debling described SNAP (Special Needs Assessment Program) that the Youth Commission worked to implement with the Los Gatos-Monte Sereno Police Department.

Council and the Youth Commission discussed the items.

The Council thanked the Youth Commission for their great work and directed them to continue the programs and services.

PAGE 2 OF 2

SUBJECT: Minutes of the Joint Town Council and Library Board

DATE: June 7, 2021

STUDY SESSION ADJOURNED

Study Session adjourned at 6:35 p.m.

Respectfully submitted:

Shelley Neis, Town Clerk



**DRAFT
Minutes of the Town Council Meeting
June 1, 2021**

The Town Council of the Town of Los Gatos conducted a regular meeting via Teleconference via COVID-19 Shelter in Place Guidelines on Tuesday, June 1, 2021, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Present: Mayor Marcia Jensen, Vice Mayor Barbara Spector, Council Member Rob Rennie, Council Member Marico Sayoc.

Absent: None

PRESENTATIONS

Mayor Sayoc presented commendations to the outgoing Youth Commissioners.

Youth Commission Chair Ryu presented the Youth Friendly Business of the Year Aware to Posh Bagel. Peter Keo, Owner, thanked the Youth Commission and the Town for their support.

Youth Commission Chair Ryu presented the Youth Friendly Green Business of the Year Award to Trader Joe's. Due to technical difficulties, Lee Stewart, Trader Joe's representative, was unable to speak. Jackie Rose, Community Outreach Coordinator, accepted the award on their behalf.

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Vice Mayor Rennie stated he attended the Valley Transportation Authority (VTA) Board of Directors, Bay Area Air Quality Management District (BAAQMD) Legislative Action Committee, BAAQMD Mobile Source Committee, BAAQMD Technology Office Steering Committee, Housing Trust Investor Briefing, Community Health and Senior Services Commission (CHSSC) meetings, and the Los Gatos-Monte Sereno Police Department Swearing-in and Promotion Ceremony.
- Council Member Ristow stated she attended the General Plan Committee (GPC) meeting with Council Member Badame, the Council Policy Committee meeting with Mayor Sayoc; the Los Gatos-Monte Sereno Police Department Promotional and Swearing-in Ceremony with Mayor Sayoc, Vice Mayor Rennie, and Council Member Badame; and she represented the Town Council at the Town sponsored Energizer Station at the Library for the Bike to Anywhere event.

Council Matters – continued

- Council Member Badame stated she attended the Los Gatos-Monte Sereno Police Department Promotional and Swearing-In Ceremony and the GPC meeting.
- Council Member Hudes stated he met with the Town Manager and Police Chief.
- Mayor Sayoc stated in addition to the items mentioned, she attended the West Valley Mayors and Managers meeting with Manager Prevetti, the Cities Association General Membership meeting, and she participated in the Los Gatos Memorial Park Memorial Day Ceremony.

Manager Matters

- Announced new public art will be installed at Highway 9 and Alberto Way on June 7, 2021.
- Announced the Town is sponsoring a COVID-19 testing site on June 21 at the Adult Recreation Center (ARC).

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

1. Approve Draft Minutes of the May 18, 2021 Town Council Meeting.
2. Ratify the Town Council Selection Committee’s Recommended Youth Commissioner Appointments.
3. Approve Town Council Meeting Schedule for 2021/2022 Fiscal Year.
4. Operating and Capital Budgets
 - a. Adopt a Resolution Approving the Town of Los Gatos Fiscal Year (FY) 2021/22 Operating Budget and FY 2021/22 – 2025/26 Capital Improvement Program (CIP), New Appropriations, other Council Actions on May 18, 2021, Minor Corrections, and Carry-Forward Appropriations. **RESOLUTION 2021-020**
 - b. Adopt a Resolution Approving Commitment of Fund Balances under GASB 54. **RESOLUTION 2021-021**
 - c. Approve FY 2020/21 Budget Adjustments:
 - a) Major Revenue Adjustments to Match Year-End Estimated Revenues as Directed by the Town Council on May 18, 2021 and as Determined from Updated Information:
 - i. Anticipated American Recovery Plan Act (ARPA) revenue increase in the amount of \$2,884,315,
 - ii. Property Tax revenue Increase in the Amount of \$703,202,
 - iii. Sales Tax Revenue Decrease in the Amount of \$444,400,
 - iv. Measure G District Tax Revenue Decrease in the Amount of 83,369, and
 - v. Business License Tax Revenue Increase in the Amount of \$200,000.
 - b) Expenditure Increases to Reflect Past Actions:
 - i. In the Amount of \$408,807 to Match Actual Transfer to CalPERS from the CEPPT Trust (\$406,988) and from the Town General Fund (\$1,819) for Additional Discretionary Payment Based on the Town Pension and OPEB Trusts Oversight Committee March 30, 2021 Action and

- ii. In the Amount of \$55,000 to the Chamber of Commerce for Development of Destination Marketing from the Anticipated ARPA Proceeds.
5. Authorize Town Manager to Execute a Two-Year Lease Agreement with Flock Safety Group for the Installation and Maintenance of 15 Stationary Automated License Plate Readers (ALPR) throughout the Town of Los Gatos in the Amount of \$78,750.
6. Authorize the Town Manager to Purchase Microsoft Software Licensing from SoftwareONE in an Amount Not to Exceed \$73,724.17.
7. Approve Increasing Construction Contingency to \$308,000 for the Guardrail Replacement Project (CIP No. 812-0120/Federal No. HSIPL-5067-022) and Authorize Staff to Execute Future Change Orders up to the Approved Amount to Expend the Federal Grant Funds.
8. Approve Temporary Changes to the Community Grant Program to Assist Community Organizations with Post-Pandemic Recovery.
9. Request for Authorization to Enter into a Legal Services Agreement with the Law Firm of Liebert Cassidy Whitmore for Litigation Defense in the Matter of Jonathon Silva v. Town of Los Gatos for a Total Contract Not-To-Exceed Amount of \$50,000.

Council Member Hudes pulled Item #4 for discussion.

MOTION: Motion by Council Member Badame to approve Consent Items 1 through 3 and 5 through 9. Seconded by Council Member Ristow.

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Eden Berg

- Requested the Listen, Learn, Change, Grow banners be removed.

Cyndi Sheehan

- Commented in opposition to Critical Race Theory (CRT), Diversity, Equity, and Inclusion (DEI) campaign, and requested the Listen, Learn, Change, Grow banners be removed.

Doug

- Requested the Listen, Learn, Change, Grow banners be removed and the list of books on the Town website be modified.

C. Roy

- Congratulated the new Youth Commissioners and commented in opposition of CRT.

Pat

- Commented in opposition of the Listen, Learn, Change, Grow campaign and CRT.

Verbal Communications – continued

Joseph

- Commented in opposition of the Listen, Learn, Change, Grow campaign and CRT.

Yweislak

- Commented in opposition of the Listen, Learn, Change, Grow campaign and CRT.

Suzanne

- Commented in opposition of the Listen, Learn, Change, Grow campaign and CRT.

Lynley Kerr Hogan

- Commented in opposition of the Listen, Learn, Change, Grow campaign and CRT.

Kaye

- Commented in opposition of the Listen, Learn, Change Grow campaign and CRT.

Quincy Scott

- Commented in support of the Listen, Learn, Change, Grow campaign.

Karen Ole

- Commented in opposition of the Listen, Learn, Change, Grow campaign, CRT, and the COVID-19 vaccine.

PUBLIC HEARINGS

10. Brush Abatement Program Public Hearing to Consider Objections to the Proposed Removal of Brush on Parcels Listed on the 2021 Wildland Urban Interface (WUI) Area Non-Compliant Parcel List and Order Abatement of the Public Nuisance and Potential Fire Hazard Pursuant to the Town of Los Gatos Municipal Code (Chapter 9) Regarding Defensible Space.

Stefanie Hockemeyer, Executive Assistant, presented the staff report.

Opened Public Comment.

No one spoke.

Closed Public Comment.

Council discussed the matter.

Public Hearing Item #10 – continued

MOTION: Motion by Council Member Badame to order abatement of the public nuisance and potential fire hazard pursuant to the Town of Los Gatos Municipal Code (Chapter 9) regarding defensible space on parcels listed on the 2021 Wildland Urban Interface (WUI) Area Non-Compliant Parcel List on Attachment 4. **Seconded by Council Member Ristow.**

VOTE: Motion passed unanimously.

OTHER BUSINESS

11. Adopt the Proposed Modifications to the Agenda Format and Rules Policy as Recommended by the Council Policy Committee. **POLICY 2-01**

Shelley Neis, Town Clerk, presented the staff report.

Opened Public Comment.

No one spoke.

Closed Public Comment.

Council discussed the matter.

MOTION: Motion by Council Member Ristow to approve the recommended changes to the Consent Calendar. **Seconded by Mayor Sayoc.**

VOTE: Motion passed 3/2. Council Members Badame and Hudes voting no.

MOTION: Motion by Council Member Badame to approve the recommended changes, with the exception of item D. **Seconded by Vice Mayor Rennie.**

VOTE: Motion passed 4/1. Council Member Hudes voting no.

12. Adopt the Proposed Modifications to the Commission Appointment Policy as Recommended by the Council Policy Committee. **POLICY 2-11**

Shelley Neis, Town Clerk, presented the staff report.

Opened Public Comment.

Other Business Item #12 – continued

No one spoke.

Closed Public Comment.

Council discussed the matter.

MOTION: Motion by Vice Mayor Rennie to remove term limits from the Policy. Seconded by Council Member Badame.

VOTE: Motion passed 3/2. Mayor Sayoc and Council Member Ristow voting no.

MOTION: Motion by Council Member Hudes to add the wording “notwithstanding, no Council Member shall be prevented from asking appropriate questions” and striking “(of a personal nature)” from the Interview Process section. AMENDMENT: Council may modify the questions provided by the Town Clerk. Seconded by Council Member Badame.

VOTE: Motion passed unanimously.

MOTION: Motion by Vice Mayor Rennie to adopt all remaining recommended changes as red-lined. Seconded by Council Member Badame.

VOTE: Motion passed unanimously.

Recess at 9:20 p.m.

Reconvened 9:26 p.m.

Pulled Consent Item #4

4. Operating and Capital Budgets
 - d. Adopt a Resolution Approving the Town of Los Gatos Fiscal Year (FY) 2021/22 Operating Budget and FY 2021/22 – 2025/26 Capital Improvement Program (CIP), New Appropriations, other Council Actions on May 18, 2021, Minor Corrections, and Carry-Forward Appropriations. **RESOLUTION 2021-020**
 - e. Adopt a Resolution Approving Commitment of Fund Balances under GASB 54. **RESOLUTION 2021-021**

Pulled Consent Item #4 – continued

- f. Approve FY 2020/21 Budget Adjustments:
 - a) Major Revenue Adjustments to Match Year-End Estimated Revenues as Directed by the Town Council on May 18, 2021 and as Determined from Updated Information:
 - vi. Anticipated American Recovery Plan Act (ARPA) revenue increase in the amount of \$2,884,315,
 - vii. Property Tax revenue Increase in the Amount of \$703,202,
 - viii. Sales Tax Revenue Decrease in the Amount of \$444,400,
 - ix. Measure G District Tax Revenue Decrease in the Amount of 83,369, and
 - x. Business License Tax Revenue Increase in the Amount of \$200,000.
 - b) Expenditure Increases to Reflect Past Actions:
 - i. In the Amount of \$408,807 to Match Actual Transfer to CalPERS from the CEPPT Trust (\$406,988) and from the Town General Fund (\$1,819) for Additional Discretionary Payment Based on the Town Pension and OPEB Trusts Oversight Committee March 30, 2021 Action and
 - ii. In the Amount of \$55,000 to the Chamber of Commerce for Development of Destination Marketing from the Anticipated ARPA Proceeds.

Laurel Prevetti, Town Manager, presented the staff report.

Opened Public Comment.

Lynley Kerr Hogan

- Commented in opposition of spending money on DEI.

Catherine Somers, Los Gatos Chamber of Commerce Executive Director

- Commented on the use of the AARP Funds being used correctly.

C. Roy

- Commented in opposition of the \$55,000 for a DEI consultant and the license plate reader purchase.

Suzanne

- Commented in opposition to the purchase of the license plate reader.

B. Nice

- Commented in opposition of CRT.

PAGE 8 OF 8

SUBJECT: Draft Minutes of the Town Council Meeting of June 1, 2021

DATE: June 3, 2021

Pulled Consent Item #4 – continued

MOTION: Motion by Council Member Hudes to a) adopt a resolution approving the Fiscal Year (FY) 2020/21 Operating Budget and FY 2021/22 – 2025/26 Capital Improvement Program (CIP), new appropriations, other approved adjustments, other Council actions on May 18, 2021, minor corrections, and carry-forward appropriations; b) adopt a resolution approving commitment of fund balances under GASB 54; c) approve FY 2020/21 Budget Adjustments; d) approve expenditure increases to reflect past actions as outlined in the staff report; e) include language in the resolutions that mirrors the Treasury’s Interim Rule regarding the provision of government services; and f) refer the revenue baseline calculation to the Finance Commission and any recommendations to be reviewed by Council at a later date.
Seconded by Council Member Badame.

VOTE: Motion passed unanimously.

ADJOURNMENT

The meeting adjourned at 10:01

Submitted by:

Shelley Neis, Town Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 3

DATE: June 7, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Introduce an Ordinance Amending the Los Gatos Town Code to Include Gender-Neutral Pronouns by Eliminating any Gender Preference Language Within the Los Gatos Town Code and Amending Sections Regarding Grammatical Interpretation to Indicate that Whenever a Gender Neutral Personal Pronoun is Used, it Shall be Deemed to Include the Feminine and Masculine Also

REMARKS:

Town staff requests that the item be continued to the August 17, 2021 meeting to allow for completion of the review of the Town Code and preparation of the proposed amendments.

PREPARED BY: Shelley Neis
Town Clerk

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



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 6/15/2021

ITEM NO: 4

DATE: May 26, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute an Agreement with All City Management Services, Inc., Los Gatos Union School District, and Union School District for Crossing Guard Services from July 1, 2021 through June 30, 2024.

RECOMMENDATION:

Authorize the Town Manager to execute an agreement with All City Management Services, Inc., Los Gatos Union School District, and Union School District for Crossing Guard Services from July 1, 2021 through June 30, 2024.

BACKGROUND:

The Town currently contracts with All City Management Services, Inc. (ACMS) to provide crossing guard services at selected school crossing locations within Los Gatos and Monte Sereno. They have provided Crossing Guard services for the Town since 1993. They are the only locally managed Crossing Guard purveyor in the Bay Area, providing services to several local school districts. The Town of Los Gatos manages the accounting of the service contract and oversees Crossing Guard staff in coordination with a local ACMS manager. Expenses for Crossing Guard services are shared between the Town, Los Gatos Union School District, and Union School District.

DISCUSSION:

Approval of this item will initiate a new contract for Crossing Guard services between the Town, All City Management Services Inc., Los Gatos Union School District, and the Union School

PREPARED BY: Greg Borrromeo
Traffic Sergeant

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

SUBJECT: Authorize the Town Manager to Execute Agreement with All City Management Services, Inc., Los Gatos Union School District and Union School District for Crossing Guard Services from July 1, 2021 through June 30, 2024.

DATE: May 26, 2021

DISCUSSION (continued):

District for FY 2021/22, 2022/23, and 2023/24. Twelve locations within Los Gatos and Monte Sereno will be served by Crossing Guards during each school year for a total of 6,534 annual hours of crossing guard service. The Town’s cost for contracted service in year one is \$36,640.25; year two \$39,071.42; year three \$42,299.69. Town expenditures account for approximately twenty percent of the total annual contract cost. The balance of the contracted cost will be paid for by the Los Gatos Union School District and the Union School District. In May, the Los Gatos Union School District, Union School District, and ACMS reviewed and agreed to the attached purchase and service agreement.

CONCLUSION:

Staff recommends the Town Council authorize the Town Manager to execute an agreement with All City Management Services, Inc., the Los Gatos Union School District, and the Union School District for duration of the three-year Crossing Guard services contract.

FISCAL IMPACT:

The fiscal impact is summarized in the table below. Upon execution of this agreement and reimbursement from the Los Gatos Union School District and the Union School District, the Town will be responsible for its portion of contracted service costs. There are sufficient funds for the 2021/22 contractual increase. Budgeting for crossing guard services for 2022/23, and 2023/24 will be prepared using the proposed fee schedule from All City Management Services, Inc. included as Exhibit E of the agreement.

Crossing Guard Services for the period starting July 1, 2021 through June 30, 2024			
School Year	2021/22	2022/23	2023/24
Los Gatos Union School District	\$128,674.27	\$137,212.12	\$148,549.27
Union School District	\$ 14,893.20	\$ 15,881.40	\$ 17,193.60
Town of Los Gatos	\$ 36,640.25	\$ 39,071.42	\$ 42,299.69
Total Annual Expense	\$180,207.72	\$192,164.94	\$208,042.56

Attachment:

1. Purchase and Service Agreement dated April 7, 2021

AGREEMENT FOR SERVICES

THIS AGREEMENT is dated for identification this 7th day of April 2021, and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Los Gatos Union School District ("District"), Union School District ("Union") and All City Management, ("Supplier"), whose address is 10440 Pioneer Blvd., Suite # 5, Santa Fe Springs, CA 90670. This Agreement is made with reference to the following facts. This contract will remain in effect from July 1, 2021 to June 30, 2024.

I. RECITALS

- 1.1 The Town desires to engage Service Provider to provide crossing guard services for the Los Gatos Union School District (District) and the Union School District (Union).
- 1.2 Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

II. AGREEMENT

- 2.1 Scope of Services. Supplier hereby agrees to deliver crossing guard services to Town, District, and Union at the locations outlined in Exhibit D, which is attached hereto and incorporated by reference. The terms and conditions are as follows:
 - a) Price. Town shall pay Supplier the amounts defined in Exhibit A, Exhibit B, and Exhibit C, each referenced Exhibit defines a specific school year and includes sales tax and delivery charges. Payment shall be net 30 days from delivery.
 - b) Delivery. The delivery of the items and materials shall be no later than the first date of the school year. Delivery shall be made between 8:00 a.m. and 5:00 p.m. on weekdays that are not school holidays.
- 2.2 Term and Time of Performance. This contract will remain in effect from July 1, 2021 – June 30, 2024. Time of performance shall be upon commencement of the school year and ending on the last day of the school year for the Los Gatos Union and Union School Districts.

- 2.3 Compliance with Laws. The Service Provider shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Service Provider represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Service Provider to practice its profession. Service Provider 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. Service Provider 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 Service Provider by the Town and all reports and supportive data prepared by the Service Provider under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Service Provider in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Service Provider shall not make any of the these documents or information available to any individual or organization not employed by the Service Provider or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Service Provider 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 Service Provider in connection with other projects shall be solely at Town's risk, unless Service Provider expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Service Provider which is and has been confirmed in writing by Service Provider to be a trade secret of Service Provider.
- 2.6 Compensation. Compensation for services **shall not exceed \$580,415.22 referenced and attached as " Exhibit E" and detailed below.** Payment shall be based upon Town approval of each task.

School Year	2021/22	2022/23	2023/24
Annual Service Hours	6,534	6,534	6,534
Annual Contract Expense	\$ 180,207.72	\$ 192,164.94	\$ 208,042.56
Total Service Expense			\$ 580,415.22

- 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. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider 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 Service Provider. 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 Service Provider, 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 Service Provider 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. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider 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 Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider 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, Service Provider 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. Service Provider 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 Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its

performance of this Agreement Service Provider 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. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider 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. Service Provider 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. Service Provider 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. Service Provider shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Service Provider agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

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 Service Provider; products and completed operations of Service Provider, premises owned or used by the Service Provider.
- ii. The Service Provider'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 Service Provider'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 Service Provider'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, Service Provider 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, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Service Provider 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 Service Provider, or any of the Service Provider's officers, employees, or agents or any subcontractor. Notwithstanding anything in this Section III to the contrary, however, in the event that a court or jury determines that liability with respect to any Loss was caused or contributed to by the negligent act, error, omission or willful misconduct of the TOWN, liability will be apportioned between the Service Provider on the one hand and the TOWN on the other hand with regard to such Loss based upon the parties' respective degrees of culpability, as determined by the court or jury, and the Service Provider duty to indemnify the TOWN, its officers, agents, employees and volunteers will be limited accordingly.

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 Service Provider 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 Service Provider shall deliver to the Town all plans, files, documents, reports, performed to date by the Service Provider. In the event of such termination, Town shall pay Service Provider 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 Service Provider.
- 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

All City Management
 Attn: Baron Farwell
 10440 Pioneer Blvd. Ste. #5
 Santa Fe Springs, CA 90670

Los Gatos Union School District
 Attn: Paul Johnson
 17010 Roberts Rd.
 Los Gatos, CA 95032

Union School District
 Attn: Denise Coleman
 5175 Union Ave.
 San Jose, CA 95124

or personally delivered to Service Provider to such address or such other address as Service Provider 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 Service Provider. 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 Service Provider have executed this Agreement.

Town of Los Gatos by:

Service Provider/All City Management, by:

Laurel Prevetti, Town Manager

Baron Farwell, General Manger

Recommended by:

Recommended by:

Paul Johnson, Los Gatos Union School District

Denise Coleman, Union School District

Recommended by:

Peter Decena, Chief of Police

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk

Exhibit A

Fiscal Year 2021/22

Crossing Guard Service

(\$27.58/Hour)

Los Gatos Union School District

(540 hours per crossing guard/per location)

	<u>Hours</u>	<u>Cost to School District</u>
4 @ 51.6%	2187	\$31,123.81
<ul style="list-style-type: none">• Winchester & Daves• Blossom Hill & Cherry Blossom• Los Gatos Blvd. & Nino• Blossom Hill & Roberts (additional 27 hrs. due to minimum days)		
1 @ 50%	540	\$7,446.60
<ul style="list-style-type: none">• Los Gatos & Shannon (Town pay half/LGUSD pays half)		
6 @ 100%	3267	\$90,103.86
<ul style="list-style-type: none">• Daves & Poppy #1• Daves & Poppy #2• Daves & Poppy #3• Nino & Fisher (additional 27 hrs. due to minimum days)• Kennedy/Los Gatos Blvd.• Shannon/Cherry Blossom		
	TOTAL	\$128,674.27

Union School District

	<u>Hours</u>	<u>Cost to School District</u>
1 @ 100%	540	TOTAL \$14,893.20

- Union & Thomas

TOTAL OFFSET REVENUE		\$143,567.47
Total Hours	6534 hrs. x \$27.58 =	\$180,207.72
	Offset Revenue =	<u>\$143,567.47</u>
	Cost to Town =	\$36,640.25

Exhibit B

Fiscal Year 2022/23

Crossing Guard Service

(\$29.41/Hour)

Los Gatos Union School District

(540 hours per crossing guard/per location)

	<u>Hours</u>	<u>Cost to School District</u>
4 @ 51.6%	2187	\$33,188.95
<ul style="list-style-type: none">• Winchester & Daves• Blossom Hill & Cherry Blossom• Los Gatos Blvd. & Nino• Blossom Hill & Roberts (additional 27 hrs. due to minimum days)		
1 @ 50%	540	\$7,940.70
<ul style="list-style-type: none">• Los Gatos & Shannon (Town pay half/LGUSD pays half)		
6 @ 100%	3267	\$96,082.47
<ul style="list-style-type: none">• Daves & Poppy #1• Daves & Poppy #2• Daves & Poppy #3• Nino & Fisher (additional 27 hrs. due to minimum days)• Kennedy/Los Gatos Blvd.• Shannon/Cherry Blossom		
TOTAL		\$137,212.12

Union School District

	<u>Hours</u>	<u>Cost to School District</u>
1 @ 100%	540	TOTAL \$15,881.40

- Union & Thomas

TOTAL OFFSET REVENUE		\$153,093.52
Total Hours	6534 hrs. x \$29.41 =	\$192,164.94
	Offset Revenue =	<u>\$153,093.52</u>
	Cost to Town =	\$39,071.42

Exhibit C

Fiscal Year 2023/24

Crossing Guard Service

(\$31.84/Hour)

Los Gatos Union School District

(540 hours per crossing guard/per location)

	<u>Hours</u>	<u>Cost to School District</u>
4 @ 51.6%	2187	\$35,931.19
		<ul style="list-style-type: none">• Winchester & Daves• Blossom Hill & Cherry Blossom• Los Gatos Blvd. & Nino• Blossom Hill & Roberts (additional 27 hrs. due to minimum days)
1 @ 50%	540	\$8,596.80
		<ul style="list-style-type: none">• Los Gatos & Shannon (Town pay half/LGUSD pays half)
6 @ 100%	3267	\$104,021.28
		<ul style="list-style-type: none">• Daves & Poppy #1• Daves & Poppy #2• Daves & Poppy #3• Nino & Fisher (additional 27 hrs. due to minimum days)• Kennedy/Los Gatos Blvd.• Shannon/Cherry Blossom
	TOTAL	\$148,549.27

Union School District

	<u>Hours</u>	<u>Cost to School District</u>
1 @ 100%	540	TOTAL \$17,193.60

- Union & Thomas

	TOTAL OFFSET REVENUE	\$165,742.87
Total Hours	6534 hrs. x \$31.84 =	\$208,042.56
	Offset Revenue =	<u>\$165,742.87</u>
	Cost to Town =	\$42,299.69



Los Gatos
Monte Sereno

POLICE DEPARTMENT

EXHIBIT D

April 6, 2021

Baron Farwell, General Manager
All City Management Service, Inc.
10440 Pioneer Blvd., Suite #5
Santa Fe Springs, CA 90670

Subject: Agreement between Town of Los Gatos, Los Gatos Union School District, Union School District, and All City Management Services, Inc. for Crossing Guard Services

Dear Mr. Farwell:

By this Letter of Agreement, the Town of Los Gatos, Los Gatos Union School District, Union School District, and All City Management Services, Inc. agree that All City Management Services, Inc. shall perform the services described below in accordance with the terms contained herein.

The following Terms and Conditions shall apply:

All City Management Services, Inc. shall provide services for the 2021/22, 2022/23, and 2023/24 school year at three (3) hours per day, for the one hundred eighty (180) days of the school year. The crossing guard service shall be for the two (2) school districts identified by the Town which have potentially hazardous locations where students cross daily while traveling to and from school. The school intersections include:

- Union Avenue and Thomas Drive
- Blossom Hill Road and Cherry Blossom Lane
- Winchester Avenue and Daves Avenue
- Blossom Hill Road and Roberts Road
- Los Gatos Boulevard and Nino Avenue
- Daves Avenue and Poppy Lane (1)
- Daves Avenue and Poppy Lane (2)
- Daves Avenue and Poppy Lane (3)
- Nino Avenue and Fisher Avenue
- Los Gatos Boulevard and Shannon Road
- Kennedy Road and Los Gatos Boulevard
- Shannon Avenue and Cherry Blossom Lane

Phone (408) 354-5257 ♦ Fax (408) 354-0578 ♦ Civic Center ♦ 110 East Main Street ♦ Los Gatos, CA 95030

EXHIBIT D cont.

The Town agrees to pay the Contractor for the services rendered pursuant to this Agreement annually for sum of each school year listed below. It is understood and agreed that SIX THOUSAND FIVE HUNDRED THIRTY-FOUR (6,534) hours of service shall be provided each school year.

School Year	2021/22	2022/23	2023/24
Annual Service Hours	6,534	6,534	6,534
Annual Contract Expense	\$ 180,207.72	\$ 192,164.94	\$ 208,042.56

Please read the attached Town of Los Gatos contract and return a signed contract to:

Los Gatos/Monte Sereno Police Department
Attn: Heather St. John
110 E. Main St.
Los Gatos, CA 95030

Sincerely,

Peter Decena
Chief of Police



ALL CITY MANAGEMENT SERVICES

EXHIBIT E

March 26, 2021

Greg Borrowmeo
Town of Los Gatos
110 E. Main Street, Los Gatos, CA 95030

Dear Sgt. Borromeo,

It is once again the time of the year when many agencies are formulating their budgets for the coming fiscal year. Toward that end, please allow this letter to serve as confirmation of our interest in extending our agreement for providing School Crossing Guard Services through the 2021-2022 fiscal year.

As you may know the California mandated minimum wage increases continue to drive pricing. Effective, January 1, 2021 minimum wages increased \$1.00 and effective January 1, 2022 they will increase another \$1.00. For each dollar of wages paid there is approximately .35 cents in variable cost associated with the wages, this includes Employer Taxes, Work Comp Insurance and Liability Insurance.

To keep pace with these mandated increases we must request an increase in your billing rate from \$25.24 to \$27.58 for the 2021-2022 fiscal year. To facilitate the calculation of the annual program cost we have developed and included with this letter a Client Worksheet. This Worksheet is our best estimation of the hours and cost of your program based on the current schedules and the proposed price increase. Below I have listed the rates for the next three (3) years:

- 2021/2022 - \$27.58
- 2022/2023 - \$29.41
- 2023/2024 - \$31.84

While we remain committed to providing a safe, cost-effective and professional School Crossing Guard Program we hope you will find this new pricing acceptable. If you have any questions or need additional information, please contact me at (800) 540-9290. Take care.

Sincerely,

Baron Farwell,
General Manager

All City Management Services Inc.

Client Worksheet

Department: 4701

Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95031

KEY:

Traditional Calendar:

For sites with no regularly scheduled early release days, use 180 regular days

For sites with one regularly scheduled early release day/week, use 144 regular days and 36 minimum days

Summer School

For schools with Summer School sessions use 19 days

2021-2022 Billing Rate \$27.58

	6534		\$27.58	=	\$180,207.72
	Total Hrs/year		Hourly Billing Rate		

2022-2023 Billing Rate \$29.41

	6534		\$29.41	=	\$192,164.94
	Total Hrs/year		Hourly Billing Rate		

2023-2024 Billing Rate \$31.84

	6534		\$31.84	=	\$208,042.56
	Total Hrs/year		Hourly Billing Rate		

TOTAL ANNUAL PROJECTED COST \$580,415.22



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 5

DATE: May 26, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution Authorizing Continued Participation in the State Abandoned Vehicle Abatement Program that:
a. Extends the Santa Clara County Abandoned Vehicle Abatement Services Authority (AVASA) for another 10-year term beginning May 1, 2022 and ending April 30, 2032 and
b. Approves the Town's continued participation in the existing "Agreement for Santa Clara County Abandoned Vehicle Abatement Service Authority" and the collection, by the Department of Motor Vehicles, of one-dollar (\$1.00) vehicle registration fee for this purpose.

RECOMMENDATION:

Adopt a Resolution authorizing continued participation in the State Abandoned Vehicle Abatement Program that:
a. Extends the Santa Clara County Abandoned Vehicle Abatement Services Authority (AVASA) for another 10-year term beginning May 1, 2022 and ending April 30, 2032 and
b. Approves the Town's continued participation in the existing "Agreement for Santa Clara County Abandoned Vehicle Abatement Service Authority" and the collection, by the Department of Motor Vehicles, of one-dollar (\$1.00) vehicle registration fee for this purpose.

BACKGROUND:

Sections 9250.7 and 22710 of the California Vehicle Code provide for the establishment of a service authority for abandoned vehicle abatement if the County Board of Supervisors and a majority of the cities within a County adopt resolutions supporting such action. In Los Gatos, the Town Council adopted a resolution authorizing the Town of Los Gatos' participation in the

PREPARED BY: Greg Borromeo and Heather St. John
Traffic Sergeant and Senior Administrative Analyst

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

PAGE 2 OF 2

SUBJECT: Adopt a Resolution Authorizing continued Participation in the State Abandoned Vehicle Abatement Program.

DATE: May 26, 2021

BACKGROUND (continued):

Santa Clara County Abandoned Vehicle Abatement Service Authority (AVASA). This service authority was established on May 1, 1992 for a term of ten years to provide County law and code enforcement agencies with resources to facilitate the proper removal and disposal of abandoned vehicles. The service authority was extended for an additional ten years in April of 2002 and in April of 2012.

DISCUSSION:

Senate Bill 106 amended section 9250.7 of the California Vehicle Code which established the AVASA program. The amendment authorizes the extension of the service fee for each Service Authority for increments of up to ten years if the County Board of Supervisors, by a two-thirds vote and a majority of the cities having a majority of the incorporated population within the County, adopt resolutions providing for the extension of the fee. The County of Santa Clara and 15 of its cities are currently participating in this program. Adoption of this resolution would re-authorize the Town's participation in the AVASA program until April 30, 2032. In the past ten years, the Town of Los Gatos received reimbursements in the amount of \$369,203.26 from the AVASA program for its expenses related to the removal of 4,155 abandoned, wrecked, dismantled, or inoperative vehicles from public and private property. Vehicle abatement relies on strong community support and has been a successful program for the Town during the previous 30 years.

CONCLUSION:

Staff recommends continued participation in the State Abandoned Vehicle Abatement Program.

FISCAL IMPACT:

The Santa Clara County Abandoned Vehicle Abatement Services program provides State reimbursement for most of the Town's ongoing costs incurred as a result of our vehicle abatement program. The reimbursement amount fluctuates with changes in the total number of vehicles and changes in the local population. The AVASA reimbursement is incorporated in the budget annually and was included in the Adopted FY 2021/22 Operating Budget. The reimbursement amount is sufficient to cover the direct costs of vehicle abatement.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Resolution authorizing continued participation in the State Abandoned Vehicle Abatement Program

RESOLUTION 2021-

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AUTHORIZING CONTINUED PARTICIPATION IN THE STATE ABANDONED VEHICLE ABATEMENT PROGRAM

WHEREAS, California Vehicle Code Sections 9250.7 and 22710 authorizes the establishment of service authority for the abatement of abandoned vehicles in Santa Clara County, and the imposition of a one dollar (\$1.00) vehicle registration fee, as well as a method of disbursement of funds to local agencies that participate in the Abandoned Vehicle Abatement Program; and

WHEREAS, the Town of Los Gatos, California, has adopted a Resolution in accordance with the California Vehicle Code providing for the Abatement of Abandoned Vehicles; and

WHEREAS, the Town of Los Gatos, California desires to continue participation in the Abandoned Vehicle Abatement Program and share in the monies in said Abandoned Vehicle Trust Fund;

NOW, THEREFORE, BE IT RESOLVED: by the Town Council of the Town of Los Gatos, that the Town of Los Gatos continue its participation in the Santa Clara County Abandoned Vehicle Abatement Program, and that the one dollar (\$1.00) service fee which is collected by the Department of Motor Vehicles to fund this program be extended for ten years, from May 1, 2022 to April 30, 2032.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 15th day of June 2021 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: _____

ATTACHMENT 1



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 6

DATE: June 9, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution Expressing Support for the Santa Clara County 2020-2025 Community Plan to End Homelessness

RECOMMENDATION:

Adopt a resolution (Attachment 1) expressing support for the Santa Clara County 2020-2025 Community Plan to End Homelessness.

BACKGROUND:

In June 2019, the City of San José, together with Santa Clara County, Destination: Home, and other cities and non-profits, embarked on strategic planning and an extensive community engagement process to develop a new five-year Community Plan to End Homelessness for Santa Clara County ("Community Plan").

The Community Plan (Attachment 2) provides a regional-level roadmap to tackle homelessness and its root causes. Preventing and ending homelessness requires collaboration and coordination of resources at all levels of government, together with community institutions, nonprofit agencies, and community-based organizations. With homelessness being a regional issue, a Countywide plan serves to unify organizations and communities on long-term strategies and collective solutions to end homelessness.

The 2020-2025 Community Plan identified three primary focus areas:

- Address the root causes of homelessness through system and policy change;
- Expand homelessness prevention and housing programs to meet the need; and
- Improve quality of life for unsheltered individuals and create healthy neighborhoods for all.

PREPARED BY: Arn Andrews
Assistant Town Manager

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

PAGE 2 OF 2

SUBJECT: Adopt a resolution (Attachment 1) expressing support for the Santa Clara County 2020-2025 Community Plan to End Homelessness

DATE: June 9, 2021

DISCUSSION:

Based on the 2019 Santa Clara County Homeless Census and Survey Comprehensive Report, Los Gatos had 16 unsheltered individuals in Town. While the Town has a relatively small unsheltered population, there are many elements of the Community Plan where Los Gatos could provide support. To date the jurisdictions of Cupertino, Milpitas, San Jose, Mountain View, Morgan Hill, and the County of Santa Clara have endorsed the Community Plan.

CONCLUSION:

Adopting a Resolution expressing support for the 2020-2025 Santa Clara County Community Plan to End Homelessness will recognize the plight of the unsheltered and acknowledge the regional approach necessary to effectively combat homelessness.

COORDINATION:

This staff report was coordinated with the Town Manager, Town Attorney, and Community Development Director.

FISCAL IMPACT:

None.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Resolution Expressing Support for 2020-2025 Plan to End Homelessness
2. 2020-2025 Santa Clara County Community Plan to End Homelessness

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
EXPRESSING SUPPORT FOR THE 2020-2025 SANTA CLARA COUNTY COMMUNITY PLAN TO
END HOMELESSNESS**

WHEREAS, in June 2019, the County, Destination: Home, and other cities and nonprofits, embarked on strategic planning and an extensive community engagement process to develop a new five-year plan, the 2020-2025 Santa Clara County Community Plan to End Homelessness (Community Plan); and

WHEREAS, during the development of the new Community Plan, feedback was sought from a variety of stakeholders to identify challenges in the homeless system of care and to collect innovative ideas on how to reduce homelessness Countywide; and

WHEREAS, this work resulted in three primary areas of focus for the Community Plan: (1) Address the root causes of homelessness through system and policy change; (2) Expand homelessness prevention and housing programs to meet the need; and (3) Improve quality of life for unsheltered individuals and create healthy neighborhoods for all; and

WHEREAS, with homelessness being a regional issue, preventing and ending homelessness requires collaboration and coordination of resources at all levels of government, together with community institutions, nonprofit agencies, and community-based organizations; and

WHEREAS, the Community Plan provides a regional-level roadmap and a common agenda for community stakeholders;

WHEREAS, the Town recognizes the moral obligation to help alleviate homelessness to extent it can; and

THEREFORE, BE IT RESOLVED: that the Town of Los Gatos expresses support for the 2020-2025 Santa Clara County Community Plan to End Homelessness.

ATTACHMENT 1

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 15th day of June 2021 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: _____



SANTA CLARA COUNTY

COMMUNITY PLAN TO END HOMELESSNESS

2020–2025



Acknowledgements

The Community Plan Steering Committee would like to thank the many community stakeholders, people with lived experience of homelessness, and organizations for their participation in the process to update the plan and their valuable input.

For a full list of organizations that participated in the process, see page 14.

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13	Strategy 2: Expand Homelessness Prevention and Housing Programs to Meet the Need
14	Strategy 3: Improve Quality of Life for Unsheltered Individuals and Create Healthy Neighborhoods for All
16	Thank you!



Introduction

In 2015, the community came together to create a roadmap for ending homelessness in Santa Clara County. This plan— which was centered around a collective impact response and the proven Housing First model—set an ambitious goal to create 6,000 new housing opportunities and identified innovative strategies and programs for reducing homelessness.

Supportive Housing System Progress 2015-2019

Thanks to the collective efforts of partners throughout the community, over the past five years, we have done the following:

Helped **8,884 households** resolve their homelessness,



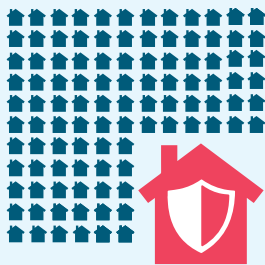
representing **14,132 people**



Doubled the number of supportive housing units in Santa Clara County



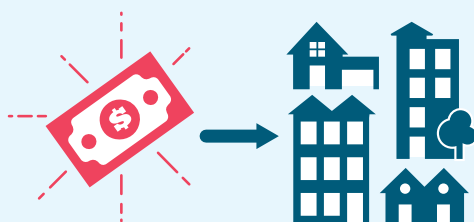
Doubled our temporary housing and emergency shelter capacity



Launched a new homelessness prevention system that now serves about **1,000 households annually**



Led a community-wide campaign that has successfully housed more than **1,600 veterans** and engaged nearly **800 private landlords** in the effort



Voters approved **\$950 million** to develop affordable housing through the 2016 Measure A Affordable Housing Bond and raised another **\$100 million** in private contributions to support the implementation of the community plan

Despite our progress creating a supportive housing system that assists thousands of homeless individuals and families each year, the crisis continues to grow. The systemic factors driving homelessness in our community—from the failed policies at the local, state, and national level to the extreme lack of housing options that are affordable for low-income residents—remain stronger than ever and are pushing more of our neighbors onto the streets every day.

These challenges have been compounded by the novel coronavirus (COVID-19) pandemic that arrived in our community as this plan was in development, making implementation of many of these strategies even more urgent. This public health crisis has ground our local economy to a halt, leaving many more households on the brink of homelessness due to job loss, lack of childcare, and economic uncertainty. The pandemic has also required a massive and immediate response by our crisis response system to quickly ramp up shelter capacity, increase access to hygiene services for people living outside, and protect those people experiencing homelessness who are particularly vulnerable. As a result, as this plan goes into effect, we anticipate there will be many more people experiencing or at risk of homelessness who will need immediate support, which will require our community to continue to be flexible and innovative in our responses to homelessness.

To truly end homelessness in Santa Clara County, we must summon the collective will and resources to not only respond to the current crisis and scale our successful housing strategies, but also address and eliminate the root causes of homelessness in our community.

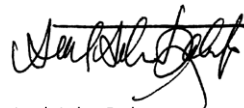
Community Plan Steering Committee Members



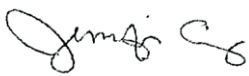
Ky Le, Co-Chair



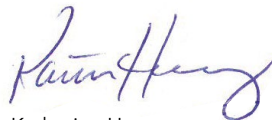
Erin Connor



Joel John Roberts



Jennifer Loving, Co-Chair



Katherine Harasz



Claudine Sipili



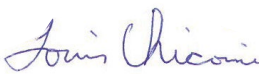
Jan Bernstein Chargin



Miguel Marquez



Leland Wilcox



Louis Chicoine

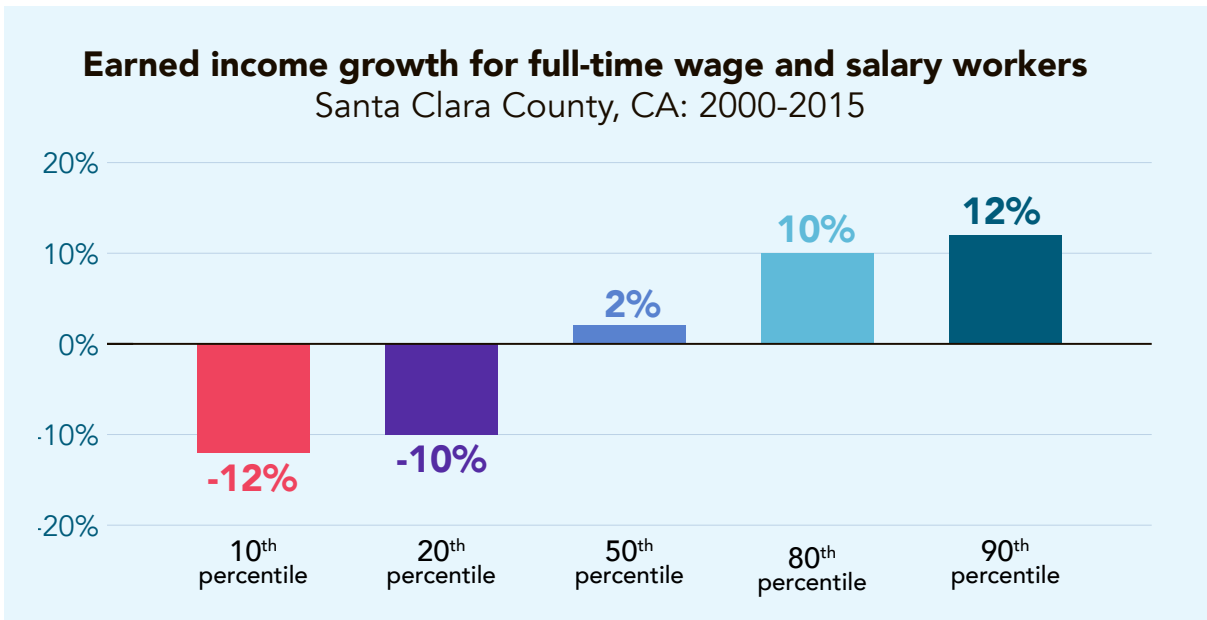


Jacky Morales-Ferrand

Our Homelessness Crisis

According to the 2019 Point-in-Time count, there are 9,706 individuals experiencing homelessness on any given night in Santa Clara County.¹ Families with children, seniors, individuals with disabilities, veterans, youth and young adults are all represented in the county's diverse homeless population. More than 80% of these individuals are unsheltered—sleeping outside, in cars, or other places not meant for human habitation. We expect that these numbers will increase over the coming months as the full impact of the COVID-19 pandemic is felt.

The gap between the rich and the poor in our community, combined with the lack of housing development particularly at the lowest income levels, is fueling the homelessness crisis. According to the Public Policy Institute of California, families at the highest income levels in the Bay Area (the 90th percentile) have more than 12 times the income of families at the bottom (the 10th percentile).² Those at the bottom rung of the economic ladder have also not shared in the region's significant economic growth. Between 2000 and 2015 in Santa Clara County, workers with earnings in the 10th percentile saw their income decline by 12%.³



This income inequality has been further exacerbated by the economic slowdown caused by the COVID-19 pandemic as many low-income households living paycheck-to-paycheck struggle to make rent and pay for other basic needs.

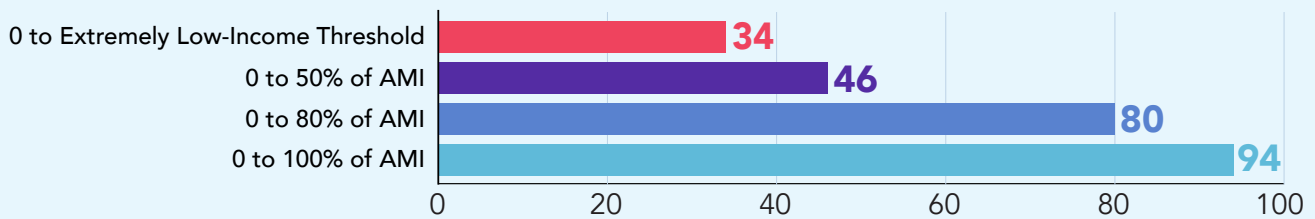
¹ Applied Survey Research, "Santa Clara County Homeless Census & Survey Comprehensive Report 2019." 2019. <https://www.sccgov.org/sites/osh/ContinuumofCare/ReportsandPublications/Pages/HomelessnessCensusandSurvey.aspx>

² Public Policy Institute of California, "Income Inequality in California." 2020. <https://www.ppic.org/publication/income-inequality-in-california/>

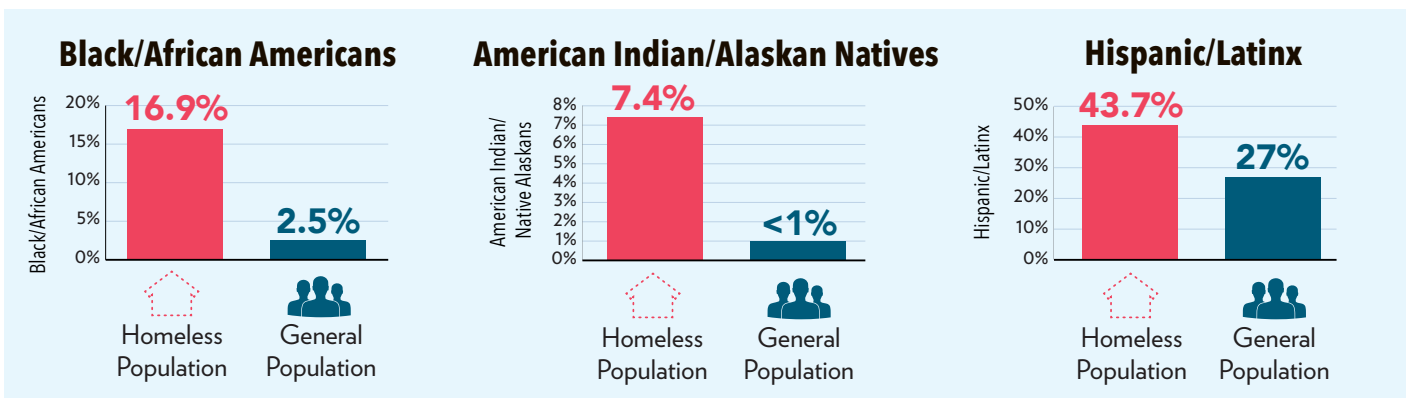
³ Bay Area Equity Atlas, "Earned income growth for full-time wage and salary workers: Santa Clara County, CA, 2000–2015." <https://bayareaequityatlas.org/indicators/income-growth#/?geo=04000000000006085>

Compounding the impacts of this inequality is the fact that housing costs are higher than ever and housing that is affordable to the lowest-income families is not being produced. In fact, the National Low-Income Housing Coalition’s most recent report, *The Gap: A Shortage of Affordable Homes*, found that in 2018 there were only 34 affordable and available units for every 100 extremely low-income renter households in the San Jose metro area.⁴

Affordable & Available Rental Homes “Per 100 Renter Households” San Jose Metropolitan Area: 2018



In addition, longstanding and structural racial inequities continue to affect who becomes homeless in our community. A recent report commissioned by Destination: Home found that people of color are dramatically more likely than their white counterparts to become homeless in Santa Clara County, and that poverty alone cannot explain disparities in homelessness. For example:



While the brunt of this crisis is borne by our unhoused neighbors, we know its impacts are felt much more broadly. Our neighborhoods, first responders, businesses, and environment are also suffering the consequences of our region’s severe homelessness crisis.

Even worse, the problem continues to grow as more people are slipping into homelessness than ever before—the result of growing income inequality, gentrification and displacement, rising housing costs, an extreme housing shortage, and a lack of sufficient safety net services to adequately care for the most vulnerable in our community. In fact, for every homeless family or individual we connect to housing, between two and three more are experiencing homelessness for the very first time.

If this trend continues, in addition to the nearly 10,000 individuals currently experiencing homelessness, another 20,000 are at-risk of falling into homelessness over the next five years—far more than our supportive housing system currently has the capacity to serve.

⁴ National Low-Income Housing Coalition, “The Gap: A Shortage of Affordable Homes.” 2020. https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2020.pdf



Ending Homelessness in Santa Clara County

Solving this crisis is one of the great moral challenges facing us. It will require tremendous effort, new partnerships, and even bolder strategies—and it will require the entire community to be a part of the solution.

We must take immediate actions that can improve the quality of life for the huge number of unsheltered residents in our community. We must increase shelter capacity and increase interim housing options, and we must expand services to meet their basic health and safety needs.

We need to significantly scale our housing development and programs to meet the growing need in our community. This includes building many thousands more supportive housing units, expanding our homelessness prevention strategies, and enhancing the way our supportive housing system serves those in need.

Most importantly, we will never end homelessness in our community if we do not attack the systemic root causes that continually push more of our neighbors into homelessness. As a result, we must address inequitable land use and housing policy to allow every jurisdiction to achieve their Regional Housing Needs Allocation goals for very low and extremely low-income housing production. We must ensure every resident who is able to work can access living wage employment and we must reverse decades-long structural inequities that have driven people of color and other vulnerable residents onto the streets.

As we implement the strategies in this plan, we will raise the voices of people with lived experience and share power with our unhoused and recently-housed neighbors. We will focus on policies and programs that reduce racial inequity, in an effort to reverse the disproportionately high rates of people of color who are unhoused.

None of this will be easy or cheap. In fact, just meeting the affordable housing needs of our community would require several billion dollars. But we cannot accept a future in which thousands of our neighbors are forced to live outside. Every member of our community deserves a safe and stable home—and it is our collective responsibility to make this vision a reality.

Our Plan

The 2020–2025 Community Plan to End Homelessness will serve as our roadmap for ending homelessness in Santa Clara County and is organized around three main strategies:

STRATEGY 1	STRATEGY 2	STRATEGY 3
 <p data-bbox="199 816 522 953">Address the root causes of homelessness through system and policy change</p>	 <p data-bbox="660 816 971 953">Expand homelessness prevention and housing programs to meet the need</p>	 <p data-bbox="1115 785 1404 953">Improve quality of life for unsheltered individuals and create healthy neighborhoods for all</p>

The strategies included in this plan are grounded in evidence-based practices, lessons learned over the past five years, and robust conversation and input from more than 8,000 members of our community; including people with lived experience of homelessness, subject matter experts, key stakeholders, and community members.

In addition, this plan sets aggressive targets designed to reverse the current growth in homelessness we are experiencing and bring us one step closer to our collective goal of eliminating homelessness in our community.

Our Targets

By 2025, we will:



Achieve a **30% reduction** in annual inflow of people becoming homeless*



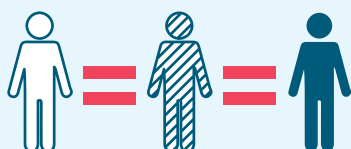
House **20,000 people** through the supportive housing system



Expand the Homelessness Prevention System and other early interventions to serve **2,500 people per year**



Double temporary housing and shelter capacity to reduce the number of people sleeping outside



Address the **racial inequities present** among unhoused people and families and track progress toward reducing disparities

*The reduction in annual inflow target was based on annual inflow prior to the COVID-19 pandemic. This target will be reevaluated once the longer term impacts of COVID-19 are known.



The Strategies

Reaching these ambitious goals will require a collaborative community response based on proven, evidence-based strategies to end homelessness as well as innovative approaches that maximize the resources available.

The strategies are organized under three areas of focus that make up the basic framework for the plan.

STRATEGY 1



Address the Root Causes of Homelessness Through System and Policy Change

To end homelessness in our community, we must address its root causes. This plan sets a five-year goal of reducing new unhoused individuals and families in a given year by 30%. The strategies below are targeted to address the entrenched economic and societal causes of homelessness through transformational systemic and policy change. The system we live in has created social, economic, and racial disparities and it will take monumental shifts in policies and priorities to make effective change. While eliminating these disparities across our community will take more than the five years covered by this plan, we can make substantial progress towards this important goal by implementing the strategies below.

1 Ensure that people accessing safety net services have the support they need to obtain and maintain housing.

- A** Adopt housing screening and referral processes for individuals and families accessing safety net services.
- B** Expand housing programs for families involved in the child welfare system.
- C** Expand and diversify housing programs for foster youth to meet their long-term housing needs, so no foster youth become homeless.
- D** Expand housing resources available to Medi-Cal recipients accessing services in the Specialty Mental Health System.
- E** Advocate for the state and the federal government to increase funding and access to safety net services.

2 Ensure that people involved in the criminal justice system do not become homeless.

- A** Support households with incarcerated family members to prevent homelessness.
- B** Expand existing and develop new housing and workforce development programs to successfully reintegrate people leaving probation, parole, jails, and prisons into the community.

STRATEGY 1



Address the Root Causes of Homelessness Through System and Policy Change (Continued)

3 Create the conditions to develop enough affordable housing to meet the need in our community.

A Work with cities to change local land use and housing policy to allow for development of more affordable housing and help reverse housing disparities that have negatively impacted people of color.

B Identify underutilized land across the county to be used for dense affordable housing development.

C Prioritize development of housing for extremely low-income individuals and families making 30% of Area Median Income or less and set joint targets.

D Advocate for flexible funding that can speed up and create more affordable housing.

4 Protect residents from evictions, displacement, and housing discrimination.

A Adopt and implement new fair housing plans for the region.

B Strengthen local rent control and tenant protections.

C Provide legal assistance to ensure that individuals and families most severely impacted by the lack of affordable housing, namely people of color, have equal access to housing.

D Create a fund to preserve both naturally affordable and income-restricted affordable housing.

5 Ensure all residents who are able to work have access to living wage employment.

A Support efforts to increase the minimum wage to a living wage in Santa Clara County.

B Partner with corporations to create living wage job opportunities for people who are unhoused or at risk of homelessness.

C Provide training, internships, and mentorships to help people who are unhoused or at risk of homelessness to obtain access to living wage jobs.

D Invest in social enterprises that train and employ people who are unhoused or at risk of homelessness.

6 Expand public and private sector support for ending and preventing homelessness.

A Increase community engagement and support for affordable and supportive housing development throughout the county.

B Provide leadership opportunities for people with lived experience of homelessness to shape how we address homelessness in our community.

C Create a county-wide education campaign that increases awareness of the causes and impacts of homelessness and ongoing efforts to end homelessness.



STRATEGY 2



Expand Homelessness Prevention and Housing Programs to Meet the Need

While Strategy 1 aims to close the gaps in our social safety net and address the other systemic causes of homelessness, we know that there will be some people over the next five years who will still become unhoused due to a severe shortage of affordable and accessible housing. To end homelessness, we will need to continue to build capacity to provide a broad array of housing and services over the next five years.

1 Increase the capacity of supportive housing programs for people experiencing homelessness.

A Expand the supportive housing system to provide housing and services to help 20,000 unhoused people secure stable, permanent housing. Expansion would target the following:

- 7,000 people housed in Permanent Supportive Housing programs that provide long-term support.
- 10,000 people housed through Rapid Rehousing programs that provide short- and medium-term support.
- 3,000 people housed through Housing Problem Solving and other short-term or one-time assistance.

B Develop programs tailored to the needs of specific populations of people experiencing homelessness, including:

- Youth and young adults
- Older adults (55+) and seniors
- Families with children
- Adults (ages 25 to 54) without children

2 Provide a broad range of supports to prevent homelessness.

A Expand the Homelessness Prevention System to prevent homelessness for an additional 7,000 households who are at risk by providing targeted financial assistance and supportive services.

B Provide targeted financial resources to prevent homelessness and eviction for severely rent-burdened residents living in existing affordable units.

3 Create a state-of-the-art supportive housing system.

A Center the voices of people who have lived experience of homelessness, especially people of color, in the policy and program design decisions of the supportive housing system.

B Invest in professional development and competitive pay to attract and retain a highly qualified workforce of homeless service provider staff.

C Incentivize hiring of people who have lived experience of homelessness to reflect the client population—especially people of color and LGBTQI+ persons.

D Increase access to supportive housing programs for people of color by addressing racial bias in our system.

STRATEGY 3



Improve Quality of Life for Unsheltered Individuals and Create Healthy Neighborhoods for All

The first two strategies of the plan seek to end and prevent homelessness for as many people as possible over the next five years. However, the reality is that many people will remain unhoused due to an extreme housing crisis and increasing income inequality. To address this immediate crisis in our community and ensure healthy neighborhoods for all, we must begin by doubling our temporary housing and shelter capacity to serve 2,000 additional households each night and increase investment in health, safety and other basic services to better meet the needs of people living in unsheltered conditions and build connections to housing programs and safety net services offered throughout the county.

1 Double the number of year-round temporary housing beds and offer a variety of welcoming temporary housing options throughout the county.

- A** Build new partnerships to host emergency shelter, safe places to park and access services, and sanctioned encampments that are not swept and include hygiene and supportive services.
- B** Reduce barriers to shelter such as allowing for pets, storage of personal items, greater privacy, longer stays, and provide higher levels of safety for residents.
- C** Expand hours at new and existing shelters to remain open during the day.
- D** Ensure that all families with children under 18 years old who are unhoused have access to emergency shelter or temporary housing.
- E** Provide more public services in neighborhoods hosting emergency shelter or temporary housing programs.

2 Increase street outreach, hygiene services, and transportation options to match the needs of unsheltered residents.

- A** Increase access to basic hygiene resources, including bathrooms, showers, and laundry
- B** Increase the number of free public transit passes and other transportation options for people who are unhoused to access services.
- C** Increase the number of street outreach staff and case managers working in encampments.
- D** Provide opportunities for people who have lived experience of homelessness to provide peer-to-peer support.

3 Increase mental health and substance use services.

- A** Increase the number of mobile crisis teams with clinical staff, and expand their hours, to support individuals experiencing severe mental health and substance use crises.
- B** Increase the number of beds available for substance use treatment and provide the follow-up supportive services needed to prevent relapses.
- C** Increase access to mental health treatment for people who are unhoused and struggling with mental illness.
- D** Develop a plan to eliminate service access and treatment gaps for unsheltered people struggling with chronic and severe mental illness.

STRATEGY 3
Improve Quality of Life for Unsheltered Individuals and Create Healthy Neighborhoods for All *(Continued)*
4 Engage a cross-section of community partners to address the needs of unsheltered residents.

- | | | | |
|---|---|---|--|
| <p>A Increase outreach to city and County staff and business and neighborhood associations about available resources to assist people who are unsheltered.</p> | <p>B Engage the private sector to contribute funding to support health and safety services and shelter for people who are unsheltered.</p> | <p>C Increase coordination between agencies engaging people living in encampments to ensure consistent and humane approaches to encampment resolution.</p> | <p>D Create a referral system where unsheltered residents can access information and services, such as available temporary housing and homeless services.</p> |
|---|---|---|--|

5 Ensure that community spaces are safe and welcoming for housed and unsheltered residents.

- | | |
|--|---|
| <p>A Partner with new private sector, community-based, and faith-based organizations to create safe and welcoming community spaces in every community for unsheltered people to access services during the day.</p> | <p>B Work with community organizations, cities, County agencies, and neighborhood associations to ensure that public spaces such as parks, libraries, and community centers remain clean, well-maintained, and welcoming to all.</p> |
|--|---|

Process Improvements Across Strategies 1, 2, and 3

Throughout our work, we must continue to expand coordination between systems, increase the use of data to improve programs, and increase training opportunities for all partners, including:

- Share data across safety net, criminal justice, and housing systems to better predict and target households who are experiencing homelessness or at risk of homelessness.
- Better utilize data collected in the homeless system of care and across County departments to know what is working well, what programs need improvement, and to identify inequities in the system.
- Provide demographic data, including race and ethnicity, in all reports on homelessness to highlight and address inequities.
- Create accessible dashboards that show our progress and hold our systems accountable.
- Provide trauma-informed care and racial equity/anti-racism training to all staff working with people experiencing homelessness.
- Increase access to services, including providing system navigation resources and training to all staff working with people experiencing homelessness.
- Align racial equity work in the homelessness sector with other racial equity initiatives in Santa Clara County.
- Expand partnerships with corporations, philanthropic institutions, and individual donors to secure private funding to reduce and prevent homelessness.
- Align and coordinate with other community efforts to address homelessness, such as the Homelessness Task Force.

Thank You!

The Community Plan Steering Committee would like to thank the following agencies and staff who participated in the Community Plan Work Group to gather community input and update the community plan:

- County of Santa Clara: Jackie MacLean, Hilary Barroga, Kathryn Kaminski, Hilary Armstrong
- City of San José: Sarah Zárata, Ragan Henninger
- Destination: Home: Ray Bramson, David Low
- City of Morgan Hill: Rebecca Garcia
- City of Mountain View: Wayne Chen
- LifeMoves: Bruce Ives
- Sacred Heart Community Service: Erin Stanton
- Community Solutions: Erin O'Brien

The Steering Committee and Work Group would like to thank the many people who are currently or formerly unhoused who shared their input and experiences to inform the community plan, including the following:

- Lived Experience Advisory Board
- Sacred Heart's Survivors of the Streets
- HomeFirst Sunnyvale Shelter's Client Collaborative
- Clients/residents from Hope's Corner, Bill Wilson Center, New Haven Inn, and Second Street Studios

The Steering Committee and Work Group would like to thank the following community stakeholders, agencies, and organizations for participating in the process:

- Abode Services
- Alta Vista High School
- Amigos de Guadalupe
- Anthem Blue Cross
- Bill Wilson Center
- Bitfocus
- Catholic Charities of Santa Clara County
- Charities Housing
- Cisco
- Cities Association of Santa Clara County
- City Team
- City of Cupertino
- City of Morgan Hill
- City of Mountain View
- City of Palo Alto
- City of San José
- City of Milpitas
- City of Santa Clara
- Community Services Agency
- Community Solutions
- County of Santa Clara:
 - Behavioral Health Services
 - Office of the District Attorney
 - Probation Department
 - Public Defender Office
 - Public Health Department
 - Reentry Services
 - Santa Clara Valley Medical Center
 - Social Services Agency
 - Office of Supportive Housing
 - Office of Equity and Social Justice
 - Offices of Supervisors Cindy Chavez, Dave Cortese, Susan Ellenberg, Joe Simitian, and Mike Wasserman
 - Valley Homeless Healthcare Program
- David and Lucile Packard Foundation
- Destination: Home
- Dependency Advocacy Center

- Downtown Business Association
- Downtown Streets Team
- EAH Housing
- East Side Union High School District
- Family Supportive Housing
- First Community Housing
- Gilroy Compassion Center
- HomeFirst
- Housing Trust Silicon Valley
- Humane Society of Silicon Valley
- Hunger at Home
- Kaiser Permanente
- Kids in Common
- Law Foundation of Silicon Valley
- LifeMoves
- LinkedIn
- Los Altos Community Foundation
- Mental Health Systems
- Next Door Solutions
- On Lok
- PATH
- Razing the Bar
- Resources for Community Development
- Santa Clara County City Managers Association
- Santa Clara County Housing Authority
- Santa Clara County Office of Education
- Santa Clara County Domestic Violence Advocacy Consortium
- Santa Clara Family Health Plan
- Sacred Heart Community Service
- Salvation Army
- Silicon Valley Community Foundation
- Silicon Valley Council of Nonprofits
- Silicon Valley at Home
- Silicon Valley Independent Living Center
- Silicon Valley Organization
- South Bay Coalition to End Human Trafficking
- Spectrum Equity
- St. Joseph Family Center
- Sunnyvale Community Services
- The Health Trust
- United Way Bay Area
- U.S. Department of Veterans Affairs
- West Valley Community Services
- YWCA of Silicon Valley



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 7

DATE: June 7, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute an Agreement for Services with the Los Gatos Chamber of Commerce to Manage the Town's Visitors Information Center Including a Visit Los Gatos Website, and Assist with Related Community Vitality Initiatives as Outlined in the Scope of Services in an Amount Not to Exceed \$55,000.

RECOMMENDATION:

Authorize the Town Manager to execute an Agreement for Services with the Los Gatos Chamber of Commerce to manage the Town's Visitors Information Center including a Visit Los Gatos website, and assist with related community vitality initiatives as outlined in the Scope of Services in an amount not to exceed \$55,000.

BACKGROUND:

In 2001, an agreement for services with the Los Gatos Chamber of Commerce was first executed to include the operation and management of the Town's Information Center as well as coordination of the Town's annual Leadership Los Gatos program. Annual renewals with modifications as needed have been approved by the Council every year thereafter.

The contract amount has increased over time. Most notably for FY 2019/20, the amount increased from a not to exceed amount of \$45,000 to a not to exceed amount of \$60,000, allocated as \$55,000 for Visitor Information Center Services and \$5,000 for the assistance with the Town's Leadership Los Gatos program. This FY 2019/20 agreement for services included a Scope of Services with deliverables and bi-annual reporting required to be submitted by the Chamber accounting for the services rendered. For the following fiscal year (FY 2020/21), the Town Council provided \$55,000 to the Chamber as a subsidy for managing the Town's Visitor's Information Center and assisting with related community vitality initiatives.

PREPARED BY: Monica Renn
Economic Vitality Manger

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

BACKGROUND (continued):

This switch was made to provide the Chamber of Commerce with flexibility during the pandemic. The Town Council understood that the shopping, dining, and entertainment environment was drastically different than typical years, thus approved the subsidy so that the Chamber could remain nimble and serve the community as they saw fit through the various stages of the pandemic. Additionally, no new Leadership Los Gatos class was established in FY 2020/21, as the prior year's final sessions were postponed to late fall of 2020 in a virtual model.

On May 4, 2021, the Town Council allocated \$55,000 of the American Recovery Plan Act (ARPA) funds to the Chamber of Commerce to assist with emergency destination marketing to provide a jumpstart to community vitality efforts. When this money was allocated, the Town Council noted that this annual agreement for services would be forthcoming and that it was necessary to show a distinction between the services rendered under the funds allocated for the emergency destination marketing, and the services rendered under the Chamber's annual agreement to facilitate the Town's Visitors Information Center. Town staff will execute separate agreements for each funding allotment to provide clarity and distinction of service deliverables.

DISCUSSION:

Attachment 1 contains the draft Agreement for Services including Exhibit A, Scope of Services for the Chamber of Commerce to coordinate and operate the Town's Visitor's Information Center, including a Visit Los Gatos website. With these services, the Chamber will provide advertisement and broad marketing outreach in the form of Social Media, Google Ad Words, website boosts, and other marketing efforts that drive traffic to the Visit Los Gatos webpage.

Another key component of the Scope of Services is that the service rendered result in the Visit Los Gatos webpage becoming a top hit for webpage options when residents, visitors, and other stakeholders search the web for terms such as: visit Los Gatos, Los Gatos events, things to do in Los Gatos, Los Gatos restaurants, places to stay in Los Gatos, etc. In addition, the Chamber will continue to provide in-person Visitor Center services in the heart of downtown.

Through conversations with the Chamber of Commerce, the Chamber has relayed that future Visitor Information Center Services may require an increase in funding. As shoppers, diners, and other visitor behavior shifts, the need for a strong web and social media presence increases and the Chamber relies on outside vendors and other industry professionals for assistance with some of this programming. Due to the availability of the ARPA funds, the Chamber is able to split the duties this year between the two funding sources and will provide reporting to confirm the appropriate use of both funding sources. Thus, staff is presenting a single year agreement so that future years' needs may be assessed at a later date.

PAGE 3 OF 3

SUBJECT: Chamber of Commerce Agreement for Services

DATE: June 7, 2021

CONCLUSION:

Authorize the Town Manager to execute an Agreement for Services with the Los Gatos Chamber of Commerce to manage the Town's Visitors Information Center including a Visit Los Gatos website, and assist with related community vitality initiatives as outlined in the Scope of Services in the amount not to exceed \$55,000.

FISCAL IMPACT:

The funds for this agreement of service do not exceed \$55,000 and have been previously appropriated by the Town Council in the adopted budget for FY 2021/22.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Chamber of Commerce Agreement for Services for FY 2021/22 including Exhibit A – Scope of Services

AGREEMENT FOR SERVICES BY AND BETWEEN THE TOWN OF LOS GATOS AND THE LOS GATOS CHAMBER OF COMMERCE FISCAL YEAR 2021/2022

THIS AGREEMENT is made and entered into on June 15, 2021, by and between TOWN OF LOS GATOS, a California municipal corporation, (“Town”) and LOS GATOS CHAMBER OF COMMERCE, (“Chamber”), whose address is 10 Station Way, Los Gatos, California. This Agreement is made with reference to the following facts.

I. RECITALS

WHEREAS, TOWN appropriated funds in its Fiscal Year 2021/2022 Budget for allocation of funds, and;

WHEREAS, Town desires to engage Chamber to provide services as permitted, and TOWN has appropriated funds for this purpose, to be utilized during the time period between July 1, 2021, and June 30, 2022, and;

WHEREAS, CHAMBER represents and warrants the truth of all statements contained in “Scope of Services” attached as Exhibit A and incorporated herein by reference.

WHEREAS, TOWN and Los Gatos Chamber of Commerce has executed an Agreement since Fiscal Year 2001, and;

WHEREAS, TOWN desires to engage the Chamber to provide Town Visitor’s Information Center, including a redesigned and robust Visit Los Gatos Website with the Town of Los Gatos.

- 1.2 The Chamber represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Chamber 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 Chamber.

II. AGREEMENTS

- 2.1 Scope of Services. Chamber shall provide services as described in that certain Exhibit A Chamber of Commerce Scope of Services, 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 July 1, 2021, to June 30, 2022. Chamber shall perform the services described in this agreement as follows: provide the Visitor’s Information Center including the Visit Los Gatos website as outlined in Exhibit A – Scope of Services.

ATTACHMENT 1

- 2.3 Compliance with Laws. The Chamber shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Chamber represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Chamber to practice its profession. Chamber 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. Chamber 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 Chamber 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 Chamber in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Chamber shall not make any of these documents or information available to any individual or organization not employed by the Chamber or the Town without the written consent of the Town before such release.
- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$55,000** for Town Visitor's Information Center including the Visit Los Gatos Website, inclusive of all costs.
- 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 as described in Exhibit A.

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

Invoices:

Email to: AP@losgatosca.gov

Or, Mail to: Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 2.8 Availability of Records. Chamber 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 Annual Report. Chamber shall provide, at a minimum, reports in December 2021 and May 2022 including services rendered by the Visitor’s Information Center and Visit Los Gatos Website accounting of expenditures of the funds covered by this agreement; and, analytics and data reflective of activity and online “traffic” on the website, social media and boosts/advertisements with direct links to the website as described in Exhibit A - Scope of Services.
- 2.10 Use of Town of Los Gatos Branding and Logo. The Town of Los Gatos will provide branding for the Visit Los Gatos Website including a logo and color palette. This shall be used for the creation of the website. The provided branding is property of the Town of Los Gatos and shall only be used by the Chamber for business of and marketing collateral that is executed as a part of the Visitor’s Information Center or Visit Los Gatos website. Use of the logo in social media, print, email, or other form that is not directly related to the Visitor’s Information Center or Visit Los Gatos website requires explicit written permission by the Town of Los Gatos.
- 2.11 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Chamber. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.12 Independent Contractor. It is understood that the Chamber, 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 Chamber 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. Chamber agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Chamber 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 Chamber or is based on allegations of Chamber’s negligent performance or wrongdoing.
- 2.13 Conflict of Interest. Chamber understands that the professional responsibilities of the Town Information Center are solely to the Town. The Chamber has and shall not obtain any holding or interest within the Town of Los Gatos. Chamber 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, Chamber 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. Chamber 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, Chamber discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Chamber shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

- 2.14 Use of Funds. The Chamber (Visitor Information Center) shall not use any monies received under this agreement for the endorsement, opposition or participation in any political lobbying activity involved in the support or opposition to any candidate for public office, proposed ballot measure or item pending Town Council Action.
- 2.15 Equal Employment Opportunity. Chamber warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Chamber nor its subcontractors 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. Chamber 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. Chamber 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. Chamber 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. Chamber 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 Chamber; products and completed operations of Chamber, premises owned or used by the Chamber. This requirement does not apply to the professional liability insurance required for professional errors and omissions.

- ii. The Chamber'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 Chamber'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 Chamber'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, Chamber 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, Chamber shall ensure that all subcontractors employed by Chamber provide the required Workers' Compensation insurance for their respective employees.

3.4 Indemnification. The Chamber 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 Chamber, or any of the Chamber'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 Chamber 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 Chamber shall deliver to the Town all plans, files, documents, reports, performed to date by the Chamber. In the event of such termination, Town shall pay Chamber 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 Chamber.

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

LOS GATOS CHAMBER OF COMMERCE
Attn: Catherine Somers, Executive Director
10 Station Way
Los Gatos, CA 95030

or personally delivered to Chamber to such address or such other address as Chamber 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 Chamber. 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 Chamber have executed this Agreement.

Recommended by:

Monica Renn, Economic Vitality Manager

Page 6 of 9

Town of Los Gatos by:

Laurel Prevetti, Town Manager

Los Gatos Chamber of Commerce by:

Executive Director

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, Town Clerk

**EXHIBIT A - SCOPE OF SERVICES
AGREEMENT FOR SERVICES WITH THE CHAMBER OF COMMERCE
FY 2021/2022**

**LOS GATOS VISITOR INFORMATION CENTER & VISIT LOS GATOS WEBSITE
\$55,000**

All services rendered as a part of this scope of services under the function of the Los Gatos Visitor Information Center shall be to the benefit and promotion of Town-wide stakeholders including businesses, residents, and visitors.

The following services and information will be coordinated and provided by the Chamber of Commerce as a part of the operations of the Los Gatos Visitor Information Center and Visit Los Gatos Website:

1. Create and maintain branded website that is easily accessible and simple to navigate.
 - a. Simple url that is easily identified, published, and remembered;
 - b. Appears in keyword searches as a top option for phrases such as: Visit Los Gatos; Things to do in Los Gatos; Los Gatos Restaurants; Los Gatos Hotels; Los Gatos Events, etc.;
 - c. Inclusive of all businesses in featured categories, regardless of Chamber of Commerce membership status;
 - d. Includes businesses throughout the Town including Downtown, The Boulevard, and featured shopping centers;
 - e. Branding and messaging reflective of the Town's goals and objectives, final brand to be approved by the Town;
 - i. Town will provide logo and color palette
 - f. Language on the website must reflect the partnership of the Town of Los Gatos and Chamber of Commerce as partners/sponsors of the website;
 - g. Provide limited printed marketing materials such as small cards, window clings, counter signs, or other appropriate collateral that may be displayed or provided to visitors at the hotels, restaurants, shops, Chamber of Commerce Office, Town Hall, Library, etc. that identifies and promotes the Visit Los Gatos website;
 - h. Website maintained weekly by Chamber of Commerce to ensure information is up to date.
 - i. Town staff will provide new business information as available;
 - i. Website launched within 4 months of contract execution; and,
 - j. Town of Los Gatos will maintain a direct link to the Visit Los Gatos website as its primary source for visitor information.

2. Social Media advertisement of Visit Los Gatos Website:

- a. Purchase/provide social media ads and/or boosts that promote the Visit Los Gatos website and track “clicks” and visits directly linked to the webpage.
 - b. Minimum three posts per week on each social media outlet promoting the Visit Los Gatos web address, Town will also utilize social media accounts to promote Visit Los Gatos website;
 - c. Provide the “link in the bio” to the Visit Los Gatos website on all social media accounts where available; and,
 - d. Identify two-three official designated hash tags, one should be #experiencelosgatos, that are included on all social media posts.
3. Continue to support the Town’s business outreach efforts for events, meetings, and programs through social media, email, etc.
 - a. Promote Town events in Chamber of Commerce marketing materials including email notifications and newsletters.
4. Offer in-person Los Gatos Visitor Information Center services from the Chamber of Commerce offices.
 - a. Respond to walk-in and call-in inquiries, and encourage engagement with the Visit Los Gatos website; and
 - b. Allow Town meetings with the business community to be conducted at the Chamber of Commerce offices during mutually agreed upon times and days.
5. Bi-Annual written reports and monthly invoicing:
 - a. Upon request, and at a minimum twice annually, in December and late May, Chamber shall provide analytics in a written report for the identified objectives.
 - b. Invoice the Town for payment of services monthly, as described in the attached agreement.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 8

DATE: June 8, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt Resolutions Establishing the FY 2020/21 and FY 2021/22 Gann Appropriations Limits for the Town of Los Gatos

RECOMMENDATION:

Adopt Resolutions establishing the FY 2020/21 and FY 2021/22 Gann Appropriations Limits for the Town of Los Gatos

BACKGROUND:

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

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

The Town recently signed an annexation agreement with the County of Santa Clara reflecting the annexation of multiple county pockets in 2019. The Town Council adopted the FY 2020/21 Gann Limit resolution in October 2020 based on the mutually agreed amount for Gann Limit calculation purposes (see Attachment 1).

PREPARED BY: Stephen Conway
Finance Director

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

SUBJECT: Adopt Resolutions Establishing the FY 2020/21 and FY 2021/22 Gann Appropriations Limits for the Town of Los Gatos

DATE: June 8, 2021

BACKGROUND (continued):

In the resolution adopted in October 2020, staff adjusted the base with the agreed upon amount first and applied the appropriation factor arriving at a \$45,839,363 Gann Appropriation Limit. Staff conferred with the Town’s independent auditor and is modifying the original FY 2020/21 amount by applying the calculation factor first and then adjusting the new base by the agreed upon amount to derive a revised Gann Appropriation Limit of \$45,831,327. Attachment 2 contains the resolution updating the Gann Appropriation Limit for FY 2020/21 as it serves as the base for the calculation of the ensuing FY 2021/22 Gann Appropriation Limit.

DISCUSSION:

Attachment 3 for Council consideration is a resolution establishing an appropriations limit for FY 2021/22. The appropriations limit is based on population and per capita income data provided by the State of California Finance Department. In alignment with State guidelines, the appropriation limit for FY 2021/22 was calculated using inflation and population factors comprised of the change in County or Town population (whichever is higher) and the change in California per capita personal income.

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

As mentioned earlier, the Town recently signed an annexation agreement with the County of Santa Clara in 2020 and subsequently, both parties reached a mutually agreed amount for Gann Limit calculation purposes that is reflected in the FY 2020/21 Gann Limit calculation.

The calculation of the FY 2021/22 Gann Appropriations Limit is as follows:

FY 2020/21 Calculation								
County Population Factor		Per Capita Income Factor		Appropriation Factor		2020/21 Appropriation Limit		2021/22 Appropriation Limit
0.9944	X	1.0573	=	1.051379	X	\$ 45,831,327	=	\$ 48,186,101

PAGE 3 OF 3

SUBJECT: Adopt Resolutions Establishing the FY 2020/21 and FY 2021/22 Gann
Appropriations Limits for the Town of Los Gatos

DATE: June 8, 2021

DISCUSSION (continued):

The appropriations limit is the total amount of tax money that can be appropriated by the Town in FY 2021/22. The proposed FY 2021/22 budget anticipates \$30,797,977 in taxes, which is \$17,388,124 less than the appropriation limit of \$48,186,101.

FISCAL IMPACT:

There is not direct identifiable fiscal impact from this action.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. October 2020 Resolution establishing the Gann Appropriation Limit for FY 2020/21
2. Resolution updating the Gann Appropriation Limit for FY 2020/21
3. Resolution establishing the Gann Appropriation Limit for FY 2021/22

RESOLUTION 2020-043

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

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

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

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

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

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

WHEREAS, the Town is calculating its Annual Appropriations Limit for FY 2020/21 based on the mutually agreed amount as of this date with the County of Santa Clara; and

THEREFORE, BE IT RESOLVED: that the Annual Appropriations Limit for the Town of Los Gatos for FY 2020/21 is \$45,839,363 as reflected in Exhibit A.

ATTACHMENT 1

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 3rd day of November 2020 by the following vote:

COUNCIL MEMBERS:

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

NAYS: None

ABSENT: None

ABSTAIN: None

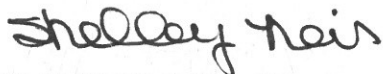
SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 11/4/20

ATTEST:



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

DATE: 11/4/2020

APPROPRIATION LIMIT FACTORS

For YE June 30	Beginning Appropriation Limit	County Population Factor	Town Population Factor	Per Capita Income Factor	Ending Appropriation Limit	% Limit Increase
2010	28,426,367	1.0156	1.0108	1.0062	29,048,811	2.19%
2011	29,048,811	1.0126	1.0101	0.9746	28,667,689	-1.31%
2012	28,667,689	1.0089	1.0096	1.0251	29,669,366	3.49%
2013	29,669,366	1.0124	1.0081	1.0377	31,169,671	5.06%
2014	31,169,671	1.0157	1.0147	1.0512	33,279,977	6.77%
2015	33,279,977	1.0150	1.0102	0.9977	33,701,485	1.27%
2016	33,701,485	1.0113	1.0020	1.0382	35,384,256	4.99%
2017	35,384,256	1.0126	1.0070	1.0537	37,754,174	6.70%
2018	37,754,174	1.0081	1.0040	1.0369	39,464,396	4.53%
2019	39,464,396	1.0099	1.0050	1.0367	41,317,775	4.70%
2020	41,317,775	1.0033	0.9998	1.0385	43,180,611 *	4.51%
2021	43,180,611 *	1.0037	1.0234	1.0373	45,839,363	6.16%

FY 2020/21 Calculation

Town Population Factor	Per Capita Income Factor	Appropriation Factor	2019/20 Appropriation Limit	2020/21 Appropriation Limit
1.0234	X	1.0373	=	1.061573
			X	\$ 43,180,611
			=	\$ 45,839,363

Percentage of Appropriation

2020/21 Tax Revenues	2020/21 Appropriation Limit	Percentage of Limit
30,447,571	/ \$ 45,839,363	= 66%

*FY 2019/20 ending and FY 2020/21 beginning Appropriation Limit includes an adjustment of \$130,503 to address the recently annexed parcels from Santa Clara County. The Town of Los Gatos increasing its base by \$130,503 while the County of Santa Clara decreasing its base with the same amount.

EXHIBIT A

RESOLUTION 2021-

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

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

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

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

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

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

WHEREAS, the Town is calculating its Annual Appropriations Limit for FY 2020/21 based on the mutually agreed amount as of this date with the County of Santa Clara; and

THEREFORE, BE IT RESOLVED: that the Annual Appropriations Limit for the Town of Los Gatos for FY 2020/21 is \$45,831,327 as reflected in Exhibit A.

ATTACHMENT 2

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 15th day of June 2021 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____

APPROPRIATION LIMIT FACTORS

For YE June 30	Beginning Appropriation Limit	County Population Factor	Town Population Factor	Per Capita Income Factor	Ending Appropriation Limit	% Limit Increase
2010	28,426,367	1.0156	1.0108	1.0062	29,048,811	2.19%
2011	29,048,811	1.0126	1.0101	0.9746	28,667,689	-1.31%
2012	28,667,689	1.0089	1.0096	1.0251	29,669,366	3.49%
2013	29,669,366	1.0124	1.0081	1.0377	31,169,671	5.06%
2014	31,169,671	1.0157	1.0147	1.0512	33,279,977	6.77%
2015	33,279,977	1.0150	1.0102	0.9977	33,701,485	1.27%
2016	33,701,485	1.0113	1.0020	1.0382	35,384,256	4.99%
2017	35,384,256	1.0126	1.0070	1.0537	37,754,174	6.70%
2018	37,754,174	1.0081	1.0040	1.0369	39,464,396	4.53%
2019	39,464,396	1.0099	1.0050	1.0367	41,317,775	4.70%
2020	41,317,775	1.0033	0.9998	1.0385	43,050,108	4.19%
2021	43,050,108	1.0037	1.0234	1.0373	45,831,327 *	6.46%

FY 2020/21 Calculation

Town Population Factor		Per Capita Income Factor		Appropriation Factor		2019/20 Appropriation Limit		2020/21 Appropriation Limit
1.0234	X	1.0373	=	1.061573	X	\$ 43,050,108	=	\$ 45,831,327

Percentage of Appropriation

2020/21 Tax Revenues		2020/21 Appropriation Limit		Percentage of Limit
30,447,571	/ \$	45,831,327	=	66%

*FY 2020/21 ending Appropriation Limit includes an adjustment of \$130,503 to address the recently annexed parcels from Santa Clara County. The Town of Los Gatos increasing its base by \$130,503 while the County of Santa Clara decreasing its base with the same amount.

EXHIBIT A

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
ESTABLISHING THE FY 2021/22 APPROPRIATIONS LIMIT
FOR THE TOWN OF LOS GATOS**

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

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

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

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

THEREFORE, BE IT RESOLVED: that the Annual Appropriations Limit for the Town of Los Gatos for FY 2021/22 is \$48,186,101 as reflected in Exhibit B.

ATTACHMENT 2

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 15th day of June 2021 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____

APPROPRIATION LIMIT FACTORS

For YE June 30	Beginning Appropriation Limit	County Population Factor	Town Population Factor	Per Capita Income Factor	Ending Appropriation Limit	% Limit Increase
2010	28,426,367	1.0156	1.0108	1.0062	29,048,811	2.19%
2011	29,048,811	1.0126	1.0101	0.9746	28,667,689	-1.31%
2012	28,667,689	1.0089	1.0096	1.0251	29,669,366	3.49%
2013	29,669,366	1.0124	1.0081	1.0377	31,169,671	5.06%
2014	31,169,671	1.0157	1.0147	1.0512	33,279,977	6.77%
2015	33,279,977	1.0150	1.0102	0.9977	33,701,485	1.27%
2016	33,701,485	1.0113	1.0020	1.0382	35,384,256	4.99%
2017	35,384,256	1.0126	1.0070	1.0537	37,754,174	6.70%
2018	37,754,174	1.0081	1.0040	1.0369	39,464,396	4.53%
2019	39,464,396	1.0099	1.0050	1.0367	41,317,775	4.70%
2020	41,317,775	1.0033	0.9998	1.0385	43,050,108	4.19%
2021	43,050,108	1.0037	1.0234	1.0373	45,831,327 *	6.46%
2022	45,831,327	0.9944	0.9919	1.0573	48,186,101	5.14%

FY 2020/21 Calculation

County Population Factor	Per Capita Income Factor	Appropriation Factor	2020/21 Appropriation Limit	2021/22 Appropriation Limit
0.9944	X	1.0573	=	1.051379
			X	\$ 45,831,327
			=	\$ 48,186,101

Percentage of Appropriation

2021/22 Tax Revenues	2021/22 Appropriation Limit	Percentage of Limit
30,797,977	/ \$ 48,186,101	= 64%

*FY 2020/21 ending and FY 2021/22 beginning Appropriation Limit includes an adjustment of \$130,503 to address the recently annexed parcels from Santa Clara County. The Town of Los Gatos increasing its base by \$130,503 while the County of Santa Clara decreasing its base with the same amount.

EXHIBIT B



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 9

DATE: June 7, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Amend an Agreement for Employee Safety Compliance and Training Consultant Services with BSI EHS Services and Solutions (West) Inc. (Attachment 1) to:
a. Extend the Term of the Agreement through June 2023, and
b. Increase the Contract Amount by \$89,361 for a Total Amount not to Exceed \$286,711.

RECOMMENDATION:

Authorize the Town Manager to amend an agreement for employee safety compliance and training consultant services with BSI EHS Services and Solutions (West) Inc. (Attachment 1) to:
a. Extend the term of the agreement through June 2023, and
b. Increase the contract amount by \$89,361 for a total amount not to exceed \$286,711.

BACKGROUND:

The Town contracts with BSI to provide safety consultant services to ensure compliance with California's Occupational Health and Safety Administration (Cal-OSHA) regulations, provide on-site safety training classes, and partner with the Town's existing Health and Safety Committee to promote a safe work environment. The term of the existing agreement between the Town and BSI is January 2018 through June 2021.

DISCUSSION:

The Town entered into an agreement with BSI following a successful request for proposal process resulting in an initial three-year term with an option to extend for two terms of one-year each. Based upon satisfaction of the services received from BSI during the initial three-year term, staff is requesting to exercise the option to extend the remaining two years of the agreement.

PREPARED BY: Lisa Velasco
Human Resources Director

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

PAGE 2 OF 2

SUBJECT: Authorize Town Manager to Amend an Agreement for Employee Safety
Compliance

DATE: June 7, 2021

CONCLUSION:

Staff recommends that the Town Council authorize the Town Manager to execute a fifth amendment to the agreement with BSI to extend the term through June 30, 2023 for a total amount not to exceed \$286,711.

FISCAL IMPACT:

The cost of \$40,000 for FY 2021/22 is already included in the Workers' Compensation Program of the Adopted Budget. The cost of \$49,361 will be proposed in the Workers' Compensation Program during budget development for future FY 2022/23.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Fifth Amendment to Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.
2. Fourth Amendment to Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.
3. Third Amendment to Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.
4. Second Amendment to Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.
5. First Amendment to Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.
6. Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.

FIFTH AMENDMENT TO AGREEMENT

This AMENDMENT TO AGREEMENT is dated for identification this 15th day of June, 2021 and amends that certain agreement for environmental health & safety services dated January 1st, 2018, made by and between the Town of Los Gatos, ("Town,") and the BSI EHS Services and Solutions (West) Inc., ("Consultant.")

RECITALS

- A. Town and Consultant entered into a Consultant Services Agreement on January 1st, 2018, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Consultant entered into a First Amendment to Agreement on April 1, 2018, a copy of which is attached hereto and incorporated by reference as Attachment 2.
- C. Town and Consultant entered into a Second Amendment to Agreement on March 1, 2020, a copy of which is attached hereto and incorporated by reference as Attachment 3.
- D. Town and Consultant entered into a Third Amendment to Agreement on August 4, 2020, a copy of which is attached hereto and incorporated by reference as Attachment 4.
- E. Town and Consultant entered into a Fourth Amendment to Agreement on December 15, 2020, a copy of which is attached hereto and incorporated by reference as Attachment 5.

AMENDMENT

1. Section 2.2 Term and Time of Performance. This contract will be extended from July 1, 2021 through June 30, 2023.
2. Section 2.6 Compensation. Compensation for Consultant's professional services shall not exceed an additional \$89,361 during the contract extension period. Total contract not to exceed amount is \$286,711.

3. All other terms and conditions of the Agreement remain in full force and effect.

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

Town of Los Gatos

Approved as to Consent:

By: _____
Laurel Prevetti, Town Manager

By: _____
Janice McKim,
CFO

Department Approval:

Lisa Velasco
Human Resources Director

Approved as to Form:

Attest:

Robert Schultz, Town Attorney

Shelley Neis, CMC, Clerk Administrator

BSI EHS Services – Fifth Amendment to Agreement – June 2021

FOURTH AMENDMENT TO AGREEMENT

This AMENDMENT TO AGREEMENT is dated for identification this 15th day of December, 2020 and amends that certain agreement for environmental health & safety services dated January 1st, 2018, made by and between the Town of Los Gatos, ("Town,") and the BSI EHS Services and Solutions (West) Inc., ("Consultant.")

RECITALS

- A. Town and Consultant entered into a Consultant Services Agreement on January 1st, 2018, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Consultant entered into a First Amendment to Agreement on April 1, 2018, a copy of which is attached hereto and incorporated by reference as Attachment 2.
- C. Town and Consultant entered into a Second Amendment to Agreement on March 1, 2020, a copy of which is attached hereto and incorporated by reference as Attachment 3.
- D. Town and Consultant entered into a Third Amendment to Agreement on August 4, 2020, a copy of which is attached hereto and incorporated by referent as Attachment 4.

AMENDMENT

- 1. Section 2.2 Term and Time of Performance. This contract will be extended from January 1, 2021 through June 30, 2021.
- 2. Section 2.6 Compensation. Compensation for Consultant's professional services shall not exceed an additional \$22,000 during the contract extension period. Total contract not to exceed amount is \$197,350.

3. All other terms and conditions of the Agreement remain in full force and effect.

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

Town of Los Gatos

DocuSigned by:
By: Laurel Piretti 1/7/2021
Laurel Piretti, Town Manager

Approved as to Consent:

DocuSigned by:
By: Janice McKim 12/23/2020
Janice McKim,
CFO

Department Approval:

DocuSigned by:
Lisa Velasco 12/22/2020
Lisa Velasco
Human Resources Director

Approved as to Form:

DocuSigned by:
Robert W. Schultz 1/7/2021
Robert Schultz, Town Attorney

Attest:

DocuSigned by:
Shelley Neis 1/7/2021
Shelley Neis, CMC, Clerk Administrator

BSI EHS Services – Fourth Amendment to Agreement – December 2020



THIRD AMENDMENT TO AGREEMENT

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

RECITALS

- A. Town and Consultant entered into a Consultant Services Agreement on January 1st, 2018, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
B. Town and Consultant entered into a First Amendment to Agreement on April 1, 2018, a copy of which is attached hereto and incorporated by reference as Attachment 2.
C. Town and Consultant entered into a Second Amendment to Agreement on March 1, 2020, a copy of which is attached hereto and incorporated by reference as Attachment 3.

AMENDMENT

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

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

Town of Los Gatos

DocuSigned by:
By: Laurel Prevetti 10/6/2020
Laurel Prevetti, Town Manager

Approved as to Consent:

DocuSigned by:
By: Janice McKim 9/30/2020
Genevieve Vaccaro, Approval signature changed to:
Senior Consultant Janice McKim, CFO

Department Approval:

DocuSigned by:
Lisa Velasco 10/1/2020
Lisa Velasco
Human Resources Director



Approved as to Form:

DocuSigned by:
Robert W. Schultz 10/6/2020
Robert Schultz, Town Attorney

Attest:

DocuSigned by:
Shelley Neis 10/6/2020
Shelley Neis, CMC, Clerk Administrator

SECOND AMENDMENT TO AGREEMENT

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

RECITALS

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

AMENDMENT

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

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

Town of Los Gatos

Approved as to Consent:

By: _____
Laurel Prevetti, Town Manager

By: _____
Geneve Vaccaro
Senior Consultant

Department Approval:

Lisa Velasco
Human Resources Director

Approved as to Form:

Attest:

Robert Schultz, Town Attorney

Shelley Neis, CMC, Clerk Administrator

FIRST AMENDMENT TO AGREEMENT

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

RECITALS

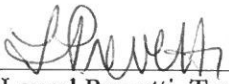
- A. Town and Consultant entered into a Consultant Services Agreement on January 1st, 2018, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.

AMENDMENT

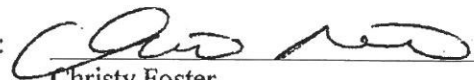
- 1. Section 2.6 Compensation. Compensation for Consultant's professional services shall not exceed \$115,600 over the term of the agreement (\$33,200 annually for Safety Training Services, Safety Committee Support, and Annual Program Review, plus \$16,000 over the course of the agreement for Job Hazard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

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

Town of Los Gatos

By: 
Laurel Prevetti, Town Manager

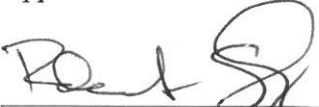
Approved as to Consent:

By: 
Christy Foster
Director of Healthcare

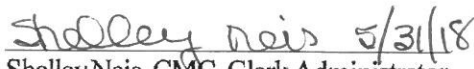
Department Approval:


Lisa Velasco
Human Resources Director

Approved as to Form:


Robert Schultz, Town Attorney

Attest:

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



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/01/2018

ITEM NO: 04

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

RECOMMENDATION:

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

BACKGROUND:

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

PREPARED BY: LISA VELASCO
Human Resources Director

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

PAGE 2 OF 2

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

APRIL 24, 2018

DISCUSSION:

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

CONCLUSION:

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

COORDINATION:

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

FISCAL IMPACT:

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

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

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

AGREEMENT FOR CONSULTANT SERVICES

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

I. RECITALS

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

II. AGREEMENTS

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

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

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

Invoices:

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

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

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

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

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

General Liability:

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

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

IV. GENERAL TERMS

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

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

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

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

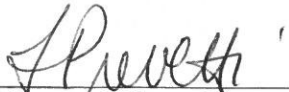
or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

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

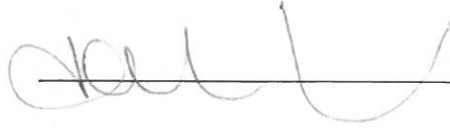
IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:

Consultant, by:

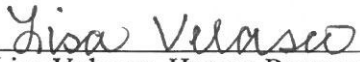


Laurel Prevetti, Town Manager



Recommended by:

Janice McKim,
Chief Financial Officer



Lisa Velasco, Human Resources Director

Title

Approved as to Form:



Robert Schultz, Town Attorney

EXHIBIT A – Scope/Cost Estimate Basis

Safety Training Services:

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

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

Safety Committee Support:

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

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

Job Hazard Analysis:

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

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

Annual Program Review:

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

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

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

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

12/2017

Page 8 of 8

EXHIBIT A



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/19/2017

ITEM NO: 6

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

RECOMMENDATION:

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

BACKGROUND:

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

PREPARED BY: LISA VELASCO
Human Resources Director

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

PAGE 2 OF 2

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

DECEMBER 11, 2017

DISCUSSION:

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

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

CONCLUSION:

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

COORDINATION:

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

FISCAL IMPACT:

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

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

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



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 10

DATE: June 8, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Five-year Maintenance Agreement with Accela, Inc. for Cloud Migration, Maintenance, and Support of the Accela Automation Permitting Software System, and Authorize a FY 2021/22 Expenditure Budget Adjustment in the Amount of \$174,093 to Cover the Difference of the Two-year Upfront Payment of \$228,649.

RECOMMENDATION:

Authorize the Town Manager to Execute a Five-year Maintenance Agreement with Accela, Inc. for Cloud Migration, Maintenance, and Support of the Accela Automation Permitting Software System, and Authorize a FY 2021/22 Expenditure Budget Adjustment in the Amount of \$174,093 to Cover the Difference of the Two-year Upfront Payment of \$228,649.

BACKGROUND:

In 2006, the Town's Community Development Department upgraded its permitting system from PERMITS-Plus to Accela Automation system. The Accela Automation system tracks all building, planning, and engineering permits as well as code enforcement citations. The public has access to development data online and the Accela system allows for online permitting. The Department has had a maintenance agreement with Accela, Inc. since 2006.

DISCUSSION:

The Town's Community Development Department has requested an upgrade from the current on-premise version of Accela to a cloud hosted version. Migration to a cloud hosted environment will provide an enhanced citizen access portal that will improve the overall user

PREPARED BY: Joel Paulson
Community Development Director

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

DISCUSSION (continued):

experience and function during application and monitoring of Town permits. Other benefits include the ability for field staff to utilize a mobile app version that will allow for offline access in areas where internet coverage may be weak or unavailable. The upgrade will also help eliminate the need to host and maintain the infrastructure currently required for our on-premise environment.

The cost for the migration, maintenance, and support for the cloud based Accela for five years is \$597,995. As a cost-effective measure, the multi-year Maintenance Agreement allows for a two-year upfront payment of \$228,649. and a three percent (3%) increase each year. The cost savings over the five-year term is \$44,411 (Attachment 4, Option B). Additionally, Option B, includes a slight discount for new license purchases.

The Community Development Department also requests a budget adjustment for the 2021/2022 fiscal year for Accela in the amount of \$174,093 to cover the two-year upfront payment. Funding for the contract will be provided by the collected four percent (4%) computer surcharge fee.

CONCLUSION:

Staff recommends Council authorize the Town Manager to execute a five-year agreement with Accela, Inc. and authorize a budget adjustment in the amount of \$174,093 to cover the two-year upfront payment.

COORDINATION:

This report was coordinated with the Town Manager's Office, Town Attorney's office, Information Technology Department, and Finance Department.

FISCAL IMPACT:

The cost for the Five-year agreement is \$597,995. These expenditures are budgeted in the Information Technology (IT) Internal Service fund) as part of the IT Support Program. There is sufficient funds available in the IT fund for the additional expenses.

ENVIRONMENTAL ASSESSMENT:

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

PAGE 3 OF 3

SUBJECT: Accela Inc.

DATE: June 8, 2021

Attachments:

1. Order Form
2. Subscription Services Agreement
3. Opencities-Subscription-Services-Agreement
4. Statement of Work
5. Cost Comparison Analysis



Proposed by: Brad Jacobs
 Contact Phone:
 Contact Email: bjacobs@accela.com
 Quote ID: Q-23396
 Valid Through: 6/30/2021
 Currency: USD

2633 Camino Ramon, Suite 500
 San Ramon, CA, 94583

Order Form

Address Information

Bill To:

Town of Los Gatos
 110 E. Main Street
 Los Gatos, California 95030
 United States

Ship To:

Town of Los Gatos
 110 E. Main Street
 Los Gatos, California 95030
 United States

Billing Name: Chris Gjerde
 Billing Phone: (408) 354-6814
 Billing Email: cgjerde@losgatosca.gov

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Multi User	Year 1	7/1/2021	6/30/2022	12	\$2,641.00	35	\$92,435.00
> Accela Building - SaaS	Year 1	7/1/2021	6/30/2022	12	\$0.00	35	\$0.00
> Accela Planning - SaaS	Year 1	7/1/2021	6/30/2022	12	\$0.00	35	\$0.00
OpenCities - OpenForms	Year 1	7/1/2021	6/30/2022	12	\$92.00	100	\$9,200.00
OpenCities - Department	Year 1	7/1/2021	6/30/2022	12	\$8,500.00	1	\$8,500.00
Accela Data Connector	Year 1	7/1/2021	6/30/2022	12	\$2,500.00	1	\$2,500.00
Training Unit - Training		7/1/2021		60	\$0.00	40	\$0.00
TOTAL:							\$112,635.00

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Multi User	Year 2	7/1/2022	6/30/2023	12	\$2,720.23	35	\$95,208.05
> Accela Building - SaaS	Year 2	7/1/2022	6/30/2023	12	\$0.00	35	\$0.00
> Accela Planning - SaaS	Year 2	7/1/2022	6/30/2023	12	\$0.00	35	\$0.00
OpenCities - OpenForms	Year 2	7/1/2022	6/30/2023	12	\$94.76	100	\$9,476.00
OpenCities - Department	Year 2	7/1/2022	6/30/2023	12	\$8,755.00	1	\$8,755.00
Accela Data Connector	Year 2	7/1/2022	6/30/2023	12	\$2,575.00	1	\$2,575.00
TOTAL:							\$116,014.05

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Multi User	Year 3	7/1/2023	6/30/2024	12	\$2,801.84	35	\$98,064.29

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
> Accela Building - SaaS	Year 3	7/1/2023	6/30/2024	12	\$0.00	35	\$0.00
> Accela Planning - SaaS	Year 3	7/1/2023	6/30/2024	12	\$0.00	35	\$0.00
OpenCities - OpenForms	Year 3	7/1/2023	6/30/2024	12	\$97.60	100	\$9,760.28
OpenCities - Department	Year 3	7/1/2023	6/30/2024	12	\$9,017.65	1	\$9,017.65
Accela Data Connector	Year 3	7/1/2023	6/30/2024	12	\$2,652.25	1	\$2,652.25
TOTAL:							\$119,494.47

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Multi User	Year 4	7/1/2024	6/30/2025	12	\$2,885.89	35	\$101,006.22
> Accela Building - SaaS	Year 4	7/1/2024	6/30/2025	12	\$0.00	35	\$0.00
> Accela Planning - SaaS	Year 4	7/1/2024	6/30/2025	12	\$0.00	35	\$0.00
OpenCities - OpenForms	Year 4	7/1/2024	6/30/2025	12	\$100.53	100	\$10,053.09
OpenCities - Department	Year 4	7/1/2024	6/30/2025	12	\$9,288.18	1	\$9,288.18
Accela Data Connector	Year 4	7/1/2024	6/30/2025	12	\$2,731.82	1	\$2,731.82
TOTAL:							\$123,079.31

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Multi User	Year 5	7/1/2025	6/30/2026	12	\$2,972.47	35	\$104,036.41
> Accela Building - SaaS	Year 5	7/1/2025	6/30/2026	12	\$0.00	35	\$0.00
> Accela Planning - SaaS	Year 5	7/1/2025	6/30/2026	12	\$0.00	35	\$0.00
OpenCities - OpenForms	Year 5	7/1/2025	6/30/2026	12	\$103.55	100	\$10,354.68
OpenCities - Department	Year 5	7/1/2025	6/30/2026	12	\$9,566.82	1	\$9,566.82
Accela Data Connector	Year 5	7/1/2025	6/30/2026	12	\$2,813.77	1	\$2,813.77
TOTAL:							\$126,771.68

Pricing Summary

Period	Net Total
Year 1	\$ 112,635.00
Year 2	\$ 116,014.05
Year 3	\$ 119,494.47
Year 4	\$ 123,079.31
Year 5	\$ 126,771.68
Total*	\$ 597,994.51

*Years 1 and 2 Subscription costs are due upon contract signature. Years 3, 4 and 5 will be invoiced annually at the time of contract anniversary.

Additional Terms:

1. No additional or conflicting terms or conditions stated in Customer's order documentation, including purchase orders, will be incorporated into or form any part of this Order Form or the governing agreement, and all such terms or conditions will be null.
2. Use of OpenCities products is subject to the applicable terms and conditions provided at <https://www.opencities.com/files/content/common/general-pages/terms-conditions-north-america/opencities-terms-of-service-north-america.pdf>. The necessary access URL and credentials will be provided to allow the Customer and its Authorized Users access to the subscription service.
3. This Order Form will be governed by the applicable terms and conditions. If those terms and conditions are non-existent, have expired or have otherwise been terminated, the following terms at <https://www.accela.com/terms/> will govern as applicable, based on the Customer's purchase.
4. All Software Licenses, Maintenance, and Subscription purchases are non-cancelable and non-refundable.
5. If Customer has a prior agreement with Accela, and this purchase is co-termining with that prior agreement, if the start date on this Order Form is before the actual delivery date of the purchase, Accela may pro-rate this purchase so that it can co-term with the prior agreement.
6. If this Order Form is executed and/or returned to Accela by Customer after the Order Start Date above, Accela may adjust the Order Start Date and Order End Date without increasing the total price based on the date Accela activates the products and provided that the total term length does not change.
7. Accela will provide Training to Town of Los Gatos employees at a mutually agreed upon facility and date. Customer shall be responsible for all other costs and expenses incurred in connection with the Training including, but not limited to, travel, meals, incidentals, and lodging on behalf of its personnel. All Training shall be conducted in English and, to the extent Customer's personnel do have adequate English language reading and comprehension skills, Customer shall be responsible for providing appropriate interpretation and translation services necessary to ensure its personnel can participate in a meaningful and effective way in the Training provided by Accela. Customer employees may be required to take a test(s) and document their attendance during the Training. If a test(s) is given, a certificate of completion will be awarded to those individuals that complete and pass the required test(s). Ownership of any and all Training materials, including, but not limited to, all copies and derivative works, shall remain with Accela.

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

Town of Los Gatos by:

Consultant By:

Laurel Prevetti Town Manager

Aaton Haggarty, Chief Legal Officer
Accela, Inc.

Recommended by:

Joel Paulson, Community Development
Director

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk



ACCELA SUBSCRIPTION SERVICES AGREEMENT

This Accela Subscription Services Agreement (this “**Agreement**”) is entered into as of the date of the applicable Order, as defined below, that incorporates these terms (the “**Effective Date**”) by and between Accela, Inc. and the entity identified in such Order (“**Customer**”).

1. DEFINITIONS.

1.1 “**Accela System**” means the information technology infrastructure used by or on behalf of Accela in performing the Subscriptions Services, including all computers, software (including but not limited to Accela Software), hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Accela or its third party suppliers.

1.2 “**Aggregate Data**” means data and information related to Customer's use of the Subscription Services, including anonymized analysis of all data processed in the Subscription Services, that is used by Accela in an aggregate and anonymized manner, including compiling statistical and performance information related to the provision and operation of the Services.

1.3 “**Authorized User**” means one named employee, contractor or agent of Customer (each identified by a unique email address) for whom Customer has purchased a subscription to the Subscription Services and who is authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement.

1.4 “**Consulting Services**” means packaged or time and materials consulting, review, training or other services (but excluding Subscription and Support Services) delivered by Accela to Customer pursuant an Order. The current Consulting Services Policy is available at www.accela.com/terms/.

1.5 “**Customer Data**” means the content, materials, and data that Customer, Authorized Users, and External Users enter into the Subscription Services. Customer Data does not include any component of the Subscription Services, material provided by or on behalf of Accela, or Aggregate Data.

1.6 “**Documentation**” means the then-current technical and functional user documentation in any form made generally available by Accela for the Subscription Services.

1.7 “**External Users**” means third party users of the Subscription Services that access the public-facing interfaces of the Subscription Services to submit queries and requests to facilitate communications between such third party and Customer.

1.8 “**Intellectual Property Rights**” means any patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, know-how, and any other intellectual property rights, in all cases whether or not registered or registrable and recognized in any country or jurisdiction in the world.

1.9 “**Order**” means an Accela order form or other mutually acceptable document fully executed between Customer and Accela that incorporates this Agreement.



1.10 “**Service Availability Policy**” means the Service Availability and Security Policy located at www.accela.com/terms/.

1.11 “**Subscription Services**” means the civic administration services, comprised of the Accela System, Software, and Support Services, to which Customer may license access to in accordance with the terms herein.

1.12 “**Software**” means any licensed software (including client software for Authorized Users’ devices) and Documentation that Accela uses or makes available as part of the Subscription Services.

1.13 “**Support Services**” means those technical and help services provided by Accela in accordance with the Software Support Services Policies (SaaS) located at www.accela.com/terms/.

1.14 “**Subscription Period**” means the duration of Customer’s authorized use of the Subscription Services as designated in the Order.

2. USAGE AND ACCESS RIGHTS.

2.1 Right to Access. Subject to the terms and conditions of this Agreement, Accela hereby grants to Customer a limited, non-exclusive, non-transferable right and license during the Subscription Period, to permit: (i) Authorized Users to access and use the internal and administrative interfaces of the Subscription Services in accordance with the Documentation to support Customer’s internal business purposes and (ii) its External Users the ability to access and use the publicly available interfaces to submit requests and information to Customer. Each instance of the Subscription Service shall be provisioned with the amount of storage set forth in the Order and additional storage may be purchased at the then-current rates.

2.2 Support Services & Service Availability. During the Subscription Period, Accela shall provide to Customer the Support Services specified in the Order and shall make all commercially reasonable efforts to attain the service levels specified in the applicable policies. The remedies set forth in the Support Services and Service Availability Policy are the sole and exclusive remedies for any breach of the service levels. Customer grants Accela a royalty-free, worldwide, transferable, sub- licensable, irrevocable, perpetual license to use or incorporate into its software or services any suggestions or other feedback provided by Customer or Authorized Users relating to the operation or features of the Subscription Services.

2.3 Purchasing Consulting Services. Customer may purchase Consulting Services from Accela by executing an Order for such services. All prices are exclusive of travel and expenses, which will be invoiced at actual cost, without markup, and will comply with the Consulting Services Policy located at www.accela.com/terms/ or as otherwise agreed in the applicable Order. If applicable, one Consulting Services day shall be equal to eight (8) hours.

2.4 Restrictions on Use. Customer shall not, and shall not permit others to: (i) use or access the Subscription Services in any manner except as expressly permitted by the Agreement, including but not limited to, in a manner that circumvents contractual usage restrictions set forth in this Agreement; (ii) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share or otherwise make any portion of the Subscription Services available for access by third parties except as otherwise expressly provided herein; (iii) use the Subscription Service in a way that: (a) violates or infringes upon the rights



of a third party; or (b) stores or transmits libelous, tortious, or otherwise unlawful material or malicious code or viruses; (iv) create derivative works, reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the Subscription Services (except to and only to the extent such rights are proscribed by law); (v) interfere with or disrupt the security, integrity, operation, or performance of the Subscription Services; (vi) access, use, or provide access or use to the Subscription Services or Documentation for the purposes of competitive analysis or the development, provision, or use of a competing software, SaaS or product or any other purpose that is to Accela's detriment or commercial disadvantage; (vii) provide access to the Subscription Services to competitors of Accela; (viii) access or use components of the Subscription Service not licensed by Customer; (ix) use or allow the use of the Subscription Services by anyone located in, under the control of, or that is a national or resident of a U.S. embargoed country or territory or by a prohibited end user under Export Control Laws (as defined in Section 12.3, Compliance with Laws); (x) remove, delete, alter or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Subscription Services; or (xi) access or use the Subscription Services in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Subscription Services could lead to personal injury or severe physical or property damage.

2.5 Ownership. Accela retains all Intellectual Property Rights, including all rights, title and license to the Subscription Service, Software, Accela System, Support Services, Consulting Services, and Aggregate Data, any related work product of the foregoing and all derivative works thereof by whomever produced; provided however, that to the extent such materials are delivered to Customer as part of the Subscription Services, Consulting Services or Support Services then Customer shall receive a limited license consistent with the terms of Section 2 to use such materials during the Subscription Period.

2.6 Customer's Responsibilities. Customer will: (i) be responsible for meeting Accela's applicable minimum system requirements for use of the Subscription Services set forth in the Documentation; (ii) be responsible for Authorized Users' compliance with this Agreement and for any other activity (whether or not authorized by Customer) occurring under Customer's account; (iii) be solely responsible for the accuracy, quality, integrity and legality of Customer Data; (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Services and Customer Data under its account, and notify Accela promptly of any such unauthorized access or use, and; (v) use the Subscription Services only in accordance with the applicable Documentation, laws and government regulations.

3. PAYMENT TERMS.

3.1 Purchases Directly from Accela. Except as otherwise set forth in an Order, Subscription fees shall be invoiced annually in advance and such fees shall be due and payable on the first day of the Subscription and on each anniversary thereafter for each renewal, if any. All other invoices shall be due and payable net thirty (30) from the date of the applicable invoice. All amounts payable to Accela under this Agreement shall be paid by Customer in full without any setoff, deduction, debit, or withholding for any reason. Any late payments shall be subject to an additional charge of the lesser of 1.5% per month or the maximum permitted by law. All Subscription Services fees are exclusive of any taxes, levies, duties,



withholding or similar governmental assessments of any nature (collectively, "**Taxes**"). If any such Taxes are owed or payable for such transactions, they shall be paid separately by Customer without set-off to the fees due Accela.

3.2 Purchases from Authorized Resellers. In the event that Customer has purchased any products or services through a reseller, subject to these terms, any separate payment arrangements and terms shall be exclusively through such reseller and Accela is not a party to such transactions. Accela's sole obligations are set forth herein and Customer acknowledges that its rights hereunder may be terminated for non-payment to such third party.

4. **CONFIDENTIALITY.** As used herein, "**Confidential Information**" means all confidential information disclosed by a one party to this Agreement to the other party of this Agreement whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information will not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (ii) was known to the receiving party prior to its disclosure without breach of any obligation owed to the disclosing party; (iii) is received without restriction from a third party without breach of any obligation owed to the disclosing party; or (iv) was independently developed by the receiving party. Each party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information except as permitted herein, and will limit access to Confidential Information to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound to protect such Confidential Information consistent with this Agreement. The receiving party may disclose Confidential Information if it is compelled by law to do so, provided the receiving party gives the disclosing party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's request and cost, to contest, limit, or protect the disclosure.

5. **CUSTOMER DATA.**

5.1 Ownership. Customer reserves all its rights, title, and interest in and to the Customer Data. No rights are granted to Accela hereunder with respect to the Customer Data, except as otherwise set forth explicitly in Section 5.

5.2 Usage. Customer shall be responsible for Customer Data as entered in to, applied or used in the Subscription Services. Customer acknowledges that Accela generally does not have access to and cannot retrieve lost Customer Data. Customer grants to Accela the non-exclusive right to process Customer Data (including personal data) for the sole purpose of and only to the extent necessary for Accela: (i) to provide the Subscription Services; (ii) to verify Customer's compliance with the restrictions set forth in Section 2.4 (Restrictions on Use) if Accela has a reasonable belief of Customer's non-compliance; and (iii) as otherwise set forth in this Agreement. Accela may utilize the information concerning Customer's use of the Subscription Services (excluding any use of Customer's Confidential Information) to improve Subscription Services, to provide Customer with reports on its use of the Subscription Services, and to compile aggregate statistics and usage patterns by customers using the Subscription Services.

5.3 Use of Aggregate Data. Customer agrees that Accela may collect, use and disclose Aggregate Data derived from the use of the Subscription Services for industry analysis, benchmarking, analytics,



marketing and other business purposes. All Aggregate Data collected, used and disclosed will be in aggregate form only and will not identify Customer, its Authorized Users or any third parties utilizing the Subscription Services.

6. WARRANTIES AND DISCLAIMERS.

6.1 Subscription Services Warranty. During the Subscription Period, Accela warrants that Subscription Services shall perform materially in accordance with the applicable Documentation. As Customer's sole and exclusive remedy and Accela's entire liability for any breach of the foregoing warranty, Accela will use commercially reasonable efforts to: (a) repair the Subscription Services in question; (b) replace the Subscription Services in question with those of substantially similar functionality; or (c), after making all commercially reasonable attempts to do the foregoing, terminate the applicable Subscription Services and refund all unused, prepaid fees paid by Customer for such non-compliant Subscription Services.

6.2 Consulting Services Warranty. For ninety (90) days from the applicable delivery, Accela warrants that Consulting Services shall be performed in a professional and workmanlike manner. As Customer's sole and exclusive remedy and Accela's entire liability for any breach of the foregoing warranty, Accela will use commercially reasonable efforts to (a) re-perform the Consulting Services in a compliant manner; or, after making all commercially reasonable attempts to do the foregoing, (b) refund the fees paid for the non-compliant Consulting Services.

6.3. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ACCELA MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, SECURITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

6.4. Cannabis-Related Activities. If Customer purchases any Subscription Services for use with any cannabis-related activities, the following additional disclaimers shall apply: Accela is considered a software service provider to its customers and not a cannabis related business or agent thereof. In addition to the foregoing, Accela only retains Subscription Services fees of this Agreement from its Customer for general software services, a state or local government agency, and does not retain these fees from any type of External Users. It is the sole responsibility of the Customer to offer state law compliant services, which may be coordinated and facilitated through the use of the Subscription Services. Accela makes no representations, promises, or warranties with respect to the legality, suitability, or otherwise regarding any third party provider, including partners, and have no responsibility or liability with respect to services provided to Customer by such third parties.

7. **INDEMNIFICATION.** Accela will defend (or at Accela's option, settle) any third party claim, suit or action brought against Customer to the extent that it is based upon a claim that the Subscription Services, as furnished by Accela hereunder, infringes or misappropriates the Intellectual Property Rights of any third party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded against Customer, provided that Customer provides: (a) Accela notice of such claim as soon practical and in no event later than would reasonably permit Accela to respond to such claim, (b) reasonable cooperation to Accela, at Accela's expense, in the defense and/or settlement of such claim and (c) Accela the sole and exclusive control of the defense, litigation and settlement of such claim. In the event that Accela reasonably believes, in its sole discretion, that such claim may



prevail or that the usage of the Subscription Services may be joined, Accela may seek to: (a) modify the Subscription Services such that it will be non-infringing (provided such modification does not materially reduce the functionality or performance of Customer's installed instance); (b) replace the Subscription Services with a service that is non-infringing and provides substantially similar functionality and performance; or, if the first two options are not commercially practicable, (c) terminate the remainder of the Subscription Period and refund any, pre-paid, unused fees received by Accela. Accela will have no liability under this Section 7 to the extent any claims arise from (i) any combination of the Subscription Services with products, services, methods of a third party; (ii) a modification of the Subscription Services that were either implemented by anyone other than Accela or implemented by Accela in accordance with Customer specifications; (iii) any use of the Subscription Services in a manner that violates this Agreement or the instructions given to Customer by Accela; (iv) a version of the Subscription Services other than the current, fully patched version, provided such updated version would have avoided the infringement; or (v) Customer's breach of this Agreement. THIS SECTION 7 STATES THE ENTIRE OBLIGATION OF ACCELA AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS RELATED TO THIS AGREEMENT.

8. **LIMITATION OF LIABILITY.** EXCEPT FOR LIABILITY ARISING OUT OF EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY OR CUSTOMER'S BREACH OF SECTION 2, NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, SHALL EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT. EXCEPT FOR LIABILITY ARISING OUT OF CUSTOMER'S BREACH OF SECTION 2 OR EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY, IN NO EVENT SHALL EITHER PARTY OR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICE BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SUBSCRIPTION SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

9. **SECURITY.** Accela has implemented commercially viable and reasonable information security processes, policies and technology safeguards to protect the confidentiality and integrity of Customer Data, personal data protect against reasonably anticipated threats. Customer acknowledges that, notwithstanding security features of the Subscription Services, no product, hardware, software or service can provide a completely secure mechanism of electronic transmission or communication and that there are persons and entities, including enterprises, governments and quasi- governmental actors, as well as technologies, that may attempt to breach any electronic security measure. Subject only to its limited warranty obligations set forth in Section 6, Accela will have no liability for any such security breach. Customer further acknowledges that the Subscription Services is not guaranteed to operate without interruptions, failures, or errors. If Customer or Authorized Users use the Subscription Services



in any application or environment where failure could cause personal injury, loss of life, or other substantial harm, Customer assumes any associated risks and will indemnify Accela and hold it harmless against those risks.

10. **THIRD PARTY SERVICES.** Customer may choose to obtain a product or service from a third party that is not directly produced by Accela as a component of the Subscription Services (“**Third Party Services**”) and this may include third party products resold by Accela. Accela assumes no responsibility for, and specifically disclaims any liability, warranty or obligation with respect to, any Third Party Service or the performance of the Subscription Services (including Accela’s service level commitment) when the Subscription Services are used in combination with or integrated with Third Party Services.

11. TERM AND TERMINATION.

11.1 Agreement Term. This Agreement shall become effective on the Effective Date and shall continue in full force and effect until the expiration of any Subscription Periods set forth in an applicable Order governed by the Agreement.

11.2 Subscription Periods & Renewals. Subscription Periods begin as specified in the applicable Order and, unless terminated earlier in accordance with this Agreement, continue for the term specified therein. Except as otherwise specified in the applicable Order, (a) all Subscription Services will automatically renew for additional Subscription Periods equal to the expiring Subscription Period, unless either party gives the other at least sixty (60) days’ notice of non-renewal before the end of the relevant Subscription Period and (b), Orders may only be cancelled or terminated early in accordance with Section 11.3. Subscription Services renewals may be subject to an annual increase, for which Accela shall provide Customer notice prior to the renewal of the Subscription Period. In the event of any non-renewal or other termination, Customer’s right to use the Subscription Services will terminate at the end of the relevant Subscription Period.

11.3 Termination or Suspension for Cause. A party may terminate this Agreement and Subscription Services license granted hereunder for cause upon thirty (30) days’ written notice to the other party of a material breach if such breach remains uncured at the expiration of such thirty (30) day period. Either party may terminate immediately if the other party files for bankruptcy or becomes insolvent. Accela may, at its sole option, suspend Customer’s or any Authorized User’s access to the Subscription Services, or any portion thereof, immediately if Accela: (i) suspects that any person other than Customer or an Authorized User is using or attempting to use Customer Data; (ii) suspects that Customer or an Authorized User is using the Subscription Services in a way that violates this Agreement and could expose Accela or any other entity to harm or legal liability; (iii) is or reasonably believes it is required to do so by law or court order or; (iv) Customer’s payment obligations are more than ninety (90) days past due, provided that Accela has provided at least thirty (30) days’ notice of such suspension for delinquent payment. Should Customer terminate this Agreement for cause, Accela will refund a pro-rata portion of unused, pre-paid fees.

11.4 Effect of Termination. If this Agreement expires or is terminated for any reason: (i) within thirty (30) calendar days following the end of Customer’s final Subscription Period, upon Customer’s request Accela provided Customer Data and associated documents in a database dump file; provided that Customer pays (a) all costs of and associated with such copying, as calculated at Accela’s then-current time-and-materials rates, and (b) any and all unpaid amounts due to Accela; (ii) licenses and use rights



granted to Customer with respect to Subscription Services and intellectual property will immediately terminate; and (iii) Accela's obligation to provide any further services to Customer under this Agreement will immediately terminate, except as mutually agreed between the parties. If the Subscription Services are nearing expiration date or are otherwise terminated, Accela will initiate its data retention processes, including the deletion of Customer Data from systems directly controlled by Accela. Accela's current Data Storage Policy can be accessed www.accela.com/terms/.

11.5 Survival. Sections 2.5 (Ownership and Proprietary Rights), 4 (Confidentiality), 6.3 (Disclaimer), 8 (Limitation of Liability), 11.4 (Effect of Termination), 11.5 (Surviving Provisions), and 12 (General Provisions) will survive any termination or expiration of this Agreement.

12. GENERAL.

12.1 Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given upon: (i) personal delivery; (ii) three days after sending registered, return receipt requested, post or; (iii) one day after sending by commercial overnight carrier. Notices will be sent to the address specified by the recipient in writing when entering into this Agreement or establishing Customer's account for the Subscription Services.

12.2 Governing Law and Jurisdiction. This Agreement and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions. The exclusive jurisdiction and venue of any action related to the subject matter of this Agreement will be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

12.3 Compliance with Laws. Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement including, but not limited to, export laws and regulations of the United States and other applicable jurisdictions. Further, in connection with the services performed under this Agreement and Customer's use of the Subscription Services, the parties agree to comply with all applicable anti-corruption and anti-bribery laws, statutes and regulations.

12.4 Assignment. Customer may not assign or transfer this Agreement, whether by operation of law or otherwise, without the prior written consent of Accela, which shall not be unreasonably withheld. Any attempted assignment or transfer, without such consent, will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.5 Publicity. Notwithstanding anything to the contrary, each party will have the right to publicly announce the existence of the business relationship between parties without disclosing the specific terms of the Agreement.

12.6 Miscellaneous. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect. Accela will not be liable for any delay or failure to perform under this Agreement to the extent such



delay or failure results from circumstances or causes beyond the reasonable control of Accela. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or similar relationship between the parties. This Agreement, including any attachments hereto as mutually agreed upon by the parties, constitute the entire agreement between the parties concerning its subject matter and it supersedes all prior communications, agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by a duly authorized representative of each party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary, no additional or conflicting terms or conditions stated in any of Customer's purchase order documentation or otherwise will be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

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

Town of Los Gatos by:

Consultant By:

Laurel Prevetti Town Manager

Aaton Haggarty, Chief Legal Officer
Accela, Inc.

Recommended by:

Joel Paulson, Community Development
Director

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk

OPENCITIES SERVICES AGREEMENT

1. DEFINITIONS. The following capitalized terms will have the following meanings whenever used in this Agreement.

- 1.1. “Acceptable Use Policy” (“AUP”) means, as of any date, the version of OpenCities’ acceptable use policy posted at <http://help.OpenCities.com> as of such date.
- 1.2. “Business Day” means a day other than a Saturday or a Sunday on which banks in the State of California are open for business.
- 1.3. “Core Module” means the individual modules that are included within the Services. From time to time, new Core Modules will be introduced to the Services via Version Updates which are included in the Fees paid by Customer.
- 1.4. “Customer Data” means any and all data and information, including text, graphics, photographs, audio-visual elements, music, illustrations, video or other content, domain names, email, chat room content, bulletin board postings, or any other items or materials of Customer, any user or any other third party provided or permitted by Customer to be made available by or to reside within the Services or Customer’s Website.
- 1.5. “Customer’s Website” means the website(s) created by or on behalf of Customer through use of the Services for Customer’s internal business purposes.
- 1.6. “Customizations” has the meaning ascribed to it in Section 2.2(f).
- 1.7. “Documentation” means OpenCities’ standard user documentation and any other operating, training and reference manuals related to the Services, all of which are contained in the OpenCities Help Center.
- 1.8. “Integrations” means optional enhancements to the Services involving third party products or services, which are offered separately by OpenCities and are available for purchase by Customer via the OpenCities Help Center.
- 1.9. “Intellectual Property Rights” means all intellectual or industrial property, including without limitation any copyright, trade or service mark, patent, moral right, trade secret, logo, know how, rights in relation to inventions, drawings, discoveries, improvements, technical data, formulae, computer programs, know-how, logos, designs, circuit layouts, domain names, business names, software, whether or not now existing, and whether or not registered or unregistered rights, and rights in respect of Confidential Information.
- 1.10. “Malicious Code” means code, files scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
- 1.11. “Order” means an OpenCities, or an OpenCities’ authorized reseller, order form or other mutually acceptable document that expressly incorporates this Agreement and is duly executed by Customer and, as applicable, OpenCities or an OpenCities authorized reseller.
- 1.12. “OpenCities Help Center” means the Documentation and the specifications for the Services (the “Specifications”) currently posted at <http://help.OpenCities.com>.

- 1.13. “Privacy Policy” means, as of any date, OpenCities’ privacy policy posted at <http://help.OpenCities.com> as of such date.
- 1.14. “Scheduled Maintenance Window” means the date and time slot identified by OpenCities in a written notice given to Customer via the OpenCities Help Center no later than 5 Business Days prior to the proposed Scheduled Maintenance Window to enable maintenance work and Version Updates to be performed. The Scheduled Maintenance Window will be outside of Customer’s normal business hours and periods of peak demand, whenever reasonably possible.
- 1.15. “Services” means the components of OpenCities’ proprietary content management system set forth in the Order, including, as applicable, data traffic management, website publishing and web hosting services, and any Version Updates and Core Modules released by OpenCities, and all related Specifications and Documentation.
- 1.16. “SLA” or “Service Level Agreement” means, as of any date, OpenCities’ service level agreement, the current version of which is set forth in Schedule A.
- 1.17. “Support Services” means the support and maintenance services provided by OpenCities in accordance with Article 3.
- 1.18. “Term” is defined in Section 12.1 below.
- 1.19. “Version Updates” means updated versions of the Services (indicated by a higher numerical version number) developed by OpenCities with enhancements or additions to the functionality, and/or performance improvements and bug fixes.

2. SCOPE AND USAGE OF SERVICES.

2.1. Use of Services. During the Term and upon payment of the applicable Fees set out in the applicable Order, OpenCities shall make the Services available to Customer in accordance with the terms of this Agreement solely for Customer’s internal business purposes. Customer may permit an unlimited number of its employees and its contractors to use the Services provided their use is solely for Customer’s internal business purposes and at all times in compliance with the terms of this Agreement. Customer agrees to be responsible for any breach of this Agreement by its contractors.

2.2. Provision of Services. Upon payment of the applicable Fees and subject to the terms of the applicable Order and the other terms and conditions hereof, OpenCities will use commercially reasonable efforts to provide the Services to Customer during the Term and to ensure the Services are available in accordance with the then applicable Service Level Agreement.

2.3. Professional Services. Upon payment of the applicable Fees and subject to the terms of the applicable Order and the other terms and conditions hereof, OpenCities may provide certain professional services to Customer, including developer training and custom development services (“Professional Services”). Any Professional Services to be supplied by OpenCities will be provided pursuant to a separate statement of work executed by Customer and OpenCities. Except as otherwise provided in an Order, all such Professional Services will be charged on a time and materials basis at OpenCities then-current rates for the applicable Professional Services.

OpenCities agrees that any custom software developed by OpenCities (“Custom Software”) will be compatible with the then-current version of the Services in accordance with the terms set forth in the applicable statement of work. Customer acknowledges that the support and maintenance services set out in Article 3 will not be provided for any Custom Software and that Custom Software is not covered by the Service Level Agreement. If Customer desires to obtain support for any Custom Software, any support offered by OpenCities will be charged on a time and materials basis at OpenCities’ then-current rates for such support. Any Custom Software developed by OpenCities shall be the property of OpenCities. Effective upon delivery of any such Custom Software to Customer, OpenCities grants Customer a nonexclusive, non-transferable, fully paid license to copy, modify, create derivative works of and use such Custom Software solely as part of Customer’s Website during the Term. All modifications and derivative works of the Services by whomever produced shall be the property of OpenCities.

2.4. Use of Third-Party Service Providers. Customer acknowledges that OpenCities has, and in the future may, retain one or more third party service providers to supply certain aspects of the Services, including certain of the facilities, equipment, products, services and connectivity necessary to offer the Services. Customer acknowledges that OpenCities currently obtains web hosting services from a third party, and that OpenCities has no responsibility or liability for any third-party services.

2.5. Documentation: Customer may reproduce and use the Documentation solely as necessary to support its use of the Services during the Term.

2.6. Users of Customer’s Website. Customer may authorize an unlimited number of users to access and use Customer’s Website. Customer agrees that it is not authorized to, and agrees not to, make any representations or warranties regarding the Services or OpenCities to any user or third party, and further agrees not to otherwise create or purport to create any obligations or liabilities on the part of OpenCities. Customer agrees to indemnify OpenCities for its and any user’s acts and omissions related to Customer’s Website and/or the Services. OpenCities has no obligation to provide support or any other services, or any SLA or other remedies, to such users.

3. MAINTENANCE AND SUPPORT SERVICES.

3.1. Maintenance and Support; SLA. Subject to the other provisions of the Order, this Article 3 and Customer’s payment of all applicable Fees, during the Term:

- (a) OpenCities will provide the remedies listed in the SLA for any defect, error, or failure of the Services or in the Documentation in accordance with the SLA. Such remedies are Customer’s sole remedy for any failure of or defect in the Services or the Documentation, and Customer recognizes and agrees that if the SLA does not list a remedy for a given failure, it has no remedy. Any credits issued pursuant to the SLA for failure to meet the uptime guarantee specified in the SLA will apply to outstanding or future invoices only and are forfeited upon termination of this Agreement. OpenCities is not required to issue refunds or to make payments against such credits under any circumstances, including without limitation after termination of this Agreement.
- (b) OpenCities may revise the SLA or the features and functions of the Services at any time, provided no such revision materially reduces the features or functionality provided to

Customer as set forth herein.

- (c) OpenCities will provide Customer with Version Updates. Customer acknowledges that Version Updates are mandatory and necessary for the proper function and security of the Services. Customer agrees to the implementation of all Version Updates by OpenCities. Implementation will occur during a Scheduled Maintenance Window. Any SaaS downtime or functionality issues arising during a Scheduled Maintenance Window will not be subject to the Service Level Agreement.
- (d) OpenCities grants Customer personnel unlimited access to the OpenCities Help Center to review the Documentation and Specifications. Customer acknowledges and agrees that it does not have an unlimited right to request maintenance and support services through the OpenCities Help Center; requests for maintenance and support must be made in compliance with paragraph (e) hereof.
- (e) OpenCities will make available to Customer an online and telephone help desk service, which will allow 2 designated support representatives of Customer who have received training in the Services to request maintenance and support services in accordance with the Service Level Agreement. Requests from other personnel will not be accepted. The contact details for the online and telephone help desk support services are set out in Schedule A.
- (f) Notwithstanding the provisions of paragraphs (d) and (e) above, where Customer's Website is experiencing a Severity 1 problem, any Customer personnel may contact OpenCities via the telephone help desk to report the Severity 1 problem.

3.2. Scheduled and Emergency Maintenance. OpenCities agrees to use commercially reasonable efforts to conduct all SaaS maintenance within a Scheduled Maintenance Window. However, Customer acknowledges that an unplanned event may occur that will require the need for OpenCities to perform maintenance on the Services on an emergency basis outside of a Scheduled Maintenance Window. OpenCities will use reasonable efforts to give Customer advance notice of emergency maintenance, but it is possible that advance notification of emergency maintenance will not occur. Any SaaS downtime or functionality issues during the Scheduled Maintenance Window or during emergency maintenance will not be subject to the Service Level Agreement.

3.3 Conditions. OpenCities provision of the maintenance and support services set forth in this Article 3 is subject to the following conditions: (a) Customer must document and promptly report all errors or malfunctions of the Services to OpenCities or its assigned agents and representatives; (b) Customer must carry out procedures to rectify errors or malfunctions within a reasonable period after receiving instructions from OpenCities on such procedures; and (c) Customer must provide OpenCities with reasonable access to Customer's personnel, its assigned agents and representatives as required by OpenCities to meet its obligations under this Agreement.

3.4 Exclusions. OpenCities is under no obligation to provide the maintenance and support services specified in this Article 3 if they are requested as a result of or related to: (a) operation of

the Services with other media and hardware, or services or interfaces not authorized or maintained in accordance with this Agreement or the Documentation; (b) use of the Services that is not in accordance with the Documentation; (c) any modification, alteration or addition or attempted modification, alteration or addition to the Services (unless such modifications were developed by OpenCities or authorized by OpenCities in writing); (d) failure of any data service, internet service, hosting service or any other third-party service, or failure of a telecommunications connection, hardware, software, web services, or third party content, software, or equipment; or (e) any non-reproducible error or defect reported by Customer.

3.5 Abuse of Maintenance Services. In the event Customer abuses the maintenance and support services offered by OpenCities (e.g. by declaring a problem Severity Level 1 when it is only Severity Level 2, 3 or 4, unless such distinction could not reasonably have been determined, or by reporting problems which are not Severity 1 during non-business hours) an "Abuse Incident" will be noted, and OpenCities will inform Customer of such.

4. FEES AND PAYMENT TERMS.

4.1 Subscription Fees. Except as otherwise provided in the Order, Customer will pay OpenCities the annual subscription and other fees set forth in the Order (the "Fees") during the Initial Term and the applicable Fees for each Renewal Term, which Fees are based on the resident population of Customer. Except as otherwise expressly provided in this Agreement, all Fees are non-cancelable and non-refundable. Except as otherwise provided in the Order, the Fees for the first year of the Initial Term are payable within 30 days of execution of this Agreement, and the Fees for each successive year during the Initial Term and each Renewal Term shall be payable net 30 days from the date of OpenCities' invoice.

4.2 Fee Adjustments. Upon expiration of the Initial Term, Fees may be adjusted for each Renewal Term to take into account any increases in the Consumer Price Index for all Items as published by the US Bureau of Labor Statistics. OpenCities shall notify Customer of any Fees adjustments made pursuant to this Section 4.2 at least seventy (70) days prior to the commencement of the applicable Renewal Term.

4.3 Overdue Charges. Except as otherwise provided in the Order, if any invoiced amount is not received by OpenCities by the due date, then without limiting OpenCities' rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) OpenCities may condition future subscription renewals on payment terms shorter than those specified herein. Customer will be liable for all costs of collection of any undisputed, overdue amounts including, without limitation, all court costs, legal fees and other costs incurred by OpenCities.

4.4 Taxes. The Fees charged by OpenCities do not include any taxes, levies, duties or similar governmental assessments of any nature, including, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated Customer's purchase of the Services. If OpenCities has the legal obligation to pay or collect any Taxes for which Customer is responsible under this Section 4(e), then Customer agrees that OpenCities will invoice Customer that amount unless Customer

provides OpenCities with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, OpenCities is responsible for taxes assessable against it based on its income, property and employees.

4.5 Purchases from Authorized Resellers. Notwithstanding the foregoing, in the event that Customer has purchased Services through an authorized OpenCities reseller pursuant to an Order that incorporates these terms, the payment arrangements and related terms set forth in the Order shall control, such terms shall be exclusively by and between such reseller and Customer, and OpenCities' sole obligation will be to provide the Services set forth in the Order to Customer on the other terms and conditions, and subject to the limitations, set forth in this Agreement.

4.6 Future Functionality. Customer agrees that its purchase is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by OpenCities, or any authorized reseller or other third party regarding future functionality or features.

5. CUSTOMER DATA & SECURITY.

5.1. Customer Rights to Data. Customer retains all right, title and interest (including any Intellectual Property Rights) in and to all data and content supplied by or on behalf of Customer in connection with the Services and Customer's Website, including data uploaded by users thereof (collectively, the "Customer Data"). Customer hereby grants OpenCities a limited, non-exclusive, royalty-free, non-transferable license to host, reproduce, transmit, cache, store, exhibit, publish, display, distribute, perform, and otherwise use the Customer Data solely as necessary to provide the Services for Customer.

5.2. Responsibility for Customer Data. Customer is solely responsible for Customer Data, including the accuracy, quality, appropriateness and legality of all Customer Data and the means by which the Customer Data is acquired, and OpenCities shall have no responsibility or liability therefor. Customer represents and warrants to OpenCities that Customer owns or has the right to use Customer Data, and has the rights necessary to grant OpenCities the licence set forth in Section 5.1, all Customer Data will be "server ready" and otherwise remain fully compatible with OpenCities' SaaS (including all software and operating systems); and Customer has obtained all necessary rights, releases and consents to allow the Customer Data to be collected, used and disclosed in the manner contemplated by this Agreement and to grant OpenCities the rights herein.

5.3. OpenCities' Use of Customer Data. Unless it receives Customer's prior written consent, OpenCities: (a) will not access, process, or otherwise use Customer Data other than as necessary to facilitate the Services; and (b) will not intentionally grant any third party access to Customer Data, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, OpenCities may disclose Customer Data, including, without limitation, user profile information (i.e. name, e-mail address, etc.), IP addressing and traffic information, and usage history, as required by applicable law or by proper legal or governmental authority. OpenCities will give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

5.4. Protection of Customer Data. OpenCities will use commercially reasonable, industry standard administrative, physical and technical safeguards for the protection of the security, confidentiality and integrity of the Customer Data, including implementation of measures designed to prevent unauthorized access, use, modification, disclosure and loss of the Customer Data. OpenCities will archive Customer Data on a regular basis during the Term by performing 6 daily and 8 weekly backups for the purposes of disaster recovery. In the event of equipment failure or data corruption, OpenCities will restore from the most recent uncorrupted archive. In the event of corruption of all of OpenCities' archives, or in the event that an old archive is used to restore data, Customer will have the responsibility of uploading new Customer Data to Customer's Website. OpenCities will not be liable for incomplete, out-of-date, corrupt or otherwise deficient Customer Data recovered from OpenCities' backups.

5.5. No Obligation to Monitor; Right to Remove. OpenCities may, but has no obligation to, monitor, review or edit Customer Data. In all cases, OpenCities reserves the right to remove, delete or disable access to any Customer Data that OpenCities determines, in the exercise of its sole discretion, violates this Agreement (including the Acceptable Use Policy) or is illegal, damaging, problematic, objectionable or otherwise inappropriate. OpenCities may take such action without prior notification of Customer.

5.6. Privacy Policy. The Privacy Policy applies only to the Services and does not apply to any third-party website or service linked to the Services or recommended or referred to through the Services or by OpenCities staff.

5.7. Risk of Exposure. Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that Customer, by accessing and using the Services, assumes such risks. OpenCities offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.

5.8. Aggregate Data. Notwithstanding the provisions of this Article 5, OpenCities may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. ("Aggregate Data" refers to Customer Data with the following removed: personally identifiable information and the names and addresses of Customer and any of its users.)

6. CUSTOMER'S OBLIGATIONS & RESTRICTIONS.

6.1 Acceptable Use. Customer will comply with OpenCities' AUP as in effect from time to time. Customer will not: (a) sell, resell, license, sublicense, distribute, make available, rent or lease the Services or use the Services for service bureau or time-sharing purposes or in any other way allow third parties to exploit or access the Services, except users accessing Customer's Website as specifically authorized by this Agreement; (b) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (c) use the Services to store or transmit Malicious Code; (d) share non-public SaaS features or content with any third party; (e) frame or mirror any part of the Services other than framing on Customer's own intranets or otherwise for Customer's internal business purposes; (f) reverse engineer any portion of the Services, or (g) access the Services in order to build a competitive product or service, to build a product using similar ideas, features,

functions or graphics of the Services, or to copy any ideas, parts, features, functions or graphics of the Services. In the event that it suspects any breach of the requirements of this Section 6.1, including without limitation by Customer's users, OpenCities may suspend or terminate Customer's access to the Services without advance notice, in addition to such other remedies as OpenCities may have. Neither this Agreement nor the AUP requires that OpenCities take any action against Customer or any user or other third party for violating the AUP, this Section 6.1, or this Agreement, but OpenCities is free to take any such action it sees fit. Any breach of the AUP or any of the provisions of this Article 6 will entitle OpenCities to elect to terminate this Agreement immediately upon written notice to Customer.

6.2 Unauthorized Access; Security. Customer will take reasonable steps to prevent unauthorized access to the Services and the network, including without limitation by protecting its passwords and other log-in information. Customer will notify OpenCities immediately of any known or suspected unauthorized access to or use of the Services or breach of its security and will use best efforts to stop said breach. Customer shall not:

- (a) interfere with or disrupt the integrity or performance of the Services or attempt to gain unauthorized access to the Services, or OpenCities' or its suppliers' related systems and networks;
- (b) commit, cause or allow any breach (or do anything which might put us in breach) of any applicable law, regulation, government direction or industry standard or code;
- (c) attempt to or actually access the Services by any means other than through the portals or interfaces provided by OpenCities;
- (d) attempt to or actually override any security component included in or underlying the Services; or
- (e) attempt or engage in any action that directly or indirectly interferes with the proper working of or place an unreasonable load on OpenCities' infrastructure.

6.3 Customer Data. Customer agrees that (a) the Customer Data and its use will not violate, misappropriate or infringe any Intellectual Property Rights or any other personal, privacy or moral right arising under the laws of any jurisdiction, nor will same constitute a libel or defamation of any person or entity; and (b) the Customer Data will not contain any harmful components, including, but not limited to, viruses, trap doors, hidden sequences, hot keys, or time bombs.

6.4 Compliance with Laws. In its use of the Services, Customer will comply with all applicable laws, including without limitation export control, decency, privacy and intellectual property laws, laws governing the protection of personally identifiable information and other laws applicable to the protection of Customer Data.

6.5 Responsibility for Users; Access to Services. Customer is responsible and liable for: (a) its own and its users use of the Services, including without limitation for any unauthorized user conduct and any user conduct that would violate the AUP or the requirements of this Agreement applicable to Customer; and (b) any use of the Services through Customer's account, whether

authorized or unauthorized. Customer agrees to indemnify OpenCities against any loss or damage that OpenCities suffers as a result of any unauthorized access to OpenCities' SaaS or network or those of OpenCities' suppliers.

6.6 Required Third Party Services.

- (a) Customer will establish and maintain, at its own expense, all telecommunications equipment and access lines necessary to gain access to the Services.
- (b) In order for OpenCities to provide some of the Services under this Agreement, Customer may at times, be required to give OpenCities access to or provide login information and password information for accounts or services Customer may have with third party providers. When Customer provides OpenCities with this information or provides OpenCities with access to these third-party accounts, Customer warrants that it has all the necessary contractual and legal rights to give OpenCities such access, login information and passwords.
- (c) Customer acknowledges that OpenCities will not have any responsibility or liability with regard to any third party services used by the Customer on or through the Services, as part of Customer's Website or otherwise, such as payment and e-commerce services, and any use of such third party services will be at Customer's own risk. Customer further acknowledges that the technical ability to link to such third-party services (such as the possibility of a 'PayPal' button), is provided only as part of the Services but will not be deemed to create any liability or responsibility on behalf of OpenCities.
- (d) Where any third-party software or services integration to the Services is found to cause performance, stability or security issues, OpenCities reserves the right to disable or remove such software or services in order to restore the Services to acceptable levels.

6.7 Customer Representative. Customer will appoint a designated representative who will be authorized to act as the primary point of contact for Customer in dealing with OpenCities with respect to each party's obligations under this Agreement and on a timely basis.

7. OPENCITIES IP & FEEDBACK.

7.1 IP Rights in the Services. OpenCities retains all Intellectual Property Rights and all other right title and interest in the Services, the Documentation, the Support Services, the Professional Services, the Custom Software and the Aggregate Data, including without limitation all software used to provide the Services, all graphics, user interfaces, logos, and trademarks reproduced through the Services, and all work product and derivative works thereof by whomever produced. This Agreement does not grant Customer any intellectual property license or rights in or to the Services or any of its components or any Documentation. Customer recognizes that the Services and its components and the Documentation are protected by copyright and other laws.

7.2 Feedback. OpenCities has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that Customer or other users provide, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict OpenCities's right

to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer or the user in question. Customer hereby grants OpenCities a perpetual, irrevocable right and license to exploit Feedback in any and every way. (“Feedback” refers to any suggestion or idea for improving or otherwise modifying any of OpenCities’s products or services.)

8. CONFIDENTIAL INFORMATION.

8.1 “Confidential Information” refers to the following items: (a) any document either party marks “Confidential”; (b) any information either party orally designates as “Confidential” at the time of disclosure, provided the disclosing party confirms such designation in writing within ten (10) Business Days; (c) any OpenCities software and all Documentation and other information in the OpenCities Help Center, whether or not marked or designated confidential; and (d) any other nonpublic, sensitive information the receiving party should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the receiving party’s possession at the time of disclosure; (ii) is independently developed by the receiving party without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the receiving party’s improper action or inaction; or (iv) is approved for release in writing by the disclosing party.

8.2 Nondisclosure. Neither OpenCities nor Customer will use Confidential Information for any purpose other than in performance of this Agreement (the “Purpose”). Each of OpenCities and Customer agrees that it: (a) will not disclose Confidential Information to any of its employees or contractors unless such persons need access in order to facilitate the Purpose and, in the case of a contractor, such contractor executes a nondisclosure agreement with the appropriate party with terms no less restrictive than those of this Article 8; and (b) will not disclose Confidential Information to any other third party without the disclosing party’s prior written consent. Without limiting the generality of the foregoing, each party will protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Each party agrees that it will promptly notify the other party of any misuse or misappropriation of the other party’s Confidential Information that comes to its attention. Notwithstanding the foregoing, each party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority, provided such party gives the other party prompt notice of any such legal or governmental demand and reasonably cooperates with the other party in any effort to seek a protective order or otherwise to contest such required disclosure, at the other party’s expense.

8.3 Injunction. The parties agree that breach of this Article 8 would cause the disclosing party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, and that the disclosing party will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

8.4 Termination & Return. With respect to each item of Confidential Information, the obligations of Section 8.1 above will terminate five (5) years after the date of disclosure; provided that such obligations related to Confidential Information of a party constituting trade secrets will continue so long as such information remains subject to trade secret protection pursuant to

applicable law. Upon termination of this Agreement, each party will return all copies of the other party's Confidential Information to the other party or certify, in writing, the destruction thereof.

8.5 Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Each party will retain all right, title, and interest in and to all of its Confidential Information.

9. WARRANTY DISCLAIMER.

9.1 Warranty Disclaimers. THE SERVICES ARE PROVIDED "AS IS" AND AS AVAILABLE, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND QUIET ENJOYMENT, AND ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, AND OPENCITIES DISCLAIMS SUCH WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) OPENCITIES DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM WILL PERFORM WITHOUT INTERRUPTION OR ERROR OR IN A TIMELY FASHION; AND (b) OPENCITIES DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE. OPENCITIES DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

10. INDEMNIFICATION.

10.1 Indemnification of Customer. Subject to the other provisions of this Section 10.1, OpenCities will defend Customer and Customer's Associates (as defined below in Section 10.3) against any third party claim, suit, or proceeding alleging that the Services or the permitted use thereof infringes any U.S. trademark, patent, copyright, or trade secret right of a third party (collectively, "Customer Indemnified Claims") and will indemnify Customer and Customer's Associates from any damages, attorney's fees and costs finally awarded against Customer and Customer's Associates for any Customer Indemnified Claim, or, as applicable, for amounts paid by Customer and Customer's Associates in a settlement approved by OpenCities in writing of a Customer Indemnified Claim.

- (a) If in OpenCities reasonable judgment any Customer Indemnified Claim, or threat of any such Claim, materially interferes with Customer's use of the Services, OpenCities will, after consultation with Customer, at OpenCities' option and in its sole discretion, either (i) substitute functionally equivalent non-infringing Services or Documentation; (ii) modify the Services to make them non-infringing, (iii) obtain for Customer at OpenCities' expense the right to continue using the infringing Services; or, (iv) if OpenCities determines that it cannot achieve any of the foregoing on a reasonable commercial basis, it may, by written notice, require Customer to cease using the Services, in which case OpenCities, or, as applicable, its authorized reseller, shall refund Customer a pro-rata portion of the Fees paid for the Services for such period of

time for which Customer was unable to use the Services.

- (b) OpenCities' obligations set forth in this Section 10.1 do not apply to the extent that a Customer Indemnified Claim arises out of: (a) Customer's breach of this Agreement; (b) revisions or modifications to the Services or any components thereof made by a party other than OpenCities if such infringement would not have occurred but for such revisions or modifications; (c) Customer's failure to incorporate or use any Version Updates, or any other updates or upgrades that would have avoided the alleged infringement; (d) inclusion of the Customer Data; (e) the use of the Services other than for its intended purposes or contrary to OpenCities' Specifications; or (f) the combination, operation or use of the Services with equipment, programs, hardware or software not provided by OpenCities if in OpenCities reasonable judgment such infringement is caused thereby.
- (c) The provisions of this Section 10.1 state OpenCities entire liability and Customer's sole and exclusive remedy in the event of any Customer Indemnified Claim.

10.2 Indemnification of OpenCities. Customer will indemnify and defend OpenCities and OpenCities' Associates (as defined below in Section 10.3) against any and all claims, liabilities, losses, damages, costs and expenses (including attorneys fees and costs) (a) arising out of or related to Customer's or its users' alleged or actual use or misuse of, or failure to use the Services, including without limitation: (b) claims by Customer's users or by Customer's employees or agents; (c) claims related to unauthorized disclosure or exposure of personally identifiable information or other private Confidential Information, including Customer Data; (d) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by any Customer Data; and (e) claims that use of the Services harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising (collectively, "OpenCities Indemnified Claims").

10.3 Litigation & Additional Terms. The obligations of the indemnifying party ("Indemnitor") pursuant to Section 10.1 or 0 above will be excused to the extent that the indemnified parties (the "Indemnified Parties") or any Indemnified Party's Associates fails to provide prompt written notice to the Indemnitor of the applicable claim or to reasonably cooperate with the Indemnitor if such failure or lack of cooperation materially prejudices the defense. Indemnitor will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided that the Indemnified Party will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (A party's "Associates" are its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)

11. LIMITATION OF LIABILITY.

11.1 LIMITATION OF LIABILITY. THE TOTAL LIABILITY OF OPENCITIES AND ITS AFFILIATES FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE ACTUAL FEES RECEIVED BY OPENCITIES DIRECTLY OR INDIRECTLY FROM CUSTOMER DURING THE TWELVE-MONTH PERIOD LEADING UP TO THE APPLICABLE CLAIM.

11.2 Exclusion of Consequential Damages. IN NO EVENT WILL OPENCITIES OR ITS AFFILIATES BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR LOSS OF REVENUES OR GOODWILL, BUSINESS INTERRUPTION, LOSS OR INACCURACY OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, OR LOST PROFITS, ARISING OUT OF OR RELATED TO THIS AGREEMENT.

11.3 Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 11 APPLY (a) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE, (b) EVEN IF OPENCITIES IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (c) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. NOTWITHSTANDING THE FOREGOING, THE LIABILITIES LIMITED BY THIS ARTICLE 11 SHALL NOT INCLUDE LIABILITY (i) UNDER THE INDEMNITY PROVIDED IN SECTION 10.1, (ii) FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE, (iii) FOR DAMAGE TO TANGIBLE PERSONAL PROPERTY, OR (iv) FOR FRAUD OR WILLFUL MISCONDUCT. If applicable law limits the application of the provisions of this Article 11, OpenCities' liability will be limited to the maximum extent permissible. For the avoidance of doubt, OpenCities' liability limits and other rights set forth in this Article 11 apply likewise to OpenCities' affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

12. TERM & TERMINATION.

12.1 Term. The initial term of this Agreement (the "Initial Term") will commence on the Effective Date and continue for the period set forth in the Order. Thereafter, the Agreement will automatically renew for successive one-year periods (each such period, a "Renewal Term"), unless either party notifies the other party in writing of its decision not to renew the Agreement at least 60 or more days before the applicable renewal date. The Initial Term and all Renewal Terms are herein referred to as the "Term".

12.2 Termination for Cause. Either party may terminate this Agreement for the other's material breach by written notice, effective in 30 days unless the other party first cures such breach, or immediately upon written notice if the other party becomes subject to any insolvency, bankruptcy or similar proceeding, whether voluntary or involuntary. Without limiting OpenCities' other rights and remedies, OpenCities may suspend or terminate any user's access to the Services at any time, without advance notice, if OpenCities reasonably concludes such user has conducted him, her or itself in a way that is not consistent with the requirements of the AUP or the other requirements of this Agreement or in a way that subjects OpenCities to potential liability.

12.3 Effects of Termination. Upon termination of this Agreement, Customer will cease all use of the Services and delete, destroy, or return all copies of the Documentation in its possession or control, and Customer will have the right to access the Services for 30 days following termination of this Agreement to download Customer Data. If requested by Customer in writing, at the Customer's expense on a time-and-materials basis, OpenCities will provide Customer an export of the Customer Data in an industry standard format. Upon the expiration of the thirty-day period following termination of this Agreement, all Customer Data in the Services will no longer be

available, and OpenCities shall have the right to delete and/or destroy all such Customer Data (including all data supplied by third parties), unless otherwise agreed by the parties in writing.

12.4 The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay Fees incurred before termination; (b) Article 1, Sections 2.3 and 6.5, and Articles 7, 8, 9, 10, 11 and 12; and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

13. MISCELLANEOUS.

13.1 Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no OpenCities employee or contractor is or will be considered an employee of Customer.

13.2 Notices. OpenCities may send notices pursuant to this Agreement to Customer's email address provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to the person identified in the Order at the email address provided for such person, and such notices will be deemed received 72 hours after they are sent.

13.3 Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.

13.4 Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without OpenCities' express written consent. Except to the extent forbidden in this Section 13.4, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.

13.5 Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

13.6 No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

13.7 Choice of Law; Venue. This Agreement will be governed by laws of the State of California. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of San Francisco, California. This Section 13.7 governs all claims arising out of or related to this Agreement, including without limitation tort claims. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

13.8 Dispute Resolution. If at any time a dispute arises out of or in connection with this Agreement, the parties will have their respective designated representatives meet in good faith with a view to resolving the dispute within a period of 15 Business Days from the issue of a written notice of dispute by one party to the other party. Should the parties not be able to resolve the dispute within the 15 Business Days, then both parties will refer the matter to their own appropriate level of senior executive management respectively for resolution. If the relevant senior executive management are unable to resolve the dispute within a further 10 Business Days, then the parties agree that the dispute must then be referred to mediation. The parties will agree on a suitable person to act as mediator having industry knowledge and expertise to facilitate resolution. Failing agreement on such appointment, either party may apply to JAMS to appoint a mediator. The dispute for mediation must be heard within 20 Business Days of a mediator being appointed. Nothing in this clause is intended to preclude a party from seeking equitable or injunctive relief. Neither party shall have the right to initiate litigation until 30 Business Days after the second mediation conference held by the parties, unless the other party has materially breached its obligation to mediate.

13.9 Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

13.10 Technology Export. Customer will not: (a) permit any third party to access or use the Services in violation of any U.S. or foreign law or regulation; or (b) export any software provided by OpenCities or otherwise remove it from the United States or Canada except in compliance with all applicable laws and regulations. Without limiting the generality of the foregoing, Customer will not permit any third party to access or use the Services in, or export such software to, a country subject to an applicable embargo.

13.11 Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.

13.12 Modifications. OpenCities may modify the terms of this Agreement, the Privacy Policy, AUP and SLA at any time and from time to time by posting a revised version on OpenCities' website. The modified terms will become effective upon posting. By continuing to use the Services after the effective date of any modification to the terms of this Agreement, Customer agrees to be bound by the modified terms. It is Customer's responsibility to check OpenCities' website regularly for such modifications. OpenCities last modified the terms of this Agreement and the applicable Policies and SLA on the dates listed at the tops of the applicable documents on OpenCities' website.

13.13 Marketing. Customer agrees to permit OpenCities to make reasonable reference to the Customer's status as a user of the Services, including captioned quotations in product literature or advertisements, websites, articles, press releases, marketing literature, presentations and the like, and occasional use as a reference for potential new users.

SCHEDULE A – SERVICE LEVEL AGREEMENT

Subject to the terms and conditions of the Agreement, OpenCities provides a guarantee of 99.9% uptime availability, calculated monthly. In a typical 30 day/730 hour month, this equates to no more than 1 hour of downtime per month (not inclusive of Scheduled and emergency Maintenance).

For confirmed downtime during any month during the Term, Open Cities will credit Customer 1% of Customer’s pro-rata monthly Base Subscription Fee for every hour of Customer’s public facing website downtime over and above the 99.9% uptime guarantee, up to a maximum of 100% of the pro rata monthly Base Subscription Fee for that month.

Issue Severity Level and Measure/Guide	Resolution Process and Contact Information	Resolution Target
Priority 1 – Downtime (Your public facing website or critical intranet is experiencing Downtime)	<ul style="list-style-type: none"> • Reportable 24 x 7 via Telephone – (877-466-7756 – Extension 3) • Acknowledgement and assignment of the problem for resolution within an hour. 	Within 4 hours.
Priority 2 – Urgent (Important publishing functionality fails to work as intended, and there is no work-around available - you cannot publish content to the site).	<ul style="list-style-type: none"> • Reportable 24 x 7 via Online helpdesk, or • Telephone during business hours (7x6 PT). (877-466-7756 – Extension 2) • Acknowledgement and assignment of the problem for resolution within one business day. 	Provide a workaround to the problem or release a Version Update to fix the problem by close of next business day.
Priority 3 – High (Important publishing functionality fails to work as intended, but workarounds are available)	<ul style="list-style-type: none"> • Reportable 24 x 7 via Online helpdesk. • Acknowledgement and assignment of the problem for resolution within one business day. 	Scheduled or next Version Update.
Priority 4 – Normal (Functionality is not working as intended)	<ul style="list-style-type: none"> • Reportable 24 x 7 via Online helpdesk. • Acknowledgement and assignment of the problem for resolution within 3 business days 	Within specified Version Update.

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

Town of Los Gatos by:

Consultant By:

Laurel Prevetti Town Manager

Aaton Haggarty, Chief Legal Officer
Accela, Inc.

Recommended by:

Joel Paulson, Community Development
Director

Luke Norris, Sr Vice President,
Government Relations & Growth
OpenCities

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk

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Statement of Work

Los Gatos California SaaS Migration Services

6/8/2021

Version 1.0

Accela, Inc.
2633 Camino Ramon
Suite 120
San Ramon, CA 94583
Tel: 925-659-3200

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DOCUMENT CONTROL

Date	Author	Version	Change Reference
4/20/2021	J. White	1.0	SOW Creation
6/8/2021	J. White	1.1	Clarified OpenCities vs Accela responsibilities

INTRODUCTION

OVERVIEW

This Statement of Work (“SOW”) dated 6/8/2021 sets forth the scope and definition of the project-based professional services (collectively, the “Services”) to be provided by Accela, Inc., its affiliates and/or agents (“Accela”) to Los Gatos California (“Agency” or “Customer”).

Agency has selected OpenCities, Inc., a Delaware limited liability company, to provide certain products and/or Services, as set forth in this SOW. Agency acknowledges and agrees that Accela is not liable or responsible for any products and/or Services provided by OpenCities.

This SOW details the deliverables that will be performed by Accela Professional Services (Deliverable 1, 2.1, and 2.4) and OpenCities Professional Services (Deliverable 2.2, 2.4, and 2.5).

This SOW is governed by the Accela Consulting Services Policy (attached) found at www.accela.com/terms for Accela deliverables and by the OpenCities Consulting Services Policy found at <https://www.opencities.com/files/content/common/general-pages/terms-conditions-north-america/opencities-terms-of-service-north-america.pdf> for OpenCities deliverables.

This statement of work represents a Fixed Fee based engagement.

SCOPE OF SERVICES

Deliverable 1: Accela will provide services to the Agency for migrating the Accela on-premise Land Management instance to the Accela Cloud based on the materials provided by the Agency in the SaaS Migration Questionnaire.

- Import/upgrade of MS SQL DBs (up to 3 environments: Support, Test, Production)
- Assistance migrating 6 specific interfaces:
 - GIS
 - DigEplan
 - Credit Card Payment Adapter (PayPal)
 - EDMS (ADS)
 - GIS data export
 - Azure SSO (optional)
- Migration of up to 45 SSRS/RTF reports
- Up to 20 hour of issue resolution and testing assistance
- Go live planning and cutover assistance

Deliverable 2: Once migrated to Accela SaaS, Premium Citizen Experience (OpenCities) will be implemented.

Standard setup includes:

- Design of the OpenCities web site with up to 100 pages
- Training on OpenCities and OpenForms

Products

The following Accela products are in scope for this Project:

- *Accela Automation*
- *Accela Citizen Access*
- *Accela GIS*
- *Accela Mobile*
- *Premium Citizen Experience (OpenCities)*

WORK DESCRIPTION

Deliverable 1: Accela will perform a migration of the customer's on-premise Accela environments using MS SQL (up to 3 environments: Support, Test, Production) to the Accela SaaS platform.

Migration Steps:

1. Customer provides an updated backup of the MS SQL databases for the environments to be migrated
2. Perform the database migration (Accela, Jetspeed, AGIS, and ADS databases as required)
 - a. Copy database to Accela site
 - b. Execute preparation and remediation scripts; drop any custom objects
 - c. Import data from the MS SQL DB into Accela SaaS SQL instance
3. Execute validation scripts to confirm the schema
4. Provision tenant instance in Accela SaaS
5. Update environment specific data in the databases
6. Start Accela services and validate the system is functional i.e. login, search, create records, etc.
7. Execute automated test tool to ensure proper system functionality
8. Customer performs migration validation
9. Remediate any data issues that found from the migration
10. Provide the customer with a backup of the revised SQL DB
11. Migrate and Test integrations
 - Repoint service endpoints to new URLs
 - Adjust firewall rules and network topologies as necessary
 - Update interface EMSE scripting dependences for Azure compatibility
12. Migrate and update SSRS reports (maximum of 200)
 - Import reports into the Accela SaaS environment
 - Update reports to remove dependencies on custom objects (stored procedures, functions)
 - Facilitate customer testing and remediate any issues found resulting from migration
13. Develop go live plan
14. Final go-live/roll back decision
15. Execute go live plan

Deliverable 2: After migration of a non-production environment, Accela will begin the implementation of the Premium Citizen Experience (OpenCities). This SOW details the deliverables that will be performed by Accela Professional Services (Deliverables 2.1 and 2.3) and OpenCities Professional Services (Deliverables 2.2, 2.4, and 2.5).

Deliverables for Accela and OpenCities	Tasks
Accela Deliverables 2.1: Project Kick Off	<ul style="list-style-type: none"> • Project Kick Off • Provide use of task management tool • Discovery of statements and/or images capturing the intention of the look/feel of new Website • Designer feedback or recommendations
OpenCities Deliverable 2.2: Design and Configuration	<ul style="list-style-type: none"> • Collect asset such as logos and images • Create and review analytics report • Departmental Portal Page & Theme Light Design Review
Accela Deliverable 2.3: Design, Configuration, & Training	<ul style="list-style-type: none"> • ACA assessment and Premium Citizen Experience configuration • Accela Integration training and consultation
OpenCities Deliverable 2.4: Training & Handover	<ul style="list-style-type: none"> • Content Publisher training • OpenCities Help Center 24 x 7 • OpenForms training • Site Administrator training
OpenCities Deliverable 2.5: Content Service Creation and Curation	<ul style="list-style-type: none"> • Content creation and building • Coordinate full launch of Departmental Portal with Agency Team to assure transition.

OUT OF SCOPE

Any Coding, conversion or additional services not specifically described in this document is the responsibility of Agency.

PROJECT ASSUMPTIONS

GENERAL PROJECT ASSUMPTIONS

- Accela and OpenCities remain responsible for their own services, warranty, and terms and conditions related to the SOW.
- Agency will provide the necessary tools, accounts, and permissions that will enable Accela to access the Agency’s internal network for remote installation and testing. This access must be provided through industry standard tools such as Virtual Private Network (VPN). Failure to provide this access in a timely fashion will result in a project delay. Such a delay will result in a Change Order.
- Agency will ensure that Accela resources have access to a Dev or Test version of the 3rd party systems for interface development. All interfaces will be developed against 1 (one), agreed upon version of the 3rd party system.

SAAS MIGRATION ASSUMPTIONS

- Migration of the GIS data export under this agreement is dependent on the purchase of the Enhanced Reporting Database (ERD). Should Los Gatos opt not to include the ERD in their SaaS license agreement, then the Los Gatos would assume responsibility for migrating the GIS data export.

- Las Gatos will provide an on-premise SQL Server to host the GIS data export interface. The on-premise SQL server will have connectivity to ERD SQL DB for a “linked server” topology.

PREMIUM CITIZEN EXPERIENCE ASSUMPTIONS

- Implementation and Training Services will be completed over a 12-week period.
- This will serve as a Digital Front Door for one department
For instance, assuming Community Development: <https://www.losgatosca.gov/46/Community-Development>
- Additional design services will be needed if more than one department

PROJECT TIMELINE

The project is estimated to take 20 weeks. The projected start date for the Project is forty-five (45) calendar days after mutual acceptance and signature of this SOW.

PROJECT COMPLETION

Upon completion of the work defined above, this contract will be closed.

PROJECTS PUT ON HOLD

It is understood that sometimes Agency priorities are revised requiring the Agency to place the Accela implementation on hold. The Agency must send a formal written request sent to Accela to put the project on hold. Delays of 2 weeks or more that have a tangible impact to Accela’s resource plan are subject to change order.

If an Agency-based delay puts the project on hold for more than 90 days, Accela reserves the right to terminate the contract and negotiate new terms. If an Agency-based delay puts the project on hold past the termination period, Accela reserves the right to terminate the contract at the time of the delay. After that time, Accela can choose to cancel the rest of the Statement of Work. To finish the project will require a new Statement of Work at new pricing.

PAYMENT TERMS

The cost of services is:

SaaS Migration	\$25,000
Premium Citizen Experience	\$21,000
Total	\$46,000

PAYMENT SCHEDULE

- 50% due at contract signing \$23,000.
- 50% invoiced at completion \$23,000.
- Invoices are due net 30 of invoice date.

EXPENSES

There is no provision for travel expenses or travel time in this SOW because Agency does not need any onsite resources. Travel to the Agency will not be conducted unless a Change Order, inclusive of travel expense terms and conditions, is signed prior to travel commencing to cover the cost of the travel.

CONTRACT SUM

The total estimated amount payable under this SOW, as calculated from the above-mentioned fees, is **\$46,000**. This estimated price is based on the information available at time of signing and the assumptions, dependencies and constraints, and roles and responsibilities of the Parties, as stated in this SOW.

ADMINISTRATION

CHANGE ORDERS

In order to make a change to the scope of Professional Services in this SOW, and subject to the Disclaimers below, Agency must submit a written request to Accela specifying the proposed changes in detail. Accela will submit to Agency an estimate of the charges and the anticipated changes in the delivery schedule that will result from the proposed change in the Professional Services Change Order. Accela will continue performing the Professional Services in accordance with the SOW until the parties agree in writing on the change in scope of work, scheduling, and fees therefore. Any Change Order will be agreed to by the parties in writing prior to implementation of the Change Order. If Accela's effort changes due to changes in timing, roles, responsibilities, assumptions, scope, etc. or if additional support hours are required, a change order will be created that details these changes, and impact to project and cost (if any). Any change order will be signed by Accela and Agency prior to commencing any activities defined in the change order. Standard blended rate for Accela resources is **\$250** per hour. The Change Order Template is attached hereto as Appendix A.

EXPIRATION

The scope and terms of this SOW must be executed as part of the Professional Services Agreement within sixty (60) calendar days of the date of this SOW. If the SOW is not executed, the current scope and terms can be renegotiated.

DISCLAIMERS

Accela makes no warranties in respect of the Services described in this SOW except as set out in the Professional Services Agreement. Any configuration of or modification to the Product that can be consistently supported by Accela via APIs, does not require direct database changes and is capable of being tested and maintained by Accela will be considered a "Supported Modification". Accela's obligations and warranties in respect of its Services, Products, and maintenance and support, as set out the agreement between Accela and Agency, does not extend outside the Supported Modifications or to any Agency manipulation of implemented scripts, reports, interfaces and adaptors.

In the event Agency requires significant changes to this SOW (including cumulative revisions across any one or more Change Orders) which Accela reasonably determines (a) is a material modification of the nature or scope of Services as initially contemplated by the Parties under this SOW and/or (b) is significantly outside the Supported Modifications, Accela may, upon no less than thirty (30) days' notice to Agency, suspend or terminate this SOW and/or any Change Order issued hereunder. In the event of any such termination or suspension, the parties will work together in finalizing agreed-upon Deliverables.

APPENDIX A: CHANGE ORDER FORM

Agency:
 Project Code:
 Contract ID:
 Initiating Department:
 Initiated By:

CO #:
 Date:

A. PROJECT CHANGE DESCRIPTION/TASK SUMMARY:

1. [Description of Change #1 – Issue details/scope impact, add as many as needed]
 - Schedule impact:
 - Resource impact:
 - Cost impact:
2. Etc.

Total Project Schedule Impact: [Enter]
 Total Project Resource Impact: [Enter]
 Total Project Cost Impact: [Enter]

B. BILLING TERMS:

Please describe the method by which Accela may bill the customer. Typically for CO's this is T&M.

C. EXPIRATION:

If this is a CO for a bucket of T&M hours there needs to be an expiration date

SIGNATURE AND ACCEPTANCE

The above Services will be performed in accordance with this Change Order, Work Authorization and the provisions of the Contract for the purchase, modification, and maintenance of the Accela systems. The approval of this Change Order will act as a Work Authorization for Accela and/or Agency to perform work in accordance with this Change Order, including any new payment terms identified in this Change Order. This Change Order takes precedent and supersedes all other documents and discussions regarding this subject matter.

Accepted By:	Accepted By: Accela, Inc.
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

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

Town of Los Gatos by:

Consultant By:

Laurel Prevetti Town Manager

Aaton Haggarty, Chief Legal Officer
Accela, Inc.

Recommended by:

Joel Paulson, Community Development
Director

Luke Norris, Sr Vice President,
Government Relations & Growth
OpenCities

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk

**Option A:
5-Year Cloud with Free Training and without 2-year Upfront**

Support and Maintenance, Hosting, Upgrades, Mobile, GIS, ACA Included

	Price	Quantity	Total
Year 1			
Cloud MultiApp	\$2,880	35	\$100,800
Premium Citizen Experience	\$20,200	1	\$20,200
Total			\$121,000
Year 2			
Cloud MultiApp	\$2,966.40	35	\$103,824
Premium Citizen Experience	\$20,806.00	1	\$20,806
Total			\$124,630
Year 3			
Cloud MultiApp	\$3,055.39	35	\$106,938.72
Premium Citizen Experience	\$21,430.18	1	\$21,430.18
Total			\$128,368.90
Year 4			
Cloud MultiApp	\$3,147.05	35	\$110,147
Premium Citizen Experience	\$22,073.09	1	\$22,073
Total			\$132,220
Year 5			
Cloud MultiApp	\$3,241.47	35	\$113,451.29
Premium Citizen Experience	\$22,735.28	1	\$22,735.28
Total			\$136,186.57
Total Five-Year Contract <u>without</u> Two-Years Upfront Payment			\$642,405.43
Free Training	\$0.00	40	\$0.00
New License Purchase			\$2,880

**Option B:
5-Year Cloud with Free Training and 2 Years Upfront**

Support and Maintenance, Hosting, Upgrades, Mobile, GIS, ACA Included

	Price	Quantity	Total
Year 1			
Cloud MultiApp	\$2,641	35	\$92,435
Premium Citizen Experience	\$20,200	1	\$20,200
Total			\$112,635.00
Year 2			
Cloud MultiApp	\$2,720.23	35	\$95,208.05
Premium Citizen Experience	\$20,806.00	1	\$20,806
Total			\$116,014.05
Year 3			
Cloud MultiApp	\$2,801.84	35	\$98,064.29
Premium Citizen Experience	\$21,430.18	1	\$21,430.18
Total			\$119,494.47
Year 4			
Cloud MultiApp	\$2,885.89	35	\$101,006.22
Premium Citizen Experience	\$22,073.09	1	\$22,073.09
Total			\$123,079.31
Year 5			
Cloud MultiApp	\$2,972.47	35	\$104,036.41
Premium Citizen Experience	\$22,735.28	1	\$22,735.27
Total			\$126,771.68
Total Five-Year Contract <u>with</u> Two-Years Upfront Training			\$597,994.51
Free Training	\$0.00	40	\$0.00
Total Contract Savings for 2 Years Upfront			\$44,410.92
New License Purchase			\$2,641

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 11

DATE: June 4, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute an Agreement with W. Jeffrey Heid, Landscape Architect, to Provide Services as Landscape Architecture Consultant to the Town.

RECOMMENDATION:

Authorize the Town Manager to execute an agreement with W. Jeffrey Heid, Landscape Architect, to provide services as Landscape Architecture Consultant to the Town.

BACKGROUND:

In 1992, the Town adopted a Water Efficient Landscape Ordinance (WELO) pursuant to State requirements. As required by the State, landscape plans subject to review under WELO, are required to be reviewed by licensed professionals. In 2011, the Town Council approved a contract with W. Jeffrey Heid to serve as Landscape Architecture Consultant to review landscape plans and to perform the irrigation audits required by the WELO.

The Town distributed a Request for Proposal in April 2021 and received three proposals from Landscape Architecture Consultants. Through the selection process, Mr. Heid was chosen to continue to serve as the Landscape Architecture Consultant for the Town, based on the quality of the proposal, the cost to provide services, and past services provided.

PREPARED BY: Sally Zarnowitz, AIA, LEED AP
Planning Manager

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

PAGE 2 OF 4

SUBJECT: Authorize the Town Manager to Execute an Agreement with W. Jeffrey Heid, Landscape Architect, to Provide Services as Landscape Architecture Consultant to the Town.

DATE: June 3, 2021

DISCUSSION:

The Landscape Architecture Consultant serves in a similar capacity to other Town peer review consultants such as architect, arborist, geotechnical, and environmental consultants. Typical Landscape Architecture Consultant tasks include the following:

- Working on special studies or projects, including: preparation of a checklist for required content for landscape plans and irrigation reports for application packets; and
- Evaluating landscape and irrigation plans for development proposals for conformance with the WELO, including review of: landscape water budget components; soil assessment and management; landscape maintenance; identifying recommendations and conditions of approval for landscape water reduction; and project monitoring.

Mr. Heid has been a licensed Landscape Architect in the State of California since 1982, and a certified Landscape Irrigation Auditor since 1987. He has made it a priority to stay current with updates to the WELO, including changes which are forthcoming from the Department of Water Resources, with continuing education. Since 2011, he has performed over 125 landscape plan reviews for the Town and has been providing auditing services for certain projects upon request.

CONCLUSION:

Staff recommends that the Town Council authorize the Town Manager to execute an agreement (Attachment 1) with W. Jeffrey Heid, Landscape Architect.

COORDINATION:

This report has been coordinated with the Town Manager's Office, Town Attorney's Office, and the Finance Department.

FISCAL IMPACT:

The WELO reviews for development proposals are paid for by the project applicant. The typical consultant review deposit for a single-family home is \$2,000.00. The actual cost is based on the scope of work and the consultant's fee schedule (see Attachment 1, Exhibit A). An administrative fee of 10 percent is also charged to reimburse the Town's administration costs.

PAGE 3 OF 4

SUBJECT: Authorize the Town Manager to Execute an Agreement with W. Jeffrey Heid,
Landscape Architect, to Provide Services as Landscape Architecture Consultant
to the Town.

DATE: June 3, 2021

ENVIRONMENTAL REVIEW:

This is not a project defined under California Environmental Quality Act (CEQA), and no further action is required.

Attachment:

1. June 30, 2021 Heid Agreement with Exhibit A

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AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is dated for identification this 1st day of July 2021 and is made by and between the TOWN OF LOS GATOS, a California municipal corporation (“Town”) and W. Jeffrey Heid, Landscape Architect and Certified Landscape Irrigation Auditor (“Consultant”), whose address is 6179 Oneida Drive, San Jose, CA 95123. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town has a need for a consulting landscape and irrigation auditor professional for evaluation of landscape and irrigation plans to ensure compliance with the State’s/Town’s Water Efficient Landscape Ordinance (WELO) for properties within the Town of Los Gatos.
- 1.2 Town desires to engage a landscape and irrigation auditor professional to: review, analyze, and comment on landscape plans; prepare technical analyses and reports; conduct peer review of outside irrigation reports; and attend public meetings as needed.
- 1.3 Consultant represents and affirms that he is qualified and willing to perform the desired work pursuant to this Agreement.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide the services listed below:

Administrative Duties

- A. When needed by Town, review landscape and irrigation plans for proposed development projects to ensure compliance with the State’s/Town’s WELO.
- B. When needed by Town, work on special studies or projects including, but not limited to, preparation of a checklist for content of landscape plans and irrigation reports for application packets.
- C. When needed by Town, evaluate landscape and irrigation plans for development proposals including, but not limited to review of landscape water budget components, soil assessment and management, landscape maintenance, recommendations and conditions of approval for landscape water reduction, and project monitoring.
- D. When needed by Town, assist in the modification of Town's WELO.
- E. When needed by Town, attend meetings with Town staff, public officials, community leaders, developers, contractors, and the general public.
- F. When needed by Town, advise, support, and assist Town departments, committees, commissions, and Town Council. In addition, act as a liaison between Town and Federal, State, and Regional agencies.

ATTACHMENT 1

- G. When needed by Town, attend Town Council, Planning Commission, and special study session meetings when water efficient landscape/irrigation issues are being considered.
- H. When needed by Town, provide copies of draft and final reports and studies prepared for Town. Consultant shall provide electronic file copies of these documents as needed.

Other miscellaneous services

Town may occasionally have the need for other services not specifically listed in this Agreement that Consultant has the necessary experience and capabilities to provide. Town may authorize Consultant to perform such selected services on an as-needed basis.

- 2.2 Time of Performance. Consultant shall perform the services described in this Agreement as follows: the services of Consultant are through June 30, 2026, that will commence upon the execution of the Agreement. Should Town not renew the Agreement, the award and authorization of the Agreement shall automatically expire. Town shall give Consultant at least 30 days' notice, prior to the cancellation or expiration of the Agreement.
- 2.3 Compliance with Laws. 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 Town and all reports and supportive data prepared by Consultant under this Agreement are Town's property and shall be delivered to Town upon the completion of Consultant's services or at 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 Town to the public, and Consultant shall not make any of the these documents or information available to any individual or organization not employed by Consultant or Town without the written consent of Town before such release. Town acknowledges that the reports to be prepared by 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 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 the established hourly rates, as set forth in the Fee Schedule (Exhibit A), which is attached hereto and incorporated herein by reference. Fees will be reviewed annually. 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 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 Town at the Consultant's offices during business hours upon written request of Town.
- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to Consultant. No portion of these services shall be assigned or subcontracted without the written consent of Town.
- 2.10 Independent Contractor. It is understood that 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 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, 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 Town. 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 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 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 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 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 and 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 Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by Town before work commences.

General Liability:

- i. 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 Consultant; products and completed operations of Consultant; and premises owned or used by Consultant.
- ii. 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 Town, its officers, officials, employees, or volunteers shall be excess of 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 Town, its officers, officials, employees, or volunteers.
 - iv. 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 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. It is understood that Consultant currently has no employees. If employees are hired in the future, Consultant shall obtain and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town. 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 Town, its officers, agents, 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 Consultant, or any of Consultant's officers, employees, 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. Town and 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, Consultant shall deliver to Town all plans, files, documents, and reports performed to date by 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 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 Town and 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:

To Town:

Joel Paulson
Community Development Director
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

To Consultant:

W. Jeffrey Heid
Landscape Architect and
Certified Landscape Irrigation Auditor
6179 Oneida Drive
San Jose, CA 95123

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 to 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 Exhibit A, constitutes the complete and exclusive statement of the Agreement between 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, Town and Consultant have executed this Agreement.

Town of Los Gatos

Consultant:

Laurel Prevetti
Town Manager

W. Jeffrey Heid
Landscape Architect and Certified Landscape
Irrigation Auditor

Department Approval:

Joel Paulson
Community Development Director

Approved as to Form:

Robert Schultz
Town Attorney

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W. JEFFREY HEID/LANDSCAPE ARCHITECT
6179 Oneida Drive, San Jose, Ca. 95123
408 691-5207 wjheidasla@comcast.net

April 28, 2021

Town of Los Gatos
Community Development Department
Planning Division
110 E. Main Street
Los Gatos, Ca. 95030

Attn: Sally Zarnowitz/Planning Staff
Re: RFQ For Plan Review and Auditing Services in Compliance with the MWELo

To the Planning Division of the Town of Los Gatos,

Thank you for the opportunity to provide this letter of interest for this position with the Town of Los Gatos. This is a position I have held for the past 10 years and am interested in continuing to provide these services.

Introduction

Conservation of our natural resources is something I have been interested in my entire career, with water conservation being as critical now as it has been the past 40 years. As we are entering another drought cycle where water rationing or other mandates may become the norm, it is more important than ever that we as landscape professionals as well as business and homeowners, be good stewards when it comes to conserving water.

Through good landscape design and enforcement of the MWELo, the public is not only better educated and informed, but landscapes are more successful.

Experience

Over the past 10 years I have provided over 125 plan checks in reference to the local WELo for the Town of Los Gatos. I have recently begun to provide auditing services for certain projects upon request. In addition to the Town of Los Gatos, I also perform similar services for the City of Saratoga. My services have also been retained by various owners, builders and contractors to provide auditing services throughout the Bay Area.

Project examples in the Town of Los Gatos include:

Sisters Court Neighborhood
Prospect Avenue Neighborhood
Creekside Estates
Hillbrook School
Various single family homes

In my private practice I must also address local WELO compliance for many Bay Area cities. It is here where I have found different, and sometimes more challenging interpretations of the ordinance, requiring that I have additional flexibility in my thinking and approach. I believe this has helped me become better in my own design work, as well reviewing and interpreting the work of other designers.

I have made it a priority to stay current with updates to the ordinance, including changes which are forthcoming from the Department of Water Resources, along with attending various educational seminars. Most recently this included: Model Water Efficient Landscape Ordinance and the New Normal, presented by Stop Waste, and, Firescape Qualification Training through Rescape California. Both are very current topics and critical to the recent environmental changes we are seeing in California.

Qualifications

I have been licensed as a Landscape Architect in the State of California since 1982. I was originally certified as a Landscape Irrigation Auditor back in 1987, and more recently renewed in 2008 through the Irrigation Association.

W. Jeffrey Heid Landscape Architect
408 691-5207
Certified Landscape Irrigation Auditor
Bay Friendly Certified
EPA WaterSense Partner
QWEL

Sean Mullin/Town of Los Gatos
Erin Walters/Town of Los Gatos
Chris Riordan/City of Saratoga 408 868-1235
Nicole Johnson /City of Saratoga 408 868-1209
John Cherbone/City of Saratoga 408 868-1241

I have not been, nor am I currently involved in any litigation.

Organization

I will be the only person providing plan check and auditing services. I have strived to provide services within a two week time frame from the notice to move forward and receipt of the landscape plans. Upon request, I can usually expedite the process sooner if needed. For auditing services, I require that the approved plans be sent to me prior to scheduling the audit and that the contractor who installed the work be present at the field audit. Scheduling of the field audit can sometimes be influenced by the availability of the contractor and access to the site.

Project Approach

My understanding of the role as WELO Plan Checker is to make sure that the intent of the landscape and irrigation designs meet and are in compliance with the requirements of the Water Efficient Landscape Ordinance. Unless it affects compliance, it is not my role to comment on the applicant's design.

As needed, I have visited sites in the past to get a better understanding of sun/shade issues, slope, existing trees, etc., all which can have an influence on the design and plan check. This can also be key in understanding the designer's approach when it comes to wildland fire protection and proposed defensible spaces.

I have previously and am open to speaking with an applicant or designer about the WELO requirements prior to their submission of plans. Alternatively, I am happy to answer any questions the applicant may have in reference to an initial plan check report.

My approach with all plan checks includes:

- 1) Initial review of all drawings in the plan set to confirm that the submittal documents are complete.
- 2) A review of the proposed landscaped area to confirm or determine whether it qualifies for a Prescriptive compliance, or must meet the Performance method of compliance.
- 3) Check of the proposed plant palette to confirm that the WUCOLS, or water need, rating of all plants has been provided.
- 4) Mark up of the planting plan to identify the location of low, water and medium water need plants, and to look for any conflicts with mixed water need groupings.
- 5) Review of the proposed hydrozones to see that they match with the proposed plant palette and water need mix.
- 6) Review of the water budget calculations for the performance method to see that the calculations are correct.
- 7) Review of the irrigation design to confirm that the proposed equipment and application methods conform to the WELO requirements and the size of the project.
- 8) Verification that any special landscape areas, gardens, pools, water features, artificial turf, gray water use, etc. are appropriately defined and identified.
- 9) Checking that a soil management report and/or notes referencing soil preparation are included.
- 10) Preparation of a plan check report identifying either compliance with the WELO, or corrections which must be made to the plans.
- 11) Review of modified plans as needed, based on initial plan check.

I don't anticipate any constraints unless the applicant doesn't fully understand the requirements of the WELO, or the plan set submitted is incomplete. I do have a private practice as a landscape architect, thus the time requirements of that work can influence how quickly I can begin my plan check reviews, but as previously noted, I am typically able to schedule a review with no issues. Should I be planning a vacation, I will let planning staff know.

Development Review

The number of hours to complete a plan check review depends on the size and complexity of the project. Time is also determined on whether corrections are needed and a second or third review of the plans are required based on the findings of the initial plan check.

For a relatively simple single-family residence which is approved based on the initial application, I have averaged 4-5 hours for the plan review and report. For more complex projects which require corrections and a second review, the hours have increased up to 10-12 hours. My original fee program was based on \$125.00/hour, but that was increased a few years ago to \$150.00. Since I began working for the Town of Los Gatos, a fixed fee program was put into place for each project. I don't believe I have ever needed the full amount of the fee to complete a review.

For field audits, I have a fixed fee program based on anticipated time in the field, preparation of my report and if a second visit is necessary to review any corrections. These have averaged \$750.00 for a single visit, up to \$1250.00 for two visits.

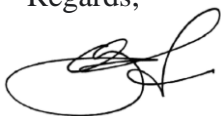
For special projects, I am happy to provide whatever is needed. I have previously been asked by planning staff to help in their understanding of the ordinance through a brief presentation and Q & A time. We recently had such an event via zoom. For this type of service, I do not charge for my time.

Examples of Work

Attached are two examples of WELO plan checks along with one audit report.

Please contact me with any questions or if you need any further information.

Regards,



W. Jeffrey Heid
Landscape Architect
408 691-5207



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 12

DATE: June 9, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute an Agreement for Consultant Services with EMC Planning Group Inc. for Preparation of the 2023-2031 Housing Element and Associated Environmental Review Documents.

RECOMMENDATION:

Authorize the Town Manager to execute an agreement for consultant services with EMC Planning Group Inc. for preparation of the 2023-2031 Housing Element and associated environmental review documents.

BACKGROUND:

The Town is actively working on the 2040 General Plan update and its associated Environmental Impact Report (EIR), anticipated to be considered by the end of 2021. On May 6, 2021, the General Plan Update Advisory Committee (GPAC) recommended approval of the Draft 2040 General Plan. Following the public review period for the 2040 General Plan and the Draft EIR, the environmental documents and Draft 2040 General Plan will be forwarded to the Planning Commission for a recommendation to the Town Council for final consideration.

The Housing Element is one of nine state-mandated elements that must be included in every General Plan. The Housing Element assesses housing needs for all income groups within the community and identifies implementation programs to meet those housing needs. Unlike other General Plan elements, the Housing Element must be updated every eight years, rather than every 10 to 20 years, must address statutory requirements regarding its content, and is

PREPARED BY: Sally Zarnowitz
Planning Manager

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

BACKGROUND (Continued):

subject to mandatory review by the State of California Department of Housing and Community Development (HCD).

The Town of Los Gatos current (2015-2023) Housing Element was certified by HCD on May 5, 2015 and will serve as a foundation for the preparation of the 2023-2031 Housing Element. The draft Regional Housing Needs Allocation (RHNA) for Los Gatos is 1,993 units for the current planning cycle (RHNA 6), compared to 619 units in RHNA 5, representing a substantial increase from the past planning cycle.

DISCUSSION:

On April 21, 2021, the Town issued a Request for Proposals (RFP) for consultant services for preparation of the 2023-2031 Housing Element, including associated public engagement and environmental review documents, to achieve certification by HCD by January 1, 2023. Proposals were due May 24, 2021. Staff sent the request for proposals to more than 25 planning consultants with known qualifications associated with the preparation of Housing Elements. Los Gatos also participates in the Cities Association Planning Collaborative and the ABAG/MTC Regional Housing Technical Assistance Program that provide technical assistance for preparation of Housing Elements.

The Town received an independent proposal from one firm, EMC Planning Group Inc., that is also included on the bench of qualified planning consultants for the ABAG/MTC Program. Staff conducted an interview and reference checks. At the conclusion of the evaluation process, staff concluded that EMC Planning Group Inc. provides the fit, capacity, and professional expertise for preparation of the 2023-2031 Housing Element and associated environmental review documents within the established time frame.

EMC Planning Group Inc. has provided environmental review consulting services for the Town for more than five years; however; the firm also offers extensive experience preparing Housing Elements for jurisdictions, including San Juan Batista, Atwater, Sand City, and Greenfield. The firm has been actively involved in the ABAG/MTC Regional Housing Technical Assistance Program and is proposing to partner with the digital platform *Bang the Table* as a cornerstone of its community outreach and engagement program.

The estimated cost to complete the proposed scope of work described in the proposal is \$246,695.00 for the Housing Element and \$35,740.00 for the environmental review documents, for a total cost of \$282,435.00.

PAGE 3 OF 3

SUBJECT: Housing Element Consultant Agreement

DATE: June 9, 2021

CONCLUSION:

Staff recommends that the Town Council authorize the Town Manager to enter into an agreement (Attachment 1) with EMC Planning Group Inc. for the reasons stated in this report.

FISCAL IMPACT:

Funding for the Housing Element will come from the General Plan Update Fund. Sufficient funds are available in this account.

COORDINATION:

This report has been coordinated with the Town Manager's Office, Town Attorney's Office, and the Finance Department.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under California Environmental Quality Act, and no further action is required.

Attachment:

1. EMC Agreement with Exhibit A

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is dated for identification this ___ day of July 2021 and is made by and between TOWN OF LOS GATOS, a California municipal corporation (“Town”) and EMC Planning Group Inc. (“Consultant”), whose address is 301 Lighthouse Avenue, Suite C, Monterey, CA 93940. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town desires to engage Consultant to provide Consultant Services for preparation of the 2023-2031 Housing Element and all associated environmental review documents.
- 1.2 Consultant represents and affirms that they are qualified and 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 the services as described in the Scope of Services, including Budget and Schedule, attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from the date of execution through July 31, 2023.
- 2.3 Compliance with Laws. 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 Town and all reports and supportive data prepared by Consultant under this Agreement are Town’s property and shall be delivered to Town upon the completion of Consultant's services or at Town's written request. All reports, information, data, and exhibits prepared or assembled

ATTACHMENT 1

by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by Town to the public, and Consultant shall not make any of these documents or information available to any individual or organization not employed by, or under contract with, Consultant or Town without the written consent of Town before such release. Town acknowledges that the reports to be prepared by 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 \$282,435.00** inclusive of all costs. Payment shall be made against tasks at costs as set forth in Exhibit A. Consultant shall be compensated for services in addition to those described in Exhibit A only if Consultant and Town execute a written amendment to this Agreement describing the additional services to be performed and the compensation to be paid for such services.
- 2.7 Flexibility. As noted in Exhibit A, the distribution of hours between firms, staff categories, and tasks are an estimate. While the total costs shall not exceed amount in Section 2.6 above, the distribution of hours/costs may vary depending on actual execution.
- 2.8 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.

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

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 2.9 Availability of Records. 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 Town at Consultant's offices during business hours upon written request of Town.
- 2.10 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to Consultant. No portion of these services shall be assigned or subcontracted without the written consent of Town.

- 2.11 Independent Contractor. It is understood that 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 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, 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.
- 2.12 Conflict of Interest. Consultant understands that its professional responsibilities are solely to Town. 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 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 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 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 Town's sole discretion, sever any such employment relationship.
- 2.13 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 and Housing Act.

III. INSURANCE AND INDEMNIFICATION

- 3.1 Minimum Scope of Insurance.
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- iii. Consultant shall provide to Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by 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: one million dollars (\$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. 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 Consultant; products and completed operations of Consultant; and premises owned or used by Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. Consultant's insurance coverage shall be primary insurance as respects Town, its officers, officials, employees, and volunteers. Any insurance or self-insurances maintained by Town, its officers, officials, employees, or volunteers shall be excess of 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 Town, its officers, officials, employees, or volunteers.
- iv. 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, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt

requested, has been given to Town. Current certification of such insurance shall be kept on file at all times during the term of this Agreement with the Town Clerk.

- 3.3 Workers' Compensation. Consultant shall maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to Town. Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. Consultant shall save, keep, hold harmless, and indemnify and defend 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 Consultant, or any of Consultant's officers, employees, 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.
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- 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:

To Town:

Joel Paulson
Community Development Director
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Fax: (408) 354-7593
Phone: (408) 354-6879
E-mail: jpaulson@losqatosca.gov
planning@losqatosca.gov

To Consultant:

Teri Wissler Adam
EMC Planning Group Inc.
301 Lighthouse Avenue, Suite C
Monterey, CA 93940
Phone: (831) 649-1799
E-mail: wissler@emcplanning.com
www.emcplanning.com

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 to 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 Exhibit A, constitutes the complete and exclusive statement of the Agreement between 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

Consultant:

Laurel Prevetti
Town Manager

Teri Wissler Adam
EMC Planning Group Inc.

Department Approval:

Approved as to Form:

Joel Paulson
Community Development Director

Robert Schultz
Town Attorney

4.1 Approach and Methodology

EMC Planning Group recognizes that the most significant work effort for Los Gatos's Housing Element Update (2023-2031) will be preparing a vacant and underutilized site inventory that accommodates Los Gatos's regional housing needs allocation (RHNA). The Town of Los Gatos is anticipating a 6th cycle RHNA of approximately 2,000 units, compared to 619 units in the 5th cycle RHNA, representing a 323 percent increase from the past planning cycle. Our approach to this effort will rely on the Town's "Preferred Land Use Alternative Framework," which identifies "Community Place Districts" where mixed-use/multi-family residential development can occur.

It is understood that there may be a need for the rezoning of property but that this would take place after completion of the Town of Los Gatos 2040 General Plan and is not envisioned as part of the housing element update process. Because the Town expects to complete its general plan update process in late 2021, EMC Planning Group does not anticipate the need for an environmental impact report (EIR) to complete the housing element update process. Instead, our work program includes the preparation of an Initial Study/Mitigated Negative Declaration.

A housing element update can be a very challenging process for local jurisdictions, and with the extraordinary RHNA numbers for the 6th Cycle, we expect it to generate a lot of public interest. EMC Planning Group understands that the success of this effort hinges on an effective public participation program that includes active engagement with Los Gatos residents, housing advocates and stakeholders, elected and appointed officials, and HCD.

We note that Los Gatos is included with a countywide collaborative led by the ABAG/MTC Regional Housing Technical Assistance Program. Our work program and budget have been trimmed in anticipation of reduced costs for certain data collection tasks, including support from a half-time technical assistant provided by the countywide collaborative. EMC Planning Group's Ande Flower has been actively involved the ABAG/MTC process and has working knowledge of housing element site selection (HESS) tool. Ande will play a central role in the housing element update, and his expertise in this area will ensure that we make the best use of the HESS tool. His effort will also provide invaluable feedback to ABAG/MTC as it works to improve the nascent tool. We are confident that with the EMC

Planning Group team, Town staff, and regional collaborators working together, Los Gatos can be assured of a successful update process that garners wide community support and timely certification of its updated housing element.

4.2 Scope of Work

EMC Planning Group will undertake the following work program to deliver a certified housing element to the Town of Los Gatos.

Task 1 – Project Schedule and Management

This task involves the development of a timeline/schedule, with milestones, that will lead to HCD certification of the housing element by December 31, 2022. This work will include scheduling for:

- Kickoff meeting with staff to refine the scope of services;
- Identification of major milestones, meetings, and work products;
- Twelve (12) Housing Element Advisory Board (HEAB) meetings (approximately one each month over the course of a year);
- Planning Commission and Town Council study sessions (one (1) meeting each for a total of two (2) meetings);
- Three (3) public hearings (one (1) Planning Commission and two (2) Town Council);
- Development of strategies to meet the Town’s RHNA 6 and the housing element update;
- Response to HCD review comments and Town staff review times; and
- Delivery of a draft and final draft housing element, including any subsequent updates to other general plan elements as required by State law.

This task also includes project management and covers communication and coordination between the EMC Planning Group team, Town staff, regional collaborators, and HCD. It includes meetings, phone conferences, email exchanges, and other communications. The EMC Planning Group team will attend one (1) kickoff meeting with staff to discuss project goals, issues, availability of reference materials, work product expectations, communications protocols, public outreach program, and site inventory. The team will also meet with staff on days that coincide with community outreach and engagement. Finally, this task includes consultation with HCD, which is typically handled with regular phone calls to HCD staff. Town staff is expected to be available for meetings with the EMC Planning Group team, to take regular coordination phone calls, and to provide Town documents as needed.

Task 2 – Review of Existing Housing Element

This task involves the review of Los Gatos’s current housing element to identify the Town’s success in accomplishing/implementing housing goals, policies and programs. This review includes explanations and updates for goals, policies, or programs that are in progress, that have been abandoned, or that have

proven ineffective. EMC Planning Group will make use of materials provided in the Town’s annual progress report to HCD.

Task 3 – Public Outreach

This task involves measures that EMC Planning Group will take to engage the Los Gatos community in the housing element update process. The 6th cycle regional housing needs allocation (RHNA) numbers are a sea change for all California communities, and the success of the update process hinges in part on a community outreach and engagement program that is robust, inclusive, and meaningful. COVID-19 has complicated community outreach efforts, but the pandemic has also catalyzed the development of new digital tools that have brought interactive engagement to a new level. One such tool is an all-in-one digital community engagement platform called *Bang the Table* (<https://www.bangthetable.com/>).

EMC Planning Group is partnering with *Bang the Table* as a cornerstone of its community outreach and engagement program. Using *Bang the Table*, the EMC Team will work with Town staff to design an interactive engagement plan that allows community members to engage on their own time. Community workshops can span days and include customizable discussion forums, and through the digital platform, discussions can be made available in multiple languages and moderated to weed out any personal attacks, profanity, or off-topic comments. This platform will serve as the internet portal for information regarding the housing element update, key documents, and interactive activities to solicit input at various stages of the process.

The following are a sample of the tools available through the *Bang the Table* platform:

- **Forums.** A safe and interactive space for Los Gatos community-members to discuss and debate pertinent issues. The site is moderated to assure safety.
- **Ideas.** These “virtual post-it notes” are a way for Los Gatos community-members to share what inspires them. EMC Planning Group staff can then assist in creating virtual stakeholder groups to help the community “grow” their ideas.
- **Places.** Gather feedback and photos directly on a map with a simple “pin” drop.
- **Stories.** Help your community better understand, empathize, and relate to others and to all that contributes to contemplating additional housing in the community.
- **Guestbook.** Simple, streamlined, and moderated space for Los Gatos community-members to upload comments.
- **Q&A.** Receive questions in a managed space that accommodates messages through the iterative brainstorming process.
- **Polls.** Ask a single question and get immediate insight with this quick and targeted tool.
- **Surveys.** Encourage Los Gatos community-members to voice their opinions in a convenient way that can also help us understand what areas of town need more encouragement to participate. Aggregate data can help the town understand generally who is participating with the outreach tools.

EMC Planning Group’s community engagement program will include the following key meetings/consultations:

- Twelve (12) HEAB meetings, integrated with the *Bang the Table* platform;
- Planning Commission and Town Council study sessions (one (1) meeting each for a total of two (2) meetings), also integrated into the *Bang the Table* platform;
- Three (3) public hearings (one (1) Planning Commission and two (2) Town Council);
- Tribal consultation in compliance with SB 18, including preparing all notices and mailings.

As part of this effort, EMC Planning Group will work with Town staff to develop a list of organizations that will be contacted to participate in the update process. Town staff will be responsible for identifying and/or confirming focus group members and providing EMC Planning Group with appropriate contact information.

Task 4 – Regional Housing Needs Assessment

This task involves a review of the Town’s vacant land inventory and an assessment of the 6th cycle regional housing needs allocation prepared by ABAG. In consultation with Town staff, EMC Planning Group will review ABAG’s methodology, coordinate with other selected Bay Area jurisdictions, and explore the likelihood of success to determine whether or not to appeal Los Gatos’ RHNA. If directed by Town staff, we will file an appeal to ABAG in the appeal period provided by ABAG (summer/fall 2021).

Task 5 – Assessment of Housing Needs

This task involves quantifying Los Gatos’s existing and projected housing needs for all income levels based on the Town’s share of the regional housing needs allocation in accordance with Section 65584 of the Government Code. EMC Planning Group will also analyze special housing needs based on data from Census 2020 and interviews with social service agencies in the area. Special housing needs will be evaluated for the disabled, elderly, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

This task assumes that ABAG’s Regional Housing Technical Assistance Program will provide jurisdiction-specific graphs and write-ups for all required data, including population, demographic, housing, market conditions and regional comparisons. EMC Planning Group anticipates some limited amount of time to tailor the work provided by regional collaborators.

This task also involves the identification of potential and actual governmental and nongovernmental constraints to the preservation, protection, and production of housing across income levels within the town. This task assumes that ABAG’s Regional Housing Technical Assistance Program will provide cross-jurisdictional comparisons necessary for this task, including the comparison of development and permitting fees and processing times. It will also provide write ups of typical countywide non-governmental constraints, including community opposition to housing, cost of construction, limited

availability of land and other topics. As is the case with the assessment of housing needs described above, EMC Planning Group anticipates some limited amount of time to tailor the work provided by regional collaborators.

Task 6 – Housing Sites Inventory

This task involves the preparation of an inventory of vacant and underutilized sites that demonstrates Los Gatos’s capacity to accommodate it RHNA. This includes identifying safe assumptions, evaluating sites, and analyzing potential policy strategies to increase site capacity, demonstrating development viability and inputting the information into HCD’s electronic form for submittal with the updated element. As discussed in the Approach and Methodology section above, EMC Planning Group anticipates that this will be the most significant area of work for the update process, and EMC’s Ande Flower will use his familiarity with the ABAG/MTC HESS tool to its best advantage.

Because Los Gatos’s inventory of vacant and underutilized sites may rely to some degree on accessory dwelling units, we recommend that Town staff apply to HCD for grants moneys through the Local Housing Trust Funds (LHTF) program (applications are due in June). LHTF funds may be used for the construction, repair, and reconstruction or rehabilitation of accessory dwelling units or junior accessory dwelling units. Application to the LHTF program would signal to HCD that Los Gatos is serious about accessory dwelling units.

Task 7 – Prepare Draft Housing Element

This task involves preparation of the housing element document, which includes collating materials developed in the previous tasks, plus:

- Updating housing, population, demographic, and employment data to coincide with recent ABAG growth projections and Census data;
- Undertaking an analysis that affirmatively furthers fair housing, in compliance with Assembly Bill 686;
- Updating housing goals and policies to address compliance with State law and effectively responds to the housing needs, constraints, and key priorities identified through data gathering and analysis and the public participation process; and
- Preparing an implementation program, including quantified objectives, to address housing needs for all income levels, seniors, veterans, populations with disabilities, or special needs, and those experiencing homelessness.

EMC Planning Group will prepare and submit an administrative draft housing element for Town staff review. Town Staff will provide a comprehensive set of recommended changes. Once edits are complete, the team will then prepare a public review draft housing element that is made available to the public and presented to HEAB, Planning Commission, and Town Council. EMC Planning Group will prepare PowerPoint presentations and attend meetings/hearings. Based on HEAB, Planning Commission, and Town Council input, the team will then prepare a HCD review draft and submit it to HCD for the mandated review.

This task involves working closely with HCD and Town Staff to respond to comments and produce a final draft housing element for final adoption. EMC Planning Group will prepare PowerPoint presentations and present the final draft document at public hearings before the Planning Commission and before the Town Council (three (3) hearings total). The team will then prepare the final adopted housing element, including any changes from the public hearings, and submit it to HCD for final certification. It will also distribute the document to the applicable water/sewer district and the California Office of Planning and Research.

Task 8 – General Plan Amendments

This task involves preparing general plan updates/revisions needed to ensure consistency with the housing element, including text, tables, maps, etc. This also includes update of the safety element as required by SB 379 (but does not include any update to the Local Hazard Mitigation Plan).

Task 9 – Environmental Documents

This task involves the preparation, posting, and filing all the appropriate environmental documents for compliance with the California Environmental Quality Act (CEQA), including the Initial Study, Notice of Intent to Adopt a Mitigated Negative Declaration (or other CEQA determinations as applicable), response to comments, mitigation measures, mitigation monitoring program, and notice of completion to be filed with Governor’s Office of Planning and Research and the Santa Clara County Clerk. In addition, the Consultant or Consultant Team will be responsible for preparing all notices and mailings for AB 52 (Tribal Consultation in CEQA process). This proposal assumes that CEQA review will be limited to the preparation of an initial study/mitigated negative declaration.

4.3 Deliverables

The following is a list of deliverables that EMC Planning Group is committed to providing through the course of its work program.

1. Preparation and submittal one (1) electronic copy in Microsoft Word (Word) format (.docx) and one (1) in PDF format of the draft housing element, and other elements as applicable for the Town of Los Gatos staff to review and comment upon in accordance with the project’s schedule and the design of the draft (text, font, graphics, tables, figures, and picture placement) shall match the *Town of Los Gatos 2040 General Plan* document format and quality;
2. Revision of the draft housing element to incorporate staff’s comments and submit (1) electronic copy in Word format, and one (1) electronic copy in PDF format of the element to the Town of Los Gatos for staff distribution to HCD, the Town Council, the Planning Commission, the HEAB, and the general public for review and comment;
3. Preparation, posting, and filing of all the appropriate environmental documents for compliance with CEQA, including the Initial Study, Notice of Intent to Adopt a Mitigated Negative

Declaration (or other CEQA determinations as applicable), Response to Comments, Mitigation Measures, Mitigation Monitoring Program, and Notice of Completion with OPR and the Santa Clara County Clerk;

4. Preparation of addendums and revisions to draft documents both in response to the Town of Los Gatos' input and comments from HCD, including tracking said revisions;
5. Preparation of the final draft updated housing element in response to comments from HCD, responsible agencies, Town of Los Gatos staff, HEAB, Planning Commission, Town Council, and the public. Upon determination of compliance by HCD of the final draft Housing Element, EMC Planning Group will submit thirty (30) bound copies, one (1) electronic copy in Word format, and one (1) electronic copy in PDF of the Final Housing Element (2023-2031) and other final draft general plan element(s), if necessary, for distribution to the Planning Commission and the Town Council for final adoption at corresponding public hearings;
6. Attendance, presentation, and participation in HEAB meetings, Planning Commission meetings, Town Council meetings, informational workshops or study session meetings, and public hearings as set forth in this work program;
7. Preparation of public meeting presentation materials, memos, letters, and other documents needed to satisfactorily complete the work program;
8. Provision of bi-monthly e-mail progress reports to the project managers;
9. Assistance in the preparation of staff reports and exhibits for HEAB, Planning Commission, and Town Council meetings and hearings;
10. Provision and maintenance of an internet-based folder for all project materials accessible to Town staff and EMC Planning Group;
11. Coordination with Town staff and HCD staff as necessary; and
12. Upon adoption of the final housing element and any required general plan amendments by the Town Council, EMC Planning Group will prepare a final adopted version with the date of adoption prominently displayed on the front cover and throughout the documents to distinguish it as the official document from other versions of the general plan elements. EMC Planning Group will provide ten (10) bound copies, one (1) electronic copy in Word format, and one (1) electronic copy in PDF format of all adopted materials for distribution to HCD, Town departments, and other stakeholders.

4.4 Budget and Schedule

Budget

EMC Planning Group proposes a not-to-exceed budget for the Los Gatos Housing Element Update of \$246,695. Of this amount, \$35,740 is earmarked for CEQA work (IS/MND). The detailed total project budget is presented on the following page. Following the total budget is a breakout detailed budget for the IS/MND, which is incorporated into the total budget on the previous page.

Los Gatos Housing Element Update (2023-2031)

Task	EMC Planning Group Inc.							Total Hours	Total Cost
Staff	Senior Principal	Principal	Principal Planner	Associate Planner	Graphics	Production Manager	Admin./ Production		
Billing Rate (Per Hour)	\$250.00	\$225.00	\$200.00	\$150.00	\$125.00	\$125.00	\$115.00		
Task 1 - Project Schedule and Management	5.0	32.0	72.0	8.0	0.0	0.0	0.0	117.0	\$24,050.00
Task 2 - Review of Existing Housing Element	0.0	16.0	0.0	32.0	0.0	0.0	0.0	48.0	\$8,400.00
Task 3 - Public Outreach	0.0	32.0	200.0	32.0	0.0	0.0	0.0	264.0	\$52,000.00
Task 4 - Regional Housing Needs Assessment	0.0	24.0	40.0	0.0	0.0	0.0	0.0	64.0	\$13,400.00
Task 5 - Assessment of Housing Needs	0.0	16.0	16.0	32.0	8.0	0.0	0.0	72.0	\$12,600.00
Task 6 - Site Inventory	0.0	40.0	32.0	16.0	10.0	0.0	0.0	98.0	\$19,050.00
Task 7 - Prepare Draft Housing Element	6.0	80.0	80.0	40.0	8.0	5.0	4.0	223.0	\$43,585.00
Task 8 - General Plan Amendments	4.0	20.0	60.0	32.0	4.0	0.0	0.0	120.0	\$22,800.00
Task 9 - Environmental Documents (See separate budget)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	--	\$35,740.00
Subtotal (Hours)*	15.0	260.0	500.0	192.0	30.0	5.0	4.0	Total Hours	Total Cost
Subtotal (Cost)*	\$3,750.00	\$58,500.00	\$100,000.00	\$28,800.00	\$3,750.00	\$625.00	\$460.00	1006.0	\$231,625.00

Additional Costs	
Production Costs	\$1,200.00
Travel Costs	\$1,500.00
Postal/Deliverables	\$500.00
Miscellaneous	\$500.00
Administrative Overhead 10%	\$370.00
Total	\$4,070.00

Subconsultant Fees	
<i>Bang the Table</i>	\$10,000.00
Subconsultant Overhead 10%	\$1,000.00
Total	\$11,000.00

Total Costs	\$246,695.00
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Los Gatos Housing Element IS/MND Budget										
Task	EMC Planning Group Inc.								Total Hours	Total Cost
	Senior Principal	Principal	Associate Planner	Principal Biologist	Associate Biologist	Graphics	Production Manager	Admin./ Production		
Staff										
Billing Rate (Per Hour)	\$250.00	\$225.00	\$150.00	\$190.00	\$130.00	\$125.00	\$125.00	\$115.00		
Management and Consultation	4.0	2.0	0.0	0.0	0.0	0.0	0.0	4.0	10.0	\$1,910.00
Research & Development	1.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	9.0	\$1,450.00
Draft Initial Study/MND	8.0	16.0	50.0	4.0	12.0	6.0	6.0	2.0	104.0	\$17,150.00
Final IS/MND	2.0	0.0	8.0	0.0	2.0	1.0	4.0	0.0	17.0	\$2,585.00
Response to Public Comments	8.0	0.0	8.0	0.0	0.0	0.0	0.0	1.0	17.0	\$3,315.00
MMRP	1.0	0.0	6.0	0.0	0.0	0.0	0.0	0.0	7.0	\$1,150.00
CEQA Noticing	0.0	0.0	4.0	0.0	0.0	0.0	0.0	2.0	6.0	\$830.00
Public Hearings	8.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	16.0	\$3,200.00
Tribal Consultation	0.0	0.0	24.0	0.0	0.0	0.0	0.0	0.0	24.0	\$3,600.00
Subtotal (Hours)	32.0	18.0	116.0	4.0	14.0	7.0	10.0	9.0	Total Hours	Total Cost
Subtotal (Cost)	\$8,000.00	\$4,050.00	\$17,400.00	\$760.00	\$1,820.00	\$875.00	\$1,250.00	\$1,035.00	210.0	\$35,190.00

Additional Costs	
Production Costs (all docs provided electronically)	\$100.00
Travel Costs	\$200.00
Postal/Deliverables	\$100.00
Miscellaneous	\$100.00
Administrative Overhead 10%	\$50.00
Total	\$550.00

Total Costs	\$35,740.00
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NOTE: This proposal is valid for 90 days

Schedule

EMC Planning Group anticipates an approximately 18-month effort to draft, adopt, and obtain HCD certification of Los Gatos's Housing Element Update (2023-2031). This schedule assumes the use of an initial study/mitigated negative declaration for CEQA review.

Tasks	Time Frame
Task 1 – Project Schedule and Management	Ongoing through completion of project
Task 2 – Review of Existing Housing Element	Summer 2021
Task 3 – Public Outreach	Summer 2021 thru Fall 2022
Task 4 – Regional Housing Needs Assessment	Summer and Fall 2021
Task 5 – Assessment of Housing Needs	Fall 2021
Task 6 – Housing Sites Inventory	Summer 2021 thru Winter 2021-22
Task 7 – Prepare Draft Housing Element	Summer 2022 thru December 31, 2022
Task 8 – General Plan Amendments	Summer 2022
Task 9 – Environmental Documents	Summer and Fall 2022
Total	Approximately 18 months



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 13

DATE: June 4, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Direct Staff to Add Rainbow Stripes to Two Crosswalks on East Main Street in Front of Town Hall

RECOMMENDATION:

Direct staff to add rainbow stripes to two crosswalks on East Main Street in front of Town Hall.

BACKGROUND:

Parks and Public Works received a request to install rainbow crosswalks in front of Town Hall in support of the Lesbian Gay Bisexual Trans Queer/Questioning (LGBTQ+) community. Crosswalk design is regulated by State and Federal traffic control standards that is fairly limiting in colors that are permissible, with yellow and white as the approved options.

DISCUSSION:

The proposed installation would entail a twelve-inch rainbow stripe parallel to and on the outside of two crosswalks, one near Pageant Way and the other near Villa Avenue. The striping would be thermoplastic material, a durable non-skid application that holds up over time. This is similar to an installation recently completed in Cupertino.

Crosswalk design standards are strict and adhering to the standards provides protection to engineers in cases where collisions occur. Directing staff to deviate from the standard provides liability relief to the engineer, while the associated risk to the Town remains. The implementation on the exterior of the crosswalk is intended to reduce risk while gaining the intended visual impact.

PREPARED BY: Matt Morley
Parks and Public Works Director

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

PAGE 2 OF 2

SUBJECT: Direct Staff to Add Rainbow Stripes to Two Crosswalks on East Main Street in
Front of Town Hall

DATE: June 4, 2021

CONCLUSION:

With Council direction, the work to install the striping would occur in July.

COORDINATION:

This project is coordinated with the Town Attorney.

FISCAL IMPACT:

The materials for this project are expected to cost \$5,000 and the labor an additional \$8,000. Funding will come from the annual pavement maintenance program.

ENVIRONMENTAL ASSESSMENT:

Repair and maintenance of existing streets is defined under CEQA Section 15301(c) as Categorically Exempt.

Attachment:

1. Sample Rainbow Crosswalk Installation





**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 13

ADDENDUM

DATE: June 14, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Direct Staff to Add Rainbow Stripes to Two Crosswalks on East Main Street in Front of Town Hall

REMARKS:

This addendum reflects public comment received from 11:01 a.m., Thursday, June 10, 2021 through 11:00 a.m., Monday, June 14, 2021.

Attachment Previously Received with Staff Report:

1. Sample Rainbow Crosswalk Installation

Attachment Received with this Addendum:

2. Public Comment Received from 11:01 a.m., Thursday, June 10, 2021 Through 11:00 a.m., Monday, June 14, 2021.

PREPARED BY: Matt Morley
Parks and Public Works Director

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

From: Rob Stump
Sent: Monday, June 14, 2021 12:23:52 PM
To: Maria Ristow <MRistow@losgatosca.gov>
Subject: Rainbow Striping Alongside Crosswalks

Councilmember Ristow,

Since I regularly review Council agendas looking for anything Wildfire related, I came across Consent Agenda Item 13 - Rainbow Striping alongside crosswalks. First, I have no grudge or agenda against LGBTQ but I would like to understand the policy the Town has in-place to govern these requests. Can anyone request special treatments on the streets of LG? Is it first come first served, or is it a discriminatory act, i.e., we will do it for X but not Y? This seems to have come from nowhere and is moving forward with no public comment at least that I am aware of...perhaps I "missed" a meeting. It seems to be moving at lightning speed which is unusual for Town Government.

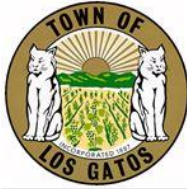
At minimum, there should be answers to these questions:

1. How did the request for Rainbow crosswalk striping come to the Town. Who fielded the request?
2. Is there a written policy that covers requests along with the approval process?
3. If not, what was the approval process?
4. Will other groups or causes now be able to make requests of the Town for similar treatment? Who will decide?

These questions or at least question like these should be asked before we start making "permanent" statements on the streets of Los Gatos. Is this just a no-brainer and I am just missing something?

Thanks for "listening."

Rob Stump



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 13

DESK ITEM

DATE: June 15, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Direct Staff to Add Rainbow Stripes to Two Crosswalks on East Main Street in Front of Town Hall

REMARKS:

Public comment and individual Council Members are inquiring about how this item was placed on the Council agenda. This Desk Item provides additional details.

As mentioned in the staff report, the City of Cupertino installed rainbow striping. The Mayor asked what it would take for Los Gatos to do something similar. After staff's evaluation, we determined that it would be best for this to be an agenda item to provide the entire Council with the opportunity to consider the proposed installation.

From a process perspective, Town Policy 2-01 "Town Agenda and Format" guides the creation of the agenda. The Policy states in part, that the agenda is prepared by staff in consultation with the Mayor for the Mayor's final approval. For this item, the Mayor made the decision to place this item on the agenda for the Council's consideration.

In July, the Policy Committee is expected to discuss the Town's Flag Policy and identify potential criteria to determine when additional flags could be flown (e.g., Pride Flag, Ireland Flag, etc.). Any recommendations would come to the full Council for action. Similarly, the Policy Committee could also recommend the establishment of a new Policy to govern requests affecting Town infrastructure, which would also come to Council for final decision.

Attachment Previously Received with Staff Report:

1. Sample Rainbow Crosswalk Installation

PREPARED BY: Matt Morley
Director of Parks and Public Works

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

PAGE 2 OF 2

SUBJECT: Direct Staff to Add Rainbow Stripes to Two Crosswalks on East Main Street in Front
of Town Hall

DATE: June 15, 2021

Attachment Previously Received with Addendum:

2. Public Comment Received from 11:01 a.m., Thursday, June 10, 2021 Through 11:00 a.m.,
Monday, June 14, 2021.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 6/15/2021

ITEM NO: 14

DATE: June 3, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Following Actions:
a. Authorize the Town Manager to Negotiate and Execute an Agreement with Los Gatos-Monte Sereno Safe Routes to School in an Amount Not to Exceed \$60,000 for Providing Services Eligible Under 2016 Measure B;
b. Establish a New Project Named Measure B Bicycle and Pedestrian Education & Encouragement Program (421-812-0134) in the Fiscal Year 2021/22 Capital Improvement Program (CIP) Budget and Authorize Revenue and Expenditure Budget Adjustments of \$98,344.

RECOMMENDATION:

Staff recommends that the Town Council authorize the following actions:

- a. Authorize the Town Manager to negotiate and execute an agreement with Los Gatos-Monte Sereno Safe Routes to School (SR2S) in an amount not to exceed \$60,000 for providing services eligible under 2016 Measure B;
- b. Establish a new project named Measure B Bicycle and Pedestrian Education & Encouragement Program (421-812-0134) in the Fiscal Year 2021/22 Capital Improvement Program (CIP) Budget and authorize revenue and expenditure budget adjustments of \$98,344.

BACKGROUND:

The Santa Clara Valley Transportation Authority (VTA)'s 2016 Measure B Program provides funding to local agencies for bicycle and pedestrian education and encouragement (E&E) activities. This sub-category, known as the Bike/Pedestrian E&E Program, covers the development and distribution of materials that are designed and intended to satisfy the following goals within the local agencies: (i) promote, educate, and/or encourage safe walking or bicycling for residents or visitors of every age and ability; (ii) communicate to residents and

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

visitors the benefits of walking and bicycling; and (iii) communicate to school children, residents, and visitors the rights and responsibilities of pedestrians, bicyclists, and motorists.

BACKGROUND (continued):

At its February 19, 2019 meeting, the Town Council authorized the Town Manager to enter into various Measure B agreements with the VTA. On November 26, 2019 the Town Manager executed the Bicycle & Pedestrian Education and Encouragement Program Agreement (Attachment 1). Said Agreement identifies the eligible use of funds, VTA's and Town's obligations, maximum funding allocations, and other terms and conditions. The initial term of the VTA Agreement was from July 1, 2019 until June 30, 2021 and included two optional extension periods which resulted in the Agreement running through June 30, 2025. The funding allocation to the Town is calculated based on the total sales tax receipt and the Town's population. The allocation to the Town in Fiscal Years 2018/19 through 2021/22 is \$24,586 annually and the cumulative amount through Fiscal Year 2021/22 is \$98,344.

DISCUSSION:

The Town has an established partnership with the Los Gatos-Monte Sereno Safe Routes to School (SR2S) in promoting and encouraging biking and walking to school-age children. The SR2S proposed a program of projects that is eligible under the Measure B Bike/Pedestrian E&E Program and aligns with the Town's strategic priority of Transportation Demand Management. SR2S is in a unique position to implement education and encouragement program and services to the target users, school-age children, and has an established relationship with the schools, the parents, and students. The details of the program of projects are included as Exhibit A to the draft agreement in Attachment 2. The cost of the proposed SR2S program of projects is approximately \$10,000 annually. Staff estimated that the total cost in the proposed term in the agreement, through June 30, 2025, would be no greater than \$60,000.

CONCLUSION:

Staff recommends approval of the contract agreement in an amount not to exceed \$60,000 to deliver eligible services per the Funding Agreement with the VTA for the Bike/Pedestrian E&E Program.

COORDINATION:

This report was coordinated with the Town Attorney's Office and Finance Department.

FISCAL IMPACT:

The budget adjustments would add \$98,344 to the Fiscal Year 2021/22 Capital Improvement Program, which would provide sufficient funds for the contract.

Measure B Bicycle and Pedestrian Education & Encouragement Program		
Project 421-812-0134		
	Budget	Costs
Grant Fund (Measure B)	\$ 98,344	
Total Project Budget	\$ 98,344	
Proposed Contract (SR2S)		\$ 60,000
Project Costs Committed		\$ 60,000
Available Balance		\$ 38,344

ENVIRONMENTAL ASSESSMENT:

The requested actions are not considered a project defined under CEQA, and no further action is required.

Attachments:

1. Measure B Bicycle & Pedestrian Education and Encouragement Program Agreement
2. Draft Agreement with Los Gatos-Monte Sereno Safe Routes to School

**FUNDING AGREEMENT
BETWEEN
THE TOWN OF LOS GATOS
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
2016 MEASURE B BICYCLE & PEDESTRIAN EDUCATION and ENCOURAGEMENT PROGRAM**

THIS AGREEMENT ("AGREEMENT") is between the TOWN OF LOS GATOS, referred to herein as "RECIPIENT", and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as "VTA". Hereinafter, RECIPIENT 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, 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
4. Whereas, the PROGRAM includes a Bicycle & Pedestrian program category ("BIKE/PED CATEGORY") to fund bicycle and pedestrian projects and educational programs; and
5. Whereas, the BIKE/PED CATEGORY consists of three sub-categories, including the education & encouragement program ("BIKE/PED E&E PROGRAM");
6. 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
7. Whereas, VTA and RECIPIENT desire to specify herein the terms and conditions under which the BIKE/PED E&E PROGRAM funds will be administered to RECIPIENT by VTA as directed by the VTA Board of Directors.

NOW, THEREFORE, the PARTIES agree as follows:

II. AGREEMENT

1. BIKE/PED E&E PROGRAM CATEGORY

The BIKE/PED E&E PROGRAM covers activities and the development and distribution of materials that are designed and intended to satisfy the following goals within the RECIPIENT'S jurisdiction (i) promote, educate, and/or encourage safe walking or bicycling for residents or visitors of every age and ability; (ii) communicate to residents and visitors the benefits of walking and bicycling; and (iii) communicate to school children, residents, and visitors the rights and responsibilities of pedestrians, bicyclists, and motorists.

2. TERM OF AGREEMENT

The term of this AGREEMENT will commence on July 1, 2019, and continue until (i) June 30, 2021, or (ii) until all BIKE/PED E&E PROGRAM funds allocated to RECIPIENT through June 30, 2021 under this AGREEMENT have been expended entirely, whichever occurs later.

At VTA's sole option, VTA may extend the term of this AGREEMENT for two 2-year periods as follows:

Option Period 1: July 1, 2021, through June 30, 2023, or until all BIKE/PED E&E PROGRAM funds allocated to RECIPIENT through June 30, 2023, under this AGREEMENT have been expended entirely, whichever occurs later.

Option Period 2: July 1, 2023, through June 30, 2025, or until all BIKE/PED E&E PROGRAM funds allocated to RECIPIENT through June 30, 2025, under this AGREEMENT have been expended entirely, whichever occurs later.

VTA may exercise these options by providing written notice to RECIPIENT at least 30 days prior to the expiration of the then-current term.

3. ELIGIBLE USE OF FUNDS

RECIPIENT must use RECIPIENT's allocated BIKE/PED E&E PROGRAM funds for the following activities/projects (each, an "E&E PROJECT"), provided, however, that RECIPIENT must obtain VTA's prior written approval for such E&E PROJECT (VTA approval must be given by the person identified below in Section 8(d), or his/her designee):

- a. Organization and implementation of K-12 Safe Routes to Schools programs and activities.
- b. Organization and implementation of Vision Zero programs. Vision Zero is defined by the Vision Zero Campaign as the "Strategy to eliminate all traffic fatalities and severe injuries, while increasing safe, healthy, equitable mobility for all", which definition is adopted herein for purposes of this AGREEMENT.
- c. Organization and implementation of open streets events. "Open streets events" are defined by the Open Streets Project (an advocacy project and collaboration between 8 80 Cities and Street Plans "Programs that temporarily open streets to people by closing them to cars" , which definition is adopted herein for purposes of this AGREEMENT.

- d. Creation and implementation of marketing to encourage mode shift towards active transportation.
- e. Development and distribution of maps that promote places to walk or bike
- f. Education of walking and bicycling skills to adults and children.
- g. Working with law enforcement officials to ensure common understanding and consistent application among law enforcement officials of traffic laws related to biking and walking.
- h. Organization and implementation of broad or targeted safety campaigns to promote safe driving, walking, and bicycling behavior.*
- i. Creation and distribution of marketing materials to encourage safe walking, biking, and driving.*
- j. Purchase and distribution of bicycle helmets, lights, reflective vests, or other bicycle/pedestrian safety equipment to be used in education/encouragement activities
- k. Purchase and distribution of incentives for education/encouragement activities.
- l. Organization and implementation of crosswalk stings or other activities that educate roadway users on traffic laws. Crosswalk stings are activities conducted by law enforcement to educate the public about crosswalk right of way laws that may or may not include citations.
- m. Organization and implementation of special community events focused on achieving the BIKE/PED E&E PROGRAM goals described in Section 1. BIKE/PED E&E PROGRAM CATEGORY, such as community rides or walks.
- n. Energizer stations and other Bike to Work Day activities.
- o. Implementation of valet bicycle parking.
- p. Community-based bicycle/pedestrian surveys of facilities and surrounding areas to learn, observe, and identify bicycle and pedestrian hot spots.
- q. Any other program or activity approved by VTA in writing.

*Any safety campaign or public service announcement targeted to motorists must focus on safe, responsible, and respectful motorist interactions with pedestrians and bicyclists.

RECIPIENT is permitted to use the BIKE/PED E&E PROGRAM funds allocated hereunder for direct costs and staff time costs incurred by RECIPIENT to support E&E PROJECTS. RECIPIENT is permitted to use the BIKE/PED E&E PROGRAM funds allocated hereunder for the costs incurred for evaluation of the E&E PROJECTS (as required under Section 4. EVALUATION REQUIREMENTS).

Notwithstanding any other provision of this AGREEMENT, RECIPIENT is not permitted to use BIKE/PED E&E PROGRAM funds allocated hereunder for capital improvements.

E&E PROJECTS may be targeted and limited to specific demographics (e.g. school children, seniors, people with disabilities, etc.) to the extent not prohibited by applicable law.

Only BIKE/PED E&E PROGRAM costs incurred by RECIPIENT on or after July 1, 2017, will be eligible for reimbursement.

4. EVALUATION REQUIREMENTS

RECIPIENT must identify (i) the project reach and scale of each E&E PROJECT and (ii) one or more metric(s) that will be measured to evaluate whether the goal is achieved. The frequency and schedule of each E&E PROJECT evaluation must also be identified by RECIPIENT and approved by VTA.

Examples of acceptable metrics are set forth in Attachment A.

5. MAXIMUM FUNDING ALLOCATIONS

- a. RECIPIENT's maximum funding allocation for each fiscal year, starting July 1, 2017, will be based upon the VTA Board of Directors Adopted Biennial Budget for the BIKE/PED E&E PROGRAM and the annual fund distribution formula described below.
- b. The BIKE/PED E&E PROGRAM annual fund distribution formula is calculated every two fiscal years (in line with VTA's budget cycle; a fiscal year begins July 1 and ends June 30) and is based on the following:
 - i. First, at the same time that VTA plans and finalizes its budget for the two upcoming fiscal years, the VTA Board of Directors determines the allocation of 2016 MEASURE B funds for the two upcoming fiscal years.
 - ii. Second, the VTA Board of Directors determines the amount of 2016 MEASURE B funds to be allocated amongst the PROGRAM categories and subcategories, including the BIKE/PED E&E PROGRAM category.
 - iii. Third, each city's percentage share ("CITY PERCENTAGE SHARE") and the County of Santa Clara's percentage share ("SCC PERCENTAGE SHARE") of the total population of Santa Clara County, California (including unincorporated areas) (according to the then most current California Department of Finance's annual population estimates (Report E-1, or any successor report)) (TOTAL SCC POP) is calculated by dividing the city's or County of Santa Clara's (as applicable) total population by the total population of all of Santa Clara County and multiplying the result by 100.
 - iv. Fourth, an allocation is made to VTA and the County of Santa Clara for countywide (with respect to Santa Clara County) BIKE/PED E&E PROGRAM activities ("COUNTYWIDE ACTIVITIES").
 - v. Fifth, the 2016 MEASURE B funds remaining for the BIKE/PED E&E PROGRAM category allocation are calculated by deducting the amount allocated for COUNTYWIDE ACTIVITIES in (iv) immediately above from the total BIKE/PED E&E PROGRAM category allocation ("REMAINING FUNDS").
 - vi. Sixth, each CITY PERCENTAGE SHARE is multiplied by the REMAINING FUNDS to determine the dollar amount that would be allocated to each city based on their CITY PERCENTAGE SHARE; however, no allocation is yet made at this step. Cities that would receive less than \$10,000 as a result of the calculation described in this section (vi) will be identified ("LOW POP CITIES").

- vii. Seventh, each city is allocated \$10,000 ("10K ALLOCATIONS"). LOW POP CITIES will not be allocated any additional funds beyond the 10K ALLOCATIONS made allocated to each city as described in this section (vii).
 - viii. Eighth, the modified REMAINING FUNDS are calculated by subtracting the cumulative total of all 10K ALLOCATIONS from the REMAINING FUNDS ("MOD REMAINING FUNDS").
 - ix. Ninth, a modified Santa Clara County population is calculated by deducting the cumulative populations attributed to the County of Santa Clara (unincorporated areas of Santa Clara County) and all LOW POP CITIES from the TOTAL SCC POP ("MODIFIED POPULATION").
 - x. Tenth, a modified population percentage share ("MOD CITY PERCENTAGE SHARE") is calculated for all cities that are not LOW POP CITIES ("NON-LOW POP CITIES") by dividing the NON-LOW POP CITY's total population by the MODIFIED POPULATION and multiplying the result by 100.
 - xi. Eleventh, each NON-LOW POP CITY's MOD CITY PERCENTAGE SHARE is multiplied by the MOD REMAINING FUNDS to calculate the NON-LOW POP CITY's additional allocation of 2016 MEASURE B funds for the BIKE/PED E&E PROGRAM category. This allocation will be made in addition to the 10K ALLOCATION described above.
- c. RECIPIENT's allocations are subject to change based on variations in annual population and actual 2016 MEASURE B receipts for prior fiscal years.
 - d. BIKE/PED E&E PROGRAM allocations may remain unspent for a maximum of three fiscal years, provided that (i) RECIPIENT provides VTA with a satisfactory explanation for why the allocation is not being spent and (ii) VTA provides RECIPIENT with written approval for such explanation.

At the end of the fourth fiscal year, allocations that were unspent for all four fiscal years will be returned by VTA to the pool of 2016 MEASURE B funds allocated to the BIKE/PED E&E PROGRAM category for redistribution in the next allocation cycle pursuant to the formula above.

- e. All funds will be available to RECIPIENT on a reimbursement basis only.

6. VTA's OBLIGATIONS

VTA will:

- a. Annually update the BIKE/PED E&E PROGRAM formula to reflect the most current populations based on the California Department of Finance's annual population estimates (Report E-1, or any successor report). VTA shall use the updated BIKE/PED E&E PROGRAM allocation formula in the allocations beginning July 1 immediately following each VTA budget cycle.
- b. Annually report to the public the amount of BIKE/PED E&E PROGRAM revenues allocated and distributed to RECIPIENT.

- c. Annually report to the public a summary of E&E PROJECT evaluation metrics submitted by RECIPIENT, as required in Section 4. EVALUATION REQUIREMENTS.
- d. Conduct an assessment regarding the effectiveness of the BIKE/PED E&E PROGRAM using approved metrics and data provided by RECIPIENT (pursuant to Section 4. EVALUATION REQUIREMENTS) related to RECIPIENT's E&E PROJECT(s).
- e. Biennially, or however frequently as VTA determines is appropriate based upon the number of ongoing E&E PROJECTs, report to the public the effectiveness of the BIKE/PED E&E PROGRAM based on the assessment described immediately above in Section 6(d).
- f. Remit the amount due to the RECIPIENT 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.

7. RECIPIENT's OBLIGATIONS

RECIPIENT will:

- a. Ensure that all 2016 MEASURE B funds are expended on only allowable BIKE/PED E&E PROGRAM expenditures as described above in Section 3. ELIGIBLE USE OF FUNDS.
- b. Annually complete and submit to VTA, by October 1st of each year, RECIPIENT's proposed work program for the BIKE/PED E&E PROGRAM, in which RECIPIENT will set forth proposed E&E PROJECTs, and develop all such E&E PROJECTs that are approved by VTA as eligible. RECIPIENT's proposed metrics and frequency of E&E PROJECT evaluation must be included with the proposed work program (see Section 4. EVALUATION REQUIREMENTS); VTA must provide approval of these proposed metrics and the frequency of evaluation.
- c. Annually submit to VTA, by October 1st of each year, a summary of the prior fiscal year's completed E&E PROJECTs.
- d. Submit to VTA, on a frequency as approved by VTA, the evaluation of the completed E&E PROJECT pursuant to Section 4. EVALUATION REQUIREMENTS.
- e. If applicable, annually submit to VTA, by October 1st of each year, an explanation of why no BIKE/PED E&E PROGRAM funds are planned for expenditure during the upcoming fiscal year.
- f. Annually complete and submit to VTA, by October 1st of each year, any accompanying reporting requirements for the BIKE/PED E&E PROGRAM.
- g. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- h. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this AGREEMENT for five (5) years. RECIPIENT 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.

- i. Submit invoices to VTA, no more frequently than monthly, for reimbursement of eligible E&E PROJECT costs (see Section 3. ELIGIBLE USE OF FUNDS). RECIPIENT must submit invoices within one year of the date RECIPIENT incurs the cost submitted on the invoice for reimbursement (unless otherwise approved by VTA in writing).

8. GENERAL TERMS AND CONDITIONS

- a. **Indemnity.** Neither VTA nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to RECIPIENT's acts or omissions under or in connection with any work, authority, or jurisdiction associated with this AGREEMENT. RECIPIENT shall fully defend, indemnify, and save harmless VTA from any liability imposed for injury (as defined by California Government Code §810.8) arising out of or relating to RECIPIENT's acts or omissions under or in connection with any work, authority, or jurisdiction delegated to RECIPIENT under this AGREEMENT. This provision will survive the termination or expiration of this AGREEMENT.
- b. **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.
- c. **Entire Agreement.** This AGREEMENT contains the entire understanding between VTA and RECIPIENT 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.
- d. **Notices.** Any notice which may be required under this AGREEMENT must be in writing, will be effective when received, and must be given by personal service or certified 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

RECIPIENT:
Matt Morley, Director of Parks and Public Works
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030
Email: mmorley@losgatosca.gov

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

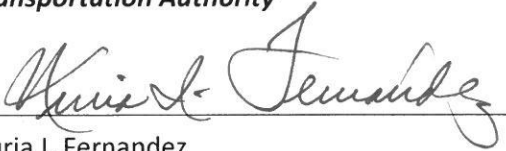
The individual identified above for RECIPIENT is RECIPIENT's BIKE/PED E&E PROGRAM liaison ("LIAISON"). The LIAISON will be (i) the liaison to VTA pertaining to implementation of this AGREEMENT and (ii) the contact for information about the BIKE/PED E&E PROGRAM and E&E PROJECTS.

- 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 RECIPIENT 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 RECIPIENT 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. RECIPIENT agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

Signatures of PARTIES on following page.

IN WITNESS WHEREOF, VTA and RECIPIENT have executed this AGREEMENT as of the last date set forth below.

**Santa Clara Valley
Transportation Authority**



Nuria I. Fernandez
General Manager/CEO

12/20/19

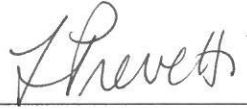
Date

Approved as to Form



Megan Gritsch
Staff Attorney II

RECIPIENT

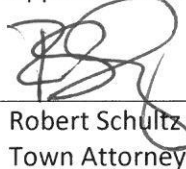


Laurel Prevetti
Town Manager

11.26.2019

Date

Approved as to Form



Robert Schultz
Town Attorney

ATTACHMENT A

Example Evaluation Requirement Metrics

- Project reach
 - Hypothetical Example: Online media safety campaign had 10,000 unique views, resulting in 2,000 people taking the “I will drive, walk, and bike safely and responsibly” pledge.
- Mode shift
 - Hypothetical Example: At the end of the school year, 200 bicycles were counted in the bike cage, an increase of 20% over the number of bicycles counted at the beginning of the year.
- Behavior change
 - Hypothetical Example: Individualized marketing packets were provided to 1,200 households. 200 households requested additional information. Before and after surveys showed that 5% of households that requested additional information switched to biking, walking, or taking transit more.
- Safety improvements
 - Hypothetical Example: After the crosswalk sting, motorists were observed yielding to pedestrians 8 out of 10 times, an increase of 10% over the yielding rate before the crosswalk sting. However, these rates decreased over time, suggesting that continued events or infrastructure changes are needed to permanently improve driver behavior.
- Community Engagement
 - Hypothetical Example: At the end of five Train the Trainer events, of the 25 trainees, ten agree to lead Safe Routes to School activities at their schools.

AGREEMENT FOR SERVICES

THIS AGREEMENT is dated for identification this 1st of January 2021, and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Los Gatos-Monte Sereno Safe Routes to School (SR2S), a 501(c)(3) ("Service Provider"), whose address is 17010 Roberts Road, Los Gatos, CA 95032. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town desires to engage Service Provider in a sole source procurement.
- 1.2 Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Town desires to engage Service Provider to deliver eligible services per the Funding Agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Bicycle & Pedestrian Education and Encouragement Program (Measure B E/E Program).
- 1.4 Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

II. AGREEMENT

- 2.1 Scope of Services. Service Provider shall provide services as described in that certain Proposal sent to the Town, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect July 1, 2021 through June 30, 2025. Only eligible costs incurred on or after July 1, 2017 will be eligible for compensation.
- 2.3 Compliance with Laws. The Service Provider shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Service Provider represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Service Provider to practice its profession. Service Provider 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. Service Provider 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 Service Provider by the Town and all reports and supportive data prepared by the Service Provider under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Service Provider in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Service Provider shall not make any of these documents or information available to any individual or organization not employed by the Service Provider or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Service Provider 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 Service Provider in connection with other projects shall be solely at Town's risk, unless Service Provider expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Service Provider which is and has been confirmed in writing by Service Provider to be a trade secret of Service Provider.
- 2.6 Compensation. Compensation for services shall not exceed \$60,000, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.7 Billing. Billing shall be quarterly by invoice and shall be accompanied by a detailed explanation of the work performed as necessary to support reimbursement of funds. 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. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider 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 Service Provider. 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 Service Provider, 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 Service Provider 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. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider 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 Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider 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, Service Provider 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. Service Provider 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 Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement Service Provider 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. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider 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. Service Provider 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. Service Provider 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. Service Provider shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Service Provider agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

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 Service Provider; products and completed operations of Service Provider, premises owned or used by the Service Provider.
- ii. The Service Provider'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 Service Provider'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 Service Provider'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, Service Provider 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, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.

- 3.4 Indemnification. The Service Provider 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 Service Provider, or any of the Service Provider's officers, employees, or agents or any subcontractor.

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 Service Provider 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 Service Provider shall deliver to the Town all plans, files, documents, reports, performed to date by the Service Provider. In the event of such termination, Town shall pay Service Provider 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 Service Provider.
- 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

Los Gatos-Monte Sereno Safe Routes to
School (SR2S)
17010 Roberts Road
Los Gatos, CA 95032

or personally delivered to Service Provider to such address or such other address as Service Provider 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 Service Provider. 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 Service Provider have executed this Agreement.

Town of Los Gatos by:

Service Provider, by:

Laurel Prevetti, Town Manager

Recommended by:

Matt Morley, Director of Parks and Public Works

Title

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk

Measure B Bicycle & Pedestrian Education & Encouragement Program of Projects

*This schedule depicts the nature of the programs we will provide. Additions and deletions may occur.

** The programs will be provided primarily by volunteers

July 1, 2019 - June 30, 2025

Project Title	Project Activities Description	Project Locations	Frequency	Project Goals*	Proposed Evaluation Metrics*
<i>Pre K Education Opportunities: Learn to Ride Balance Bikes</i>	<i>30 minutes of outdoor on-bike training. Using class time to introduce balance bike curriculum to students.</i>	<i>LGUSD elementary schools. Local preschools.</i>	<i>Once a month depending on participation rates.</i>	<ul style="list-style-type: none"> To encourage children to learn to ride bikes. Encourage parents to teach kids bike skills. 20 student participants 	<ul style="list-style-type: none"> Number of children participating Number of locations we offer the program Number of sessions offered
<i>Kindergarten Pedestrian Training</i>	<i>Use a combination of a visual presentation and outdoor crosswalk practice to teach kindergarteners how to be more aware as a pedestrian.</i>	<i>LGUSD elementary schools.</i>	<i>1 presentation per kindergarten class at each LGUSD school per year.</i>	<ul style="list-style-type: none"> 2 schools = Present to 25% of kindergarteners. 	<ul style="list-style-type: none"> Number of students participating Number of schools participating
<i>Grade 1 - Advanced Pedestrian Training</i>	<i>To build on the Kindergarten Training by adding traffic flow and more advanced traffic situations. In class visual presentation and playground.</i>	<i>LGUSD elementary schools.</i>	<i>1 presentation per first grade class at each LGUSD school per year.</i>	<ul style="list-style-type: none"> 2 schools = Present to 25% of first graders. 	<ul style="list-style-type: none"> Number of students participating Number of schools participating
<i>Grade 2 - Scooter Training and Traffic Understanding</i>	<i>To build on Pedestrian training with focus on scooter safety and the acknowledgment of traffic flow. Outdoor on-scooter training.</i>	<i>LGUSD elementary schools.</i>	<i>1 presentation per school at each LGUSD school per year.</i>	<ul style="list-style-type: none"> 1 school = Engage with 15% of second graders. 	<ul style="list-style-type: none"> Number of students participating Number of schools participating
<i>Grade 3 or 4- Helmet Safety Training</i>	<i>Middle school students present the importance of</i>	<i>LGUSD elementary schools.</i>	<i>1 assembly per LGUSD school.</i>	<ul style="list-style-type: none"> 2 Schools = 50% of 3rd or 4th graders. 	<ul style="list-style-type: none"> Number of students participating

	wearing a helmet and how to properly fit it. Indoor assembly.				<ul style="list-style-type: none"> • Number of schools participating
Grade 4 - Bike Rodeo	<p>Practical outdoor on-bike training for kids, showing them various traffic situations and how to best navigate them.</p> <p>Develops a sense of responsibility, confidence and empowerment.</p>	LGUSD elementary schools.	1 Bike Rodeo per school per year.	4 Schools = 100% of 4th graders.	<ul style="list-style-type: none"> • Number of students that participate (maintain current participation levels) • Number of schools that participate
Grade 5 & 6 - Middle School Cycling Proficiency	<p>Practical outdoor on-bike training for kids.</p> <p>Reviewing basic safety manoeuvres and road riding.</p> <p>Develops a sense of responsibility, confidence and empowerment.</p>	Daves Elementary School - Monte Sereno Neighborhood	4 week course - 2 hours per week.	<p>10 students who graduate the program.</p> <p>1-2 courses offered.</p>	<ul style="list-style-type: none"> • Number of students that graduate the program. • Number of courses offered.
Grade 7 & 8 - Train the Trainer: Helmet Safety	Train Middle school students to teach elementary school kids about the importance of wearing helmets.	Fisher Middle School - Leadership Class	1-2 times per year.	<p>1-2 training sessions completed.</p> <p>15 student participants.</p>	<ul style="list-style-type: none"> • Number of students that participate. • Number of training sessions completed.
Los Gatos High School - Implementation into Life Fitness Course	<p>High school students learn about key elements of riding on the roads.</p> <p>On road experience on the town roads navigating traffic.</p>	Los Gatos High School - Town of Los Gatos	<p>1 class per week - 90 minutes.</p> <p>Ongoing class.</p>	<p>Number of students that participate - 20-30</p> <p>Total hours of education and practical road experience - goal is to keep cycling in the HS curriculum</p>	<ul style="list-style-type: none"> • Number of students that participate • Total hours of education and practical road experience

LCI training	<i>Encourage Town members to obtain their Licensed Cycling Instructor License through the American League of Cyclists to help expand our programs going forward.</i>	<i>Los Gatos Location.</i>	<i>3 classes, 4 hour per class.</i>	<i>10 trained and licensed community members.</i>	<i>Number of community members trained and licensed.</i>
Educational Videos	<i>Online education on key areas of concern in the community regarding routes to school and student transportation (ie. key intersections, helmets, bike route mapping, key bike manoeuvres.)</i>	<i>LGUSD newsletters and website, SR2S social media and website.</i>	<i>Ongoing</i>	<ul style="list-style-type: none"> • <i>2 Videos.</i> • <i>Develop a rollout procedure to maximize views.</i> • <i>Metrics to be developed along with rollout procedure</i> 	<i>Number of students/families that see videos.</i>
Safety Lessons in a Set Curriculum / Lesson Plan (rainy day/substitute teacher plans)	<i>Provide teachers/PE teachers set curriculums to satisfy learning initiatives and target safety education using videos & games- target elementary school classes.</i>	<i>LGUSD Schools</i>	<i>Ongoing</i>	<i>1-2 schools using the curriculum.</i>	<ul style="list-style-type: none"> • <i>Number of schools using the lesson plans</i> • <i>Number of teachers that use lesson plans</i> • <i>Number of students that participate in lessons</i>



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 6/15/2021

ITEM NO: 15

DATE: June 1, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Issuance of a Request for Qualifications for the Americans with Disabilities Act (ADA) Restrooms and Human Resources Offices (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 812-2601) Design Services, and Authorize the Town Manager to Negotiate and Execute a Consultant Services Agreement in an Amount Not-to-Exceed \$100,000

RECOMMENDATION:

Staff recommends that the Town Council authorize the issuance of a Request for Qualifications (RFQ) for the ADA Restrooms and Human Resources (HR) Offices (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 812-2601) design services, and authorize the Town Manager to negotiate and execute a consultant services agreement in an amount not-to-exceed \$100,000.

BACKGROUND:

The adopted Fiscal Year (FY) 2020/21-2024/25 Capital Improvement Program (CIP) Budget designates funding for the ADA Restrooms and HR Offices (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 812-2601) projects.

The ADA Restrooms and HR Offices Project will make the necessary ADA-compliant upgrades to the two staff area restrooms in the Civic Center and modify the HR Department offices. The Community Development Department Building Inspectors have moved out of their previous space in the lower level of the Civic Center. The staff restrooms adjacent to this space are undersized and need to be upgraded to meet ADA standards. This project will upgrade the restrooms taking advantage of the available space for ADA compliance and space needs. In addition, the HR offices will be realigned to better utilize adjacent space previously a part of the New Museum (NUMU) lease.

PREPARED BY: WooJae Kim
Town Engineer

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

SUBJECT: Authorize the Issuance of a Request for Qualifications for the ADA Restrooms and HR Offices (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 812-2601) Design Services, and Authorize the Town Manager to Negotiate and Execute a Consultant Services Agreement in an Amount Not-to-Exceed \$100,000

DATE: June 1, 2021

BACKGROUND (continued):

The ADA Upgrade Public Restrooms – Adult Recreation Building Project will upgrade the two public restrooms in the Adult Recreation Center located at 208 E. Main Street. The Adult Recreation Building is leased to the Los Gatos-Saratoga Community Education and Recreation. They host various adult and senior recreational programs. Accessible restrooms are important to the service delivery. The upstairs restrooms are beyond their useful life and are not ADA compliant. The Town secured Community Development Block Grant (CDBG) funds in an amount of \$78,979 to supplement the project budget, which would need to be incurred by April 2022. The CDBG Entitlement Program provides grants to local agencies on a formula basis for developing viable urban communities.

DISCUSSION:

Staff is proposing to hire a qualified architectural consultant team for the two Town facility capital projects mentioned. Staff is requesting that the Town Council authorize the issuance of the RFQ (Attachment 1) to solicit statements of qualifications (SOQs) from design firms. Staff is also requesting Council to authorize the Town Manager to negotiate an appropriate design scope of services and execute a consultant services agreement in an amount not to exceed \$100,000 once a qualified design firm is selected.

Depending on SOQs received, staff may also establish an On-Call Architectural Services list for future building design projects. Similar to other Town on-call professional consultant lists, the On-Call Architectural Services list established from this RFQ process would be maintained three to five years, and consultant services agreements would be negotiated and executed on an as-needed basis for each architectural project in compliance with the Town’s procurement policy.

The following is the anticipated timeline for the RFQ process:

<u>Milestones</u>		<u>Anticipated Timeline</u>
Release of Request for Proposals	-	June 17, 2021
Proposals Due	-	July 13, 2021
Evaluations	-	July 2021
Oral Interviews/Presentations (if necessary)	-	August 2021
Contract Negotiation & Execution	-	September 2021

SUBJECT: Authorize the Issuance of a Request for Qualifications for the ADA Restrooms and HR Offices (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 812-2601) Design Services, and Authorize the Town Manager to Negotiate and Execute a Consultant Services Agreement in an Amount Not-to-Exceed \$100,000

DATE: June 1, 2021

CONCLUSION:

Approval of the staff recommendations would allow staff to contract with the most qualified design firm(s) for the Town facility upgrade projects in a timely and efficient manner.

COORDINATION:

This report was coordinated with the Finance Department.

FISCAL IMPACT:

The projects are contingent on approval of the Proposed 2021/22 - 2025/26 CIP Budget, which includes funds for the ADA Restrooms and HR Offices (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 812-2601) design services.

ADA Restrooms and Human Resources (CIP No. 812-2117)		
	Budget	Costs
GFAR	\$ 600,000	
Total Project Budget	\$ 600,000	
Design Consultant		\$ 65,000
Project Delivery		\$ 25,000
Construction		\$ 510,000
Total Project Costs		\$ 600,000
Available Balance		\$ 0

SUBJECT: Authorize the Issuance of a Request for Qualifications for the ADA Restrooms and HR Offices (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 812-2601) Design Services, and Authorize the Town Manager to Negotiate and Execute a Consultant Services Agreement in an Amount Not-to-Exceed \$100,000

DATE: June 1, 2021

FISCAL IMPACT (continued):

ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 812-2601)		
	Budget	Costs
GFAR	\$ 183,000	
Grants - CDBG	\$ 78,979	
Total Project Budget	\$ 261,979	
Design Consultant		\$ 35,000
Project Delivery		\$ 15,000
Construction		\$ 211,979
Total Project Costs		\$ 261,979
Available Balance		\$ 0

Staff costs are tracked for all projects. Tracking of staff costs allows for accountability in the costs of projects, recovery of costs from grant funded projects, and identification of future staffing needs for project delivery. This project utilizes a combination of full-time budgeted staff and temporary staff that support fluctuating workloads.

ENVIRONMENTAL ASSESSMENT:

This is a project defined under CEQA as being categorically exempt [Section 15301(a) Existing Facilities]. A Notice of Exemption will be filed.

Attachment:

1. RFQ for the ADA Restrooms and HR Offices (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 812-2601) Design Services



Town of Los Gatos

REQUEST FOR QUALIFICATIONS

DESIGN SERVICES FOR ADA RESTROOMS AND HUMAN RESOURCES (CIP NO. 812-2117) AND ADA UPGRADE PUBLIC RESTROOMS – ADULT RECREATION BUILDING (CIP NO. 821-2601); AND ON-CALL ARCHITECTURAL SERVICES

Date Issued: June 17, 2021

**Proposal Deadline:
Tuesday, July 13, 2021 by 4:00 p.m.**

Issued By: Town of Los Gatos
Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95030
www.losgatosca.gov

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Design Services for ADA Restrooms and Human Resources (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 821-2601); and On-Call Architectural Services

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THIS FORM MUST BE PRINTED OUT, COMPLETED, AND SUBMITTED WITH THE STATEMENT OF QUALIFICATION (SOQ).....

Attachment 1 – Town Facilities

Attachment 2 – Layout Plans for Civic Center and Adult Recreation Building

Attachment 3 – Conflict of Interest Statement

Attachment 4 – Non-Collusion Declaration

Attachment 5 – References

Attachment 6 – Statement Regarding Insurance Coverage And Workers’ Compensation

Insurance Acknowledgment Certificate

Attachment 7 – Sample Consultant Services Agreement

Schedule of Activities: The Town reserves the right to amend the schedule below as necessary.

<u>Activity</u>	<u>Anticipated Dates</u>
RFQ Release	June 17, 2021
Submission Deadline (4:00 p.m.)	July 13, 2021
Evaluation	July 2021
Consultant Interviews/Presentations (if necessary)	August 2021
Contract Negotiation and Award	August 2021
Contract Execution and Start of Work	September 2021

Town's Contact: For all questions related to the RFQ, please email the Town's Contact listed below:

WooJae Kim
Town Engineer
Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95030
wkim@losgatosca.gov

Design Services for ADA Restrooms and Human Resources (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 821-2601); and On-Call Architectural Services

Proposals Due: Tuesday, July 13, 2021, by 4:00 p.m.

Pre-Proposal Meeting: None scheduled.

Consultants may view and download this Request for Qualifications (RFQ) electronically from the Town's website at <https://www.losgatosca.gov/2258/RFPRFQ>. Consultants are responsible for checking the Town's website for any updates, questions and answers, and addenda related to this RFQ. For any questions or assistance, please reach out to the Town's Contact.

A. PURPOSE

The Town of Los Gatos (Town) is seeking Statements of Qualifications (SOQs) from qualified professional consultants (Proposers) capable of providing design services for ADA Restrooms and Human Resources (CIP No. 812-2117) project involving upgrades to two staff restrooms and a remodel (tenant improvements) of the Human Resources Department (HR) space located in the lower level of the Civic Center at 110 E. Main Street. The consultant hired through this RFQ process would also provide design services for the ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 821-2601) project to upgrade the two public restrooms located either on the first or second floor of the Los Gatos Adult Recreation Center (ARC) located at 208 E. Main Street.

From SOQs received for this RFQ, the Town may also establish an On-Call Architectural Services consultant list for future building projects related to ADA upgrades and other improvements to Town facilities (see **Attachment 1**).

B. OVERVIEW

The Town is located approximately 50 miles south of San Francisco and at the southern edge of the Silicon Valley with its jurisdictional area covering 11.5 square miles with a population of 31,439 (2020 estimate). With a Council-Manager form of governance, the Town is governed by a five-member elected council. The Town employs 160 full- and part-time employees and provides various programs including public safety, community services, library, museum, parks, and open space. The Town owns and maintains several facilities for various programs, services, and activities. List of Town owned facilities are included in **Attachment 1**.

The Civic Center is a Town facility that houses the Civic Center/Town Hall, Police Administration Building, New Museum Los Gatos (NUMU), and Friends Bookstore. The lower level of the facility (sub-grade level) is one large connected floor area with various programmed spaces.

The upper level consists of an above-grade public plaza and three building structures with separate ingress/egress points. The Town Hall area consists of the Council Chamber and staff office/public counter space for various Town departments. There are two staff restrooms located near the HR programmed space (**Attachment 2**). The goal of the ADA Restrooms and Human Resources project is to take advantage of some available space around the restrooms to bring them up to ADA standards as needed and to modify/expand the HR work area, which will involve adding an office space and a conference room at minimum. The Town has limited as-built or record drawings for the project area.

Adult Recreation Building is a Town facility leased to Los Gatos-Saratoga (LGS) Community Education and Recreation, which runs various adult and senior programs there. The building is a two-story structure with 12,000 square foot of floor area. The upstairs restrooms are beyond their useful life and are undersized for the current use. The downstairs restrooms would need to be upgraded to meet current ADA standards. With the Town staff taking the lead, further discussions may be needed with LGS Recreation regarding whether the first or second floor restrooms would need to be updated as part of the project. The selected consultant may be involved in the discussion with LGS Recreation to advise the Town regarding ADA standards and requirements and the feasibility within the project budget.

For both projects, the selected consultant would assist with the determination of building occupancy types and minimum plumbing fixture counts. The construction budget for ADA Restrooms and Human Resources (CIP No. 812-2117) project is approximately \$500,000. The construction budget for the ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 821-2601) is approximately \$200,000. The selected consultant would be expected to design a project that is feasible within the construction budget and advise the Town on any budget constraints. ARC project involves \$78,979 of Community Development Block Grant funds, which would need to be expensed by April 2022.

The Town wishes to combine the two projects into one construction document set for the economy of scale; however, if there is any reason to keep the two projects separate, that option could be considered

Through this RFQ process, the Town is looking to negotiate a scope of services and execute a consultant services agreement with a qualified professional firm to provide necessary design services and construction administration support for the two projects at the Civic Center and ARC.

In addition, the Town is in the process of updating the ADA Transition Plan. Through the transition plan efforts, other ADA facility upgrade projects may be identified and prioritized. From this RFQ process, the Town may consider establishing an On-Call Architectural Services consultant list of qualified architectural firms to work on future facility upgrade projects. Similar to other Town's on-call professional consultant lists, an On-Call Architectural Services consultant list would be maintained for a minimum of three to five years, and consultant

services agreements would be negotiated and executed on an as-needed basis for each future architectural project, in compliance with the Town's procurement policy.

C. MINIMUM QUALIFICATIONS

The Town is seeking SOQs from Proposers with the following minimum qualifications with work experience within the greater San Francisco Bay Area:

1. Minimum three years of experience providing design services and preparing construction documents for ADA upgrade projects, preferably for public agencies.
2. A design team with expertise in architecture, mechanical/electrical/plumbing (MEP) design, lighting, energy-efficiency, and cost analysis especially related to building renovation/rehabilitation projects.
3. Availability and willingness to frequently travel to the Town for site visits and meetings with Town staff.

Furthermore, Proposers shall also comply with the following provisions:

1. Each Proposer is responsible for determining and complying with all applicable business licensing requirements necessary to complete the project's scope of work. 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.
2. Each Proposer is responsible for determining and complying with all applicable professional licensing requirements necessary to complete the project's scope of work.
3. If applicable, California Department of Industrial Relations ("DIR") Registration is required. If applicable, the Proposer will be required to certify that it has verified that its subcontractors on this project are registered with DIR in compliance with the Labor Code, especially sections 1725.5 and 1771.1, and the Proposer shall provide such proof of registration to the Town.

D. General Provisions and Requirements

Following general provisions and requirements would be incorporated as part of the general scope of services for the Town's consultant services agreement:

1. Questions related to the contract administration matters should be directed to the Town's Contact or project manager.
2. 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.
3. Consultant shall maintain the consultant's key personnel throughout the entire duration of services; and therefore, the Consultant shall 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.
4. Consultant shall assist with the project management/coordination to fulfill project tasks.
 5. Consultant shall prepare technical documents in compliance with the latest applicable codes, rules, regulations, and guidelines.
 6. Consultant shall manage, coordinate, and review work submitted by the project's sub-consultants for accuracy and conflicts with other disciplines.
 7. Consultant shall not proceed further with next phases or tasks until each design submittals and cost estimates are reconciled within the project and construction budget and until authorized by the Town.
 8. Consultant shall verify that all information submitted to the Town is up to the professional standards and satisfaction.
 9. Town does not warrant the accuracy or completeness of its documents. 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.
 10. Consultant shall provide design coordination of structural system, mechanical, HVAC, plumbing, fire protection, data/voice raceway, audio/visual technology, electrical, lighting, telecommunications, alarm, and other systems, for proper location, clearance and space requirements in order to reduce potential conflicts between these systems.
 11. Consultant shall be responsible for design services related to built-in fixtures and furnishings including layout, design details, specifications, and estimates.
 12. Consultant shall make recommendations and assist with the selection of moveable furniture, fixtures, and equipment (FF&E) for functionality and space planning.
 13. Consultant shall design and incorporate backbone infrastructure systems and space required to accommodate the installation of FF&E. FF&E shall be schematically shown on design plans to be "provided by others".
 14. Generally, systems or products that are proprietary, licensed, or require periodic payments for continued use, are not acceptable. Exceptions may be allowed for certain software and other items, where the consultant has provided reasonable information that indicates the use is necessary and cost-effective to the Town.
 15. Consultant shall neatly list submittals required in the Specifications, organized in categories, indicating: the item, at least one acceptable manufacturer or material supplier, and references to the item mentioned in the Construction Documents, and other pertinent comments or information. Quantities will be indicated in the drawings.
 16. Green Infrastructure and Sustainability: The consultant shall include sustainability features into the design of the project and consider measures that will improve energy efficiency, water conservation, storm water quality control, and occupant health.
 17. Work shall be done in an electronic format, appropriate to the work product, including (AutoCAD) drawings, plans, elevations, sections, diagrams, details, etc., (Word) specifications, reports, and other narrative, (PowerPoint) presentations, (Excel) Spreadsheets, (Project) schedules, and other appropriate digital electronic formats.

18. Deliverables will be submitted in electronic format (PDF) and in native document formats such as Word, Excel, AutoCAD, etc. unless otherwise specified. Large files will be transferred through cloud services approved by the Town.

E. Proposed Scope of Services

The following tasks illustrate the general proposed scope of services required of the design services for the ADA Restrooms and Human Resources (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 821-2601) projects:

Task A - Project Management and Coordination:

1. Two Kick-off Meetings: Separate Kick-off Meetings for each project with key members and decision makers of the Town, ARC, and consultant team to discuss backgrounds, goals, scope, expectations, schedule, and budget.
2. Meet with the Town's project manager on a regular basis (minimum every two weeks) to provide updates on the progress.
3. Assist the Town in developing a work plan to complete projects in a timely manner within grant funding deadlines. Identify detailed tasks for design services, outreach, and approval process. For discussions with the Town, identify critical and challenging issues to address in order to successfully complete projects within schedules and budgets.
4. Develop a project schedule incorporating tasks, deliverable timelines, the Town's review periods, public bidding process, construction, etc. for the Town's review and approval.
5. Support the Town's project manager with project management responsibilities and coordination of various project components to successfully complete the projects in a timely manner. All work and deliverables should be through the Town's project manager. Notify and inform the Town's project manager of any information gathered from other Town staff, external agencies, or public members related to projects.
6. Assure accuracy and quality of all services and deliverables to the Town.

Deliverables:

1. Minutes of meetings.
2. Project Schedule.

Task B - Review of Existing Documents and Conditions:

1. Gather and Obtain existing documents (e.g. as-built drawings, program, and other reports) to review. Develop a list of questions and clarifications, if any, for discussions with the Town and ARC staff.
2. Conduct site visits to confirm/survey information and existing conditions. Document any discrepancies with existing documents and notify the Town's project manager. Compile findings as necessary to report to the Town. Advise the Town of any potential hazardous materials to test or abate within work areas.

Deliverables:

1. A memorandum or report on existing conditions, survey, and findings with a list of questions for the Town.

Task C - Schematic Design Documents:

1. Work with the Town's Building Division as necessary to determine the building occupancy type and plumbing fixture counts for different areas involved in projects.
2. Fulfill energy code and other Title 24 requirements.
3. Interview appropriate Town and ARC staff to update and confirm programs and space needs for HR space and for restrooms as necessary.
4. Assist the HR staff in identifying any FF&E needs and space planning.
5. Determine any temporary facility needs during the construction phase and advise the Town accordingly. Temporary facility costs would need to be included in cost estimates.
6. Develop at minimum two (2) viable and feasible concept layout plans for each project area with sufficient information to present to the Town for review and consideration. Provide rough order of magnitude (ROM) cost estimates for each option to confirm feasibility within construction budgets. ROM cost estimates shall factor in market conditions, temporary facilities needed, hazardous materials abatement, and construction contingencies. Assist the Town decide on one preferred option for each project area to further develop design.
7. Develop Schematic Design (SD) Documents for the preferred concept designs for each project area. SD Documents shall include plans, specifications, and estimates (PS&E) appropriate for 30% design level and other pertinent information for the project.
8. Identify and show improvements or upgrades required to structural, mechanical, electrical, and plumbing items.
9. SD Documents shall include, but not limited to, the following:
 - a. PS&E necessary to establish the final scope and cost of the projects.
 - b. Layout plans, elevations views and sections that reflect architectural details, materials, dimensions, and more on Town's 24"x36" titleblock.
 - c. Specifications in a format approved by the Town and appropriate with the Town's standard general and special provisions.
 - d. Detailed cost estimate in a format approved by the Town.
10. Submit SD Documents to the Town for review and comments. If necessary, meet with Town staff go over the design documents.
11. Refine SD Documents based on comments received from the Town's project manager before moving forward with next design steps.

Deliverables:

1. Minutes of meetings.
2. Draft program and space needs assessments.
3. Minimum two (2) concept design alternatives with ROM cost estimates for each project location.
4. SD Documents of the one preferred alternative for both projects.

Task E - Construction Documents (90% and 100%):

1. Before developing 90% CDs, meet with key members, decision makers of the Town and ARC, and the consultant team to discuss the status of the projects, goals, scope, expectations, schedule, and budget. Further refine design documents per comments received through the Town's project manager as necessary.
2. 90% CDs to include the following PS&E, but not limited to:
 - a. Title Sheet
 - b. Construction notes
 - c. Building Code analysis and calculations
 - d. Bid alternates
 - e. Demolition Plan.
 - f. Site plan for path of travel, if necessary
 - g. Architectural, MEP, and Structural Plans as required.
 - h. Floor Plans with the following minimum plans and details as necessary:
 - i. Building footprint.
 - ii. MEP and Fire systems and their requirements reflected and indicated on plans.
 - iii. Internal partitions and types indicated.
 - iv. Door swings indicated.
 - v. Adequate internal and external dimensions.
 - vi. Floor, slab, and level elevations.
 - vii. Typical door types.
 - viii. Typical partition types.
 - ix. Building core element with dimensions.
 - i. Enlarged Plans - Typical to provide interior elevations of enlarged plan areas with surfaces delineated.
 - j. Sections with at minimum the following plans and details:
 - x. Wall Sections - Full height sections conveying building configuration.
 - xi. Interior Elevations - Typical and special spaces, interfaced with, and cross-referenced to, floor and reflected ceiling plans.
 - xii. Reflected Ceiling Plans - Typical and special spaces. Integrated plans reflecting structural, mechanical, and electrical impacts including lighting, skylights, HVAC grilles, exposed structure, etc.
 - xiii. Room, door, and window or storefront schedules.
 - k. Structural Drawings detailing non-typical framing scheme where required.
 - l. Mechanical / Plumbing / Electrical/Fire Prevention/Information Technology/Communication/Security systems with details, as necessary.
 - m. FF&E general layout plan, as necessary.
 - n. Logistic plans with construction staging and parking locations
 - o. Specifications to include Town's General Provisions and Construction Contract template for the specifications
 - p. Construction cost estimate and a project schedule including lead times for permits
3. Meet and confer with the Town's Building Division for initial review.

4. Submit 90% CDs for review and comments by the Town. Meet with the Town and ARC staff as necessary.
5. Address comments received from the Town's project manager and proceed with the preparation of 100% CDs.
6. Submit 100% CDs for building plan check. Address Building Division comments to secure building permits. The Town will be responsible for permit fees.
7. Assist the Town with the preparation construction bid package for public bid process.

Deliverables:

1. Summary of meetings/meeting minutes.
2. 90% and 100% CDs.
3. 100% CDs for building permit submittal (electronic submittal).
4. Public construction bid package with 100% CDs incorporating all plan check comments. Submit AutoCAD and PDF files of the Final Construction Documents. PDF files shall be stamped and sign.
5. Detail cost estimates and updated project schedule.

Task F - Bid/Award and Construction Administration Support Services:

1. Assist Town staff in obtaining approval from the Town Council to bid the CDs.
2. The Town shall coordinate the public bid process.
3. Assist the Town during bid phase to solicit bids from qualified contractors, attend pre-bid meetings, address requests for information, prepare addendums if required, and assist with the evaluation of bids.
4. If the lowest responsible bid for the base scope of the CDs exceeds the construction budget by more than 5%, the consultant shall assist the Town to value engineer the CDs to incorporate necessary cost saving measures and obtain necessary approvals from the Town and stakeholders for a rebid. Value engineering, if needed, shall be conditioned as part of the consultant's base scope of services at no additional cost to the Town.
5. Once a bid is accepted and approved by the Town, compile any addendums and changes to the bid package and provide the Town with a conformed CDs set labeled "conformed set for construction".
6. During construction, the consultant will attend the pre-construction meeting and periodic site observations (monthly at minimum), observe construction progress, respond to Requests for Information and substitution requests, address design changes, and review submittals and shop drawings. The consultant will also assist the Town in the preparation of design/engineering bulletins, change orders related to design issues, and substantial completion and final completion certificates.
7. Assist the Town with review of contractor pay applications and requests for change orders.
8. Assist the Town with any commissioning process and closeout of the project for occupancy.
9. For the project closeout, furnish the Town with editable files in original formats (Word, AutoCAD, etc.) and PDF files of Record Documents incorporating all changes and

discoveries made during construction. Record Documents shall include PS&E and other project documents with as-built conditions and information provided by the Contractor.

Deliverables:

1. Summary of meetings/meeting minutes.
2. As applicable and not limited to, addendums, evaluation of bids, value engineered CDs, etc.
3. Conformed set for construction in editable original format and PDF files.
4. As applicable and not limited to, construction progress reports, response to RFIs and substitution requests, review of submittals, design/engineering bulletins, design change orders, and substantial completion punch list.
5. Record Documents incorporating as-built information from the contractor in editable original format and in PDF files.
6. Project closeout documents.

F. Other Services

Proposers shall list other specific services that they can provide as related to the projects. The Town will consider other services to be included in the scope of services for the consultant services agreement. Proposers should submit their general fee schedule for all services that they can provide.

The following design services may be included as Additional Services with contract amendments per terms described in the consultant services agreement:

1. Additional design alternatives.
2. Additional meetings.
3. Additional deliverables.
4. Bifurcating construction bid sets by tasks or projects.
5. Assist Town staff in developing temporary relocation plans or tenant improvement plans as necessary.
6. Other pertinent analysis and studies related to projects.
7. On-call architectural services for future Town facility projects.

G. Proposal Format and Submission Requirements

Submitting the Statement of Qualifications:

The SOQs must be received by the Town no later than Tuesday, July 13, 2021 by 4:00 pm. The Town requires that SOQs be submitted electronically via email or file sharing sites. The SOQ shall be clearly marked for “**Town of Los Gatos - Design Services for ADA Restrooms and Human Resources (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 821-2601); and On-Call Architectural Services RFQ**” and emailed to:

WooJae Kim
Town Engineer
Town of Los Gatos–Parks and Public Works
wkim@losgatosca.gov

Each Proposer is responsible for confirming the Town’s receipt of the SOQ. The Town email system has file size limitations; therefore, receipt confirmation is critical. Receipt of a SOQ by any other Town office will not constitute “delivery” as required by this RFQ. Each Proposer assumes full responsibility for timely delivery of its SOQ. Any SOQs received after the time and date specified above will be considered nonresponsive and will be returned to the consultant. No Proposer may submit more than one SOQ for the project.

Each SOQ must include the following information (no maximum page limit unless otherwise noted):

Cover Letter (Maximum 2 pages) – Cover letter giving an overview of the Proposer’s general expertise, experience, and ability to perform the scope of services described in this RFQ. The cover letter shall be signed by an authorized representative of the firm. **Attachment 7** is the Town’s contract template for the Consultant Services Agreement. In the cover letter, state that the Town’s contract template is acceptable to the Proposer or list any exceptions or change requests to the contract provisions. Also, state if the Proposer is interested in being considered for the Town’s On-Call Architectural Services consultant list.

Certification Forms – Complete and sign the following certification forms:

Attachment 3–Conflict of Interest Statement

Attachment 4–Non-Collusion Declaration

Attachment 6–Statement Regarding Insurance Coverage and Workers’
Compensation Insurance Acknowledgment Certificate

Review of Scope of Services (Maximum 2 pages) – Proposers must comment on the firm’s ability to realistically provide the services listed in the Proposed Scope of Services as outlined. Provide comments and suggest modifications, changes, and/or additions as appropriate. Indicate how your firm/team would approach the project and what specialized services or unique insights your team would bring to the project. This scope of services shall be considered a draft. The consultant selected shall discuss and finalize the tasks with the Town and a final version of the plan shall be incorporated into the contract.

Experience and Expertise – Discuss prior related project experience satisfying Minimum Qualifications for the project and what would make the firm the best qualified for this project. Emphasize projects of similar scope and magnitude for public agencies. Discuss the firm’s ability to meet schedules and ability to control costs.

Qualifications of Key Personnel – Identify the project manager and key individuals on the consultant team and their resumes highlighting relevant qualifications and experiences. State projects that they were assigned to and their specific roles and responsibilities. Provide a statement regarding the firm’s commitment to keep the same personnel throughout the project. Indicate how your firm’s resources will work together to complete this project. Identify additional resources available in your firm.

Sub-Consultants – Identify any sub-consultants your firm may utilize. Include resumes of key individuals who will be directly involved in this project and briefly describe any past involvement in joint projects with these sub-consultants. Indicate why the particular sub-consultant has been selected to work on the project team. Indicate how the prime firm will ensure quality control and coordination of documents between the prime and the various sub-consultants.

References (complete **Attachment 5**) – A minimum of three (3) current references from past projects (of similar scope) completed by the proposed project manager and/or project team should be provided. All references must contain relevant projects completed within the past five (5) years. Provide the following information for each reference:

- Firm, Owner, or Agency Name
- Address, Telephone Number
- Email Address
- Project Description
- List of Services Provided

Insurance Coverage – Identify carriers, A.M. Best ratings, and types and limits of insurance carried by your firm. If selected by the Town, the Consultant shall maintain minimum coverage requirements for commercial general liability, automobile liability, professional liability, and workers’ compensation as specified in the Consultant Services Agreement. The Consultant may achieve the required limits and coverage through a combination of primary and excess or umbrella liability insurance provided such policies result in the same or greater coverage as the coverages required by Town, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. If selected by the Town, the Consultant shall cause the insurance policies required herein to include the Town, and their respective officials, officers, employees, and volunteers as additional insureds for claims caused in whole or in part by the Consultant’s negligent acts or omissions. The Consultant shall provide certificates of insurance to the Town that evidence compliance with the above.

Preliminary Fee Proposal/Schedule – Submit preliminary fee proposal/schedule for various services provided by the Proposer. The preliminary fee proposal/schedule shall include anticipated tasks itemized by estimated time and hourly rates of key personnel. Include other potential services recommended by the Proposer.

Addenda

If any revisions to this RFQ become necessary, the Town shall provide responses and clarifications to questions via addenda. The last day for issuance of an addendum is Friday, July 9, 2021. A Proposer shall submit any questions or requests for clarification to the Town's Contact by Thursday, July 8, 2021.

Addenda to this RFQ, if issued, will be posted on the Town's website at <https://www.losgatosca.gov/2258/RFPFRQ>. All proposers shall verify that the Town has issued any addenda for this project prior to submitting the SOQ and ensure that all requirements of addenda are included.

H. Evaluation Process

Town staff will review the SOQs and will rank the Proposers. The evaluation of the SOQs shall be within the sole judgment and discretion of the Town. All contacts during the evaluation phase shall be through the Town's Contact only. Proposers shall neither contact nor lobby evaluators during the evaluation process. Attempts by the Proposer to contact any reviewers of the SOQs with the exception of the Town's Contact may jeopardize the integrity of the evaluation and selection process and risk possible disqualification.

During the SOQ evaluation process, written questions or requests for clarification may be submitted by the Town to a Proposer regarding its SOQ or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of the Proposer from further consideration.

Town staff will evaluate each SOQ meeting the qualification requirements set forth in this RFQ. After the review of the SOQs, the highest-ranked Proposers may be invited for oral interviews as part of the selection process, if necessary. The Proposer will be notified of the time and place of oral interviews and if any additional information may be required to be submitted.

The Town shall be the sole judge of the evaluation of all SOQs. The Town's decision(s) shall be final. The Town reserves the right to reject any and all SOQs and waive any irregularity or minor defects in any SOQ received.

Statement of Qualification Evaluation Criteria

Following criteria shall be used to evaluate the SOQs:

1. **Conflict of Interest Statement and Non-Collusion Declaration (Pass/Fail)**
 - a. Discloses any financial, business or other relationship with the Town 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.
- 2. Completeness/Organization of the SOQ (15 points)**
- a. SOQ that is current, accurate, and complete in accordance with the requirements of this RFQ. SOQ format and organization shall follow the requirements herein. SOQs that do not include the content requirements identified within this RFQ and subsequent addenda and do not address items listed shall be considered incomplete.
- 3. Organization and Approach (20 points)**
- a. Describes familiarity of the project and demonstrates understanding of any work completed to date, if applicable, and project objectives moving forward.
 - b. Project team and management approach when responding to project issues. The team structure shall provide adequate capability to perform both volume and quality of needed work within project schedule milestones.
 - c. Roles and Organization of Proposed Team
 - i. Propose adequate and appropriate disciplines of the project team.
 - ii. Some or all of team members have previously worked together on similar project(s).
 - iii. Overall organization of the team relevant to Town's needs.
 - d. Working Relationship with the Town
 - i. The team and its leaders have experience working in the public sector and knowledge of public sector procurement process.
 - ii. Team leadership understands the nature of public sector work and its decision-making process.
- 4. Qualifications & Experiences (20 points)**
- a. Meets Minimum Qualifications.
 - b. Relevant experience, specific qualifications, and technical expertise of the firm and sub-consultants related to the project.
- 5. Qualifications of Key Individuals (20 points)**
- a. Team is managed by an individual(s) with appropriate experience in similar projects. This person's time is appropriately committed to the project.
 - b. Team members, as demonstrated by enclosed resumes, have relevant experience for their role in the project.
 - c. Key positions required to execute the project team's responsibilities are appropriately staffed.
- 6. Proposer Accessibility (15 points)**
- a. A statement addressing the firm's ability to fulfill regular on-site project responsibilities.
- 7. References (10 points)**
- a. Provide a reference of at least three (3) projects the Proposer has previously managed in the past five (5) years.

Oral Interview (if necessary)

If necessary, the top-ranking Proposers may be invited to participate in Oral Interviews for a consultant presentation and Q&A session. A Proposer will be notified of the time and place for oral interviews and if any additional information may be required to be submitted.

Following the Town's determination of the firm best qualified for this work, scope of services and final terms will be negotiated, and the Consultant and the Town will execute the Town's standard Consultant Services Agreement (**Attachment 7**). If negotiations with the top-ranked Proposer are not successful, the Town will select the next-ranked Proposer for award and negotiate the final terms of the contract.

The proposed schedule is as follows:

<u>Activity</u>	<u>Anticipated Dates</u>
RFQ Release	June 17, 2021
Deadline for Submitting Questions	July 8, 2021
Submission Deadline (4:00 p.m.)	July 13, 2021
Evaluation	July 2021
Consultant Interviews/Presentations (if necessary)	August 2021
Contract Negotiation and Award	August 2021
Contract Execution and Start of Work	September 2021

I. Additional Information

- 1. Reservation of Rights.** The Town reserves the right to accept or reject any or all SOQs, or to alter the selection process if warranted, to postpone the selection process for its own convenience at any time, and to waive any defects in the RFQ. The Town also reserves the right to accept or reject any individual subconsultant that a candidate proposes to use. This RFQ 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 standard form of consultant agreement will form the basis of the contract between the parties.
- 2. Proposer's Costs.** Each Proposer responding to this RFQ 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 RFQ shall remain the property of the Town.

3. **DIR Monitoring.** This project may be subject to compliance monitoring and enforcement by the DIR.
4. **Communicating with Town.** If you have any questions regarding this RFQ, please contact the Town's Contact:

WooJae Kim
Parks and Public Works Department
Town of Los Gatos
41 Miles Avenue, Los Gatos CA 95030
wkim@losgatosca.gov
(408) 399-5773

The Town's sole point of contact for this RFQ shall be the Town's Contact who shall administer the RFQ process. All communications shall be submitted in writing and shall specifically reference this RFQ (identify in the subject line the project). 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.

5. **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 SOQ.
6. **Public Record.** All responses to this RFQ 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 SOQ, 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.

7. **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 SOQs in response to this RFQ 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.
8. **Appeal.** The Town will entertain appeals regarding this RFQ process only as set forth herein. The appeal process presented in this RFQ 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 RFQ that are apparent or reasonably should have been discovered prior to the Town's receipt of SOQs. 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 SOQs. 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 RFQ or that could not reasonably have been discovered prior to the Town's receipt of the SOQ. 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 RFQ 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's 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 RFQ. 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 RFQ 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.

9. **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.
10. **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.

J. Attachments

The following attachments are incorporated into the Request for Qualification:

- Attachment 1 – Town Facilities
- Attachment 2 – Layout Plans for Civic Center and Adult Recreation Building
- Attachment 3 – Conflict of Interest Statement
- Attachment 4 – Non-Collusion Declaration
- Attachment 5 – References
- Attachment 6 – Statement Regarding Insurance Coverage And Workers' Compensation Insurance Acknowledgment Certificate

Attachment 7 – Sample Consultant Services Agreement

ATTACHMENT 1 – TOWN FACILTIES

TOWN OF LOS GATOS - FACILITY LIST

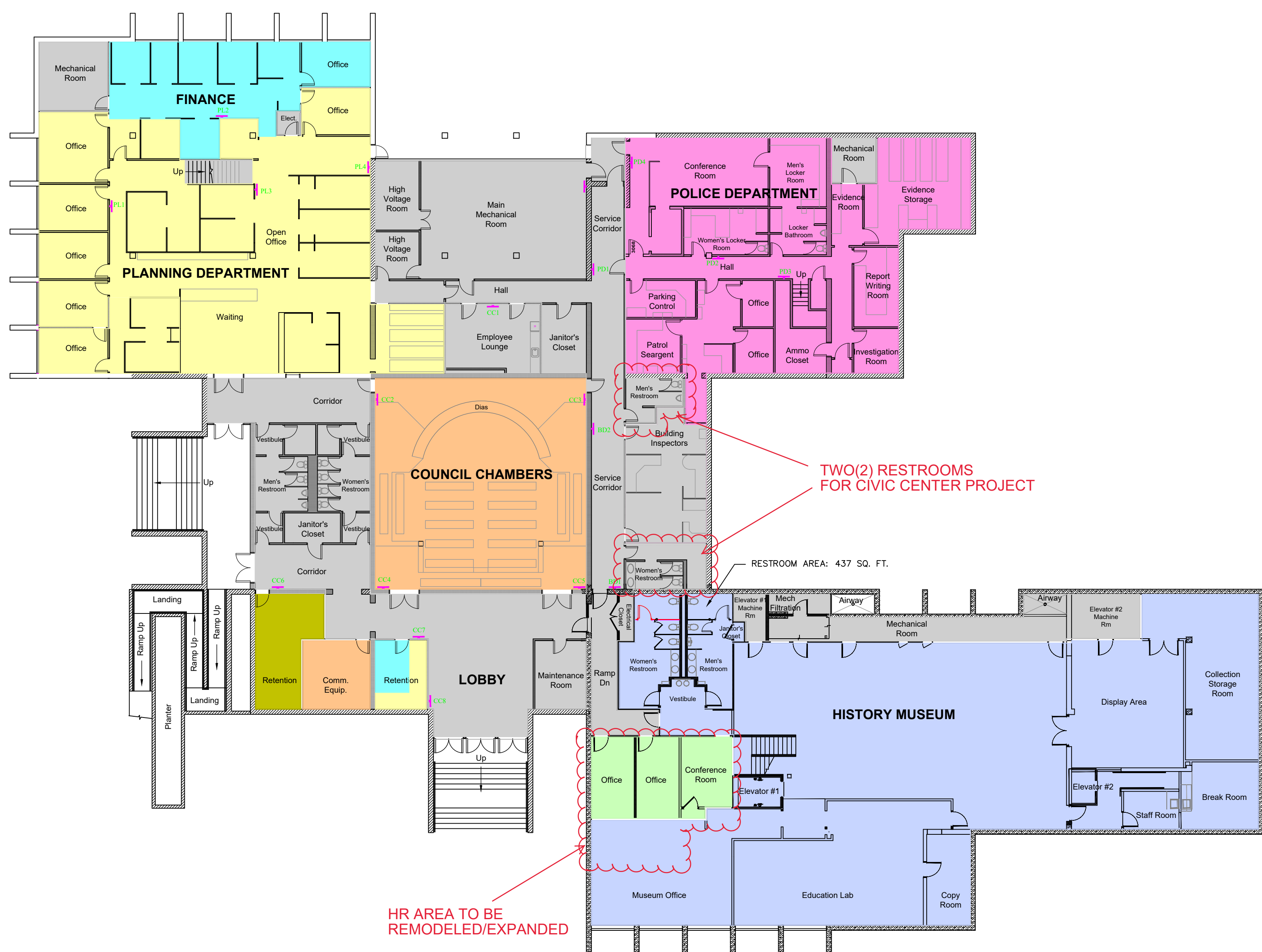
					Public Programs, Services, or Activities	
Facility Name	Facilities Within	Address	Area (S.F.)	Notes		
1 Civic Center Plaza		110 East Main Street		Built 1964. 2 buildings located within the Civic Center: Town Hall and Police Department Headquarters. NUMU and Bookstore also in the Civic Center complex.		
	Town Hall		17,815		Council Chambers and various Town Departments	
	Police Department Headquarters		5,585		Public counter	
2 New Museum Los Gatos (NUMU)		106 E. Main Street	12,511	Museum connected to Town Hall	Leased to Los Gatos Museum Association	
3 Friends Bookstore		110 E. Main Street		Within Civic Center		
4 Los Gatos Library		100 Villa Avenue	29,500	Built 2012.		
5 Adult Recreation Center-LGS Recreation		208 E. Main Street	12,000	Nickname: ARC.	Leased to LGS Recreation	
6 Youth Recreation Center		123 East Main Street	6,479	Nickname: YRC	Leased to LGS Recreation	
7 Forbes Mill Museum		75 Church Street	2,450	Est. 1854	Old museum	
8 Venue		4 New York Avenue	3,757	Located within Los Gatos High School	Town owned; Unused currently.	
9 Parks and Public Works Service Center		41 Miles Avenue		Est. 1977. White House, Engineering Building, Maintenance Building, and Equipment Building.		
	White House		2,734	Moved and renovated 1991	Public counter and meeting room.	
	Engineering Building		4,800		Public counter and meeting room.	
	Maintenance Building		1,716			
	Equipment Building		4,741			
10 Police Operations Building		15900 Los Gatos Boulevard	12,760	Nickname: POB		
	Museum	213 Tait Avenue	3,400	ex-museum and former LG fire station		

12	Lot #4 Underground Parking Garage		Grays Lane	57,546	built 1992. Below Lot #4	
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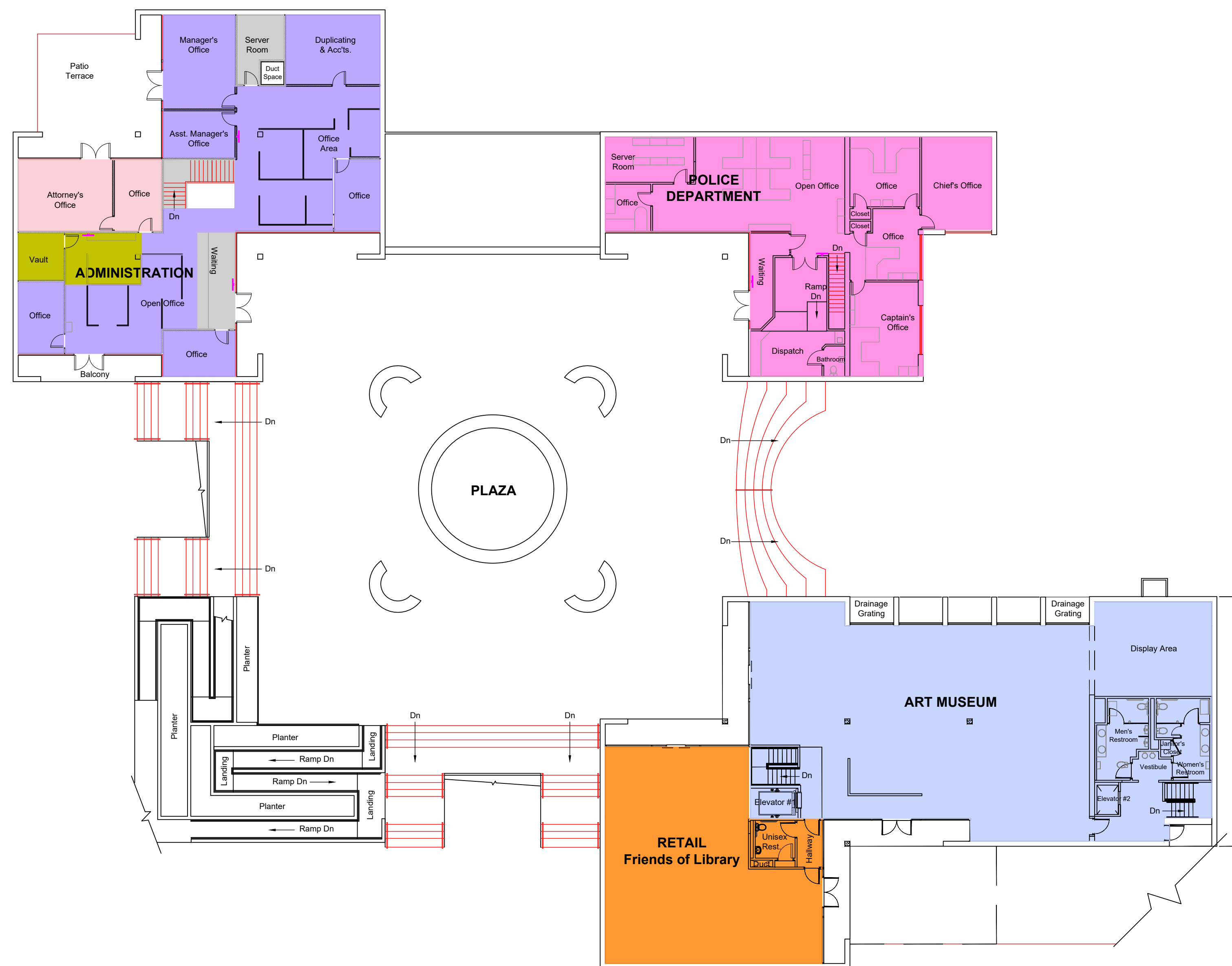
	Park Restrooms	Address	Area (S.F.)	Notes
1	Balzer Field-Restroom Building	41 Miles Avenue	600	Located next to Balzer Field. Concession building attached. Rest room open during park hours.
2	Belgatos Park-Restroom Building	330 Belgatos Road	608	Built 1977. Located in Belgatos Park. Rest room open during park hours.
3	Blossom Hill Park-Restroom Building	16300 Blossom Hill Road	924	Located in Blossom Hill Park. Concession building attached. Rest room open during park hours.
4	Creekside Sports Park-Restroom/Snack Shack Building	930 University Avenue	850	Located in Creekside Sports Park. Concession building attached. Rest room open during park hours.
5	Oak Meadow Park-Restroom Building	233 Blossom Hill Road	930	Located in Oak Meadow Park. Rest room open during park hours.

ATTACHMENT 2 – LAYOUT PLAN FOR CIVIC CENTER

CIVIC CENTER FLOOR PLANS



LOWER LEVEL FLOOR PLAN



UPPER LEVEL FLOOR PLAN

LEGEND

DEPARTMENT	AREA (IN SQ. FT.)
ATTORNEY'S OFFICE	428
CLERK'S OFFICE	522
COMMON AREAS	7153
COMMUNITY DEVELOPMENT DEPARTMENT	3866
COUNCIL CHAMBERS	2063
FINANCE DEPARTMENT	917
FRIENDS OF LIBRARY	1742
HUMAN RESOURCES	483
NUMU	10769
POLICE DEPARTMENT	5585
TOWN MANAGER'S OFFICE	2382
TOTAL AREA	35911

SCALE: 1/16"=1'



NORTH

ATTACHMENT 3 – CONFLICT OF INTEREST STATEMENT

THIS FORM MUST BE PRINTED OUT, COMPLETED, AND SUBMITTED WITH THE STATEMENT OF QUALIFICATION (SOQ)

Design Services for ADA Restrooms and Human Resources (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 821-2601); and On-Call Architectural Services

The undersigned declares:

I/We _____ (Insert Company Name) have the following financial, business, or other relationship with Town that may have an impact upon the outcome of the contract or the construction project. If none, please specify that no other relationships may have an impact on this contract or project.

I/We _____ (Insert Company Name) have the following current clients who may have a financial interest in the outcome of this contract or the construction project. If none, please specify that no other clients may have a financial interest with an impact on this contract or project.

I/We _____ (Insert Company Name) have the following financial interests or relationships with a construction company that might submit a bid for the construction of the project. If none, please specify that no such relationships exist.

Pursuant to Government Code section 1090 and any other laws, rules and regulations that may apply, the Proposer covenants that neither it, its subcontractors nor employees presently have an interest, and shall not acquire any interest, direct or indirect, financial or otherwise that would conflict in any manner or degree with contract awarded from this RFQ. Proposer certifies that to the best of its knowledge, no one who has or will have any financial interest in the contract awarded from this RFQ is an officer or employee of the Town. Through its submittal of a Proposal, the Proposer acknowledges that it is familiar with Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California and will immediately notify the Town if it becomes aware of any facts concerning the contract to be awarded that constitute a violation of said provisions.

Furthermore, if there is reason to believe that collusion exists among the Proposers, the Town may refuse to consider Proposals from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one Proposal for the same work unless alternate Proposals are called for. A person, firm, or corporation who has submitted a sub-proposal to a Proposer, or who has quoted prices on materials to a Proposer, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Proposers. Reasonable ground for believing that any Proposer is interested in more than one proposal for the same work will cause the rejection of all proposals for the work in which a Proposer is interested. If there is reason to believe that collusion exists among the Proposers, the Town may refuse to consider Proposals from participants in such collusion. Proposers shall submit as part of their Proposal documents the completed Non-Collusion Declaration provided herein as Attachment 4.

I, on behalf of the Proposer, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Proposer Name (Person, Firm, Corp.)

Title of Authorized Representative

Address

Name of Authorized Representative

City, State, Zip

(Date)

(Signed)

ATTACHMENT 4 – NON-COLLUSION DECLARATION

THIS FORM MUST BE PRINTED OUT, COMPLETED, AND SUBMITTED WITH THE STATEMENT OF QUALIFICATION (SOQ)

Design Services for ADA Restrooms and Human Resources (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 821-2601); and On-Call Architectural Services

The undersigned declares:

I am the _____ [Insert Title] of _____, [Insert name of company, corporation, LLC, partnership or joint venture] the party making the foregoing Proposal.

The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Proposal is genuine and not collusive or sham. The Respondent has not directly or indirectly induced or solicited any other respondent to put in a false or sham Proposal. The Respondent has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham Proposal, or to refrain from responding. All statements contained in the Proposal are true.

Any person executing this declaration on behalf of a respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the respondent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], ____ [state].

By: _____

Name: _____

Title: _____

ATTACHMENT 5 – REFERENCES

THIS FORM MUST BE PRINTED OUT, COMPLETED, AND SUBMITTED WITH THE STATEMENT OF QUALIFICATION (SOQ)

Design Services for ADA Restrooms and Human Resources (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 821-2601); and On-Call Architectural Services

List three (3) references for work of a similar nature to the Services performed within the last five (5) years. Use additional sheets as necessary.

1.

_____ Name of Agency	_____ Address
_____ Contact Name	_____ Contact Title
_____ Contact Telephone	_____ Contact Email Address
_____ Contract Date	_____ Contract Amount

Description of services performed including project cost estimates and actual costs.

2.

_____ Name of Agency	_____ Address
_____ Contact Name	_____ Contact Title
_____ Contact Telephone	_____ Contact Email Address
_____ Contract Date	_____ Contract Amount

Description of services performed including project cost estimates and actual costs.

3.

_____ Name of Agency	_____ Address
_____ Contact Name	_____ Contact Title
_____ Contact Telephone	_____ Contact Email Address

Contract Date

Contract Amount

Description of services performed including project cost estimates and actual costs.

I hereby certify that the Proposer performed the work listed above.

Signature of Proposer

Name

Date

ATTACHMENT 6 – STATEMENT REGARDING INSURANCE COVERAGE AND WORKERS’ COMPENSATION INSURANCE ACKNOWLEDGMENT CERTIFICATE

THIS FORM MUST BE PRINTED OUT, COMPLETED, AND SUBMITTED WITH THE STATEMENT OF QUALIFICATION (SOQ)

Design Services for ADA Restrooms and Human Resources (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 821-2601); and On-Call Architectural Services

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the RFQ. Should the Proposer be awarded the contract for the Services, Proposer further certifies that the Proposer can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name the Town as additional insured for the Services specified.

By certifying this form, the Proposer also understands the Workers’ Compensation insurance requirement per the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Name of Proposer (Person, Firm, or Corporation)

Signature of Proposer's Authorized Representative

Name & Title of Authorized Representative

Date of Signing

ATTACHMENT 7 – SAMPLE CONSULTANT SERVICES AGREEMENT

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on _____ 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 Town desires to engage Consultant to provide **design services for ADA Restrooms and Human Resources (CIP No. 812-2117) and ADA Upgrade Public Restrooms – Adult Recreation Building (CIP No. 821-2601)**.
- 1.2 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), 2021, 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 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 \$XXX**, inclusive of all costs as described in Exhibit A. 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 (Consultant)
Attn: Town Clerk (Address)
110 E. Main Street
Los Gatos, CA 95030

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, MMC, CPMC, Town Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 16

DATE: June 3, 2020

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Execute a Second Amendment to Extend the Agreement for Services with Elevator Service Company of Central CA, Inc. for Four Months in the Amount of \$7,560, for a Total Agreement Not to Exceed \$66,640

RECOMMENDATION:

Authorize the Town Manager to Execute a Second Amendment to the Agreement for Services with Elevator Service Company of Central CA, Inc. (Attachment 1) for four months in the amount of \$7,560, for a total agreement not to exceed \$66,640.

BACKGROUND:

On July 1, 2018, the Town entered into an Agreement for Services with Elevator Service Company of Central CA, Inc. to provide maintenance for five elevators in Town facilities. The current Agreement for Services with Elevator Service Company of Central CA Inc. expires on June 30, 2021.

DISCUSSION:

The Town has five elevators located in the following Town facilities: Library, New Museum, and Adult Recreation Center. Elevators require scheduled inspections, testing, maintenance, and repairs. Having an elevator service agreement is imperative for safe operation of Town elevators. Staff recommends funding an extension of four months to allow sufficient time to obtain multiple competitive bids for the ongoing provision of this service.

PREPARED BY: Daniel Keller
Facilities and 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 a Second Amendment to Extend the Agreement for Services with Elevator Service Company of Central CA, Inc. for Four Months in the Amount of \$7,560, for a Total Agreement Not to Exceed \$66,640

DATE: June 3, 2021

CONCLUSION:

Authorize the Town Manager to Execute a Second Amendment to the Agreement for Services with Elevator Service Company of Central CA, Inc. for four months in the amount of \$7,560, for a total agreement not to exceed \$66,640.

FISCAL IMPACT:

There is sufficient funding in the Facilities Program to cover elevator maintenance services cost for this extension.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Second Amendment to Agreement for Services
2. Original Agreement including First Amendment

SECOND AMENDMENT TO AGREEMENT FOR SERVICES

This SECOND AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 1stth day of June 2021 and amends that certain First Amendment to Agreement for Services dated February 18, 2020, made by and between the Town of Los Gatos, ("Town,") and Elevator Service Company of Central CA, Inc. ("Service Provider").

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on July 1, 2018, ("Agreement"), and a First Amendment to Agreement for Services on February 20, 2020, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town desires to amend the Agreement for Services to extend the term of agreement and increase compensation for the Scope of Services for Fiscal Year 2021/22.

AMENDMENT

1. 2.2 Term and Time of Performance is amended to read:

This agreement term shall continue through October 31, 2021.

2. 2.6 Compensation is amended as described below:

Compensation for July 1, 2021 through October 31, 2021 (FY 2021/22) shall be:

Preventative = \$875 x 4 months (\$3,500) + Unforeseen = \$1,015 x 4 months (\$4,060)

For a total not to exceed \$7,560.

Total agreement not to exceed \$66,640

(Prior agreements = \$59,080 + Second Amendment = \$7,360)

3. All other terms and conditions of the Agreement remain in full force and effect.

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

Town of Los Gatos

Service Provider by:

By: _____
Laurel Prevetti, Town Manager

Department Approval:

Title

Matt Morley
Director of Parks and Public Works

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk

FIRST AMENDMENT TO AGREEMENT FOR SERVICES

This FIRST AMENDMENT TO AGREEMENT is dated for identification this 18th day of February 2020 and amends that certain agreement for Agreement for Services dated July 1, 2018, made by and between the Town of Los Gatos, ("Town,") and Elevator Service Company of Central CA, Inc. ("Service Provider").

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on July 1, 2018, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement for Services to increase compensation for the Scope of Services.

AMENDMENT

- 1. 2.6 Compensation is amended as described below:

Original Agreement

	Preventative	Unforeseen
FY2018/19:	\$825 x 12 months (\$9,900) +	\$5,000 annually = \$14,900
FY2019/20:	\$825 x 12 months (\$9,900) +	\$5,000 annually = \$14,900
FY2020/21:	\$825 x 12 months (\$9,900) +	\$5,000 annually = \$14,900

Total agreement not to exceed \$44,700

Effective March 1, 2020:

First Amendment to Agreement

	Preventative	Unforeseen
FY2018/19:	\$825 x 12 months (\$9,900) +	\$5,000 annually = \$14,900
FY2019/20:	\$825 x 12 months (\$9,900) +	\$12,190 annually = \$22,090
FY2020/21:	\$825 x 12 months (\$9,900) +	\$12,190 annually = \$22,090

Total agreement not to exceed \$59,080


Compensation for year two shall not exceed \$22,090. Compensation for future years will be the base cost of \$22,090 and shall be adjusted upward annually for the remaining term of this agreement by the change, if any, in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding

- year. If the CPI indicates a downward adjustment, compensation would remain at the base amount. Payment shall be based upon Town approval of each task.
2. All other terms and conditions of the Agreement remain in full force and effect.

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

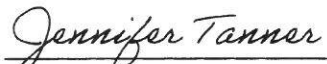
Town of Los Gatos

Service Provider by:

By: 

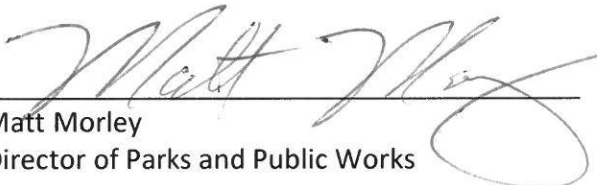
Laurel Prevetti, Town Manager

Jennifer Tanner / Office Manager



Name/Title

Department Approval:



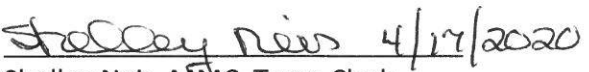
Matt Morley
Director of Parks and Public Works

Approved as to Form:

Attest:



Robert Schultz, Town Attorney

 4/17/2020

Shelley Neis, MMC, Town Clerk

AGREEMENT FOR SERVICES

THIS AGREEMENT is dated for identification this 1st of July 2018, and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Elevator Service Company of Central California, Inc. ("Service Provider"), whose address is 2636 S. Rodeo Gulch Road B, Soquel, CA 95073. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town sought quotations for the services described in this Agreement, and Service Provider was found to be the lowest responsible supplier for this purchase.
- 1.2 Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Town desires to engage Service Provider to provide Traction and Hydraulic Elevator Lubrication and Inspection services.
- 1.4 Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

II. AGREEMENT

- 2.1 Scope of Services. Service Provider shall provide services as described in that certain Proposal sent to the Town on June 28, 2018, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. The effective date of this Agreement shall begin on July 1, 2018 and will continue through June 30, 2021, subject to appropriation of funds, notwithstanding any other provision in this agreement.
- 2.3 Compliance with Laws. The Service Provider shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Service Provider represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Service Provider to practice its profession. Service Provider 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. Service Provider 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 Service Provider by the Town and all reports and supportive data prepared by the Service Provider under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or at the

Town's written request. All reports, information, data, and exhibits prepared or assembled by Service Provider in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Service Provider shall not make any of these documents or information available to any individual or organization not employed by the Service Provider or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Service Provider 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 Service Provider in connection with other projects shall be solely at Town's risk, unless Service Provider expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Service Provider which is and has been confirmed in writing by Service Provider to be a trade secret of Service Provider.

2.6 Compensation:

Preventative maintenance – shall not exceed \$9,900 annually (\$825/month). ✓

Unanticipated maintenance – shall not exceed \$5,000 annually. ✓

Compensation for year one shall not exceed \$14,900. ✓ Compensation for future years will be the base cost of \$14,900 and shall be adjusted upward annually for the remaining term of this agreement by the change, if any, in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year. If the CPI indicates a downward adjustment, compensation would remain at the base amount. 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. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider 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 Service Provider. 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 Service Provider, 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 Service Provider 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. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider 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 Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider 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, Service Provider 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. Service Provider 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 Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement Service Provider 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. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider 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. Service Provider 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. Service Provider 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. Service Provider shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Service Provider agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

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 Service Provider; products and completed operations of Service Provider, premises owned or used by the Service Provider.
- ii. The Service Provider'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 Service Provider'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 Service Provider'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, Service Provider 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, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.

- 3.4 Indemnification. The Service Provider 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 Service Provider, or any of the Service Provider's officers, employees, or agents or any subcontractor.

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 Service Provider 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 Service Provider shall deliver to the Town all plans, files, documents, reports, performed to date by the Service Provider. In the event of such termination, Town shall pay Service Provider 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. In accordance with the provisions of Sections 1770 et seq., of the Labor Code, the Director of the Industrial Relations of the State of California has determined the general prevailing rate of wages applicable to the work to be done. Service Provider will be required to pay to all persons employed on the project by the Service Provider sums not less than the sums set forth in the documents entitled "General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code, part 7, Chapter 1, Article 2, Sections 1770, 1773, 1773.1." These documents may be obtained from the State of California.

Pursuant to Labor Code section 1725.5, no contractor or subcontractor may be awarded a contract for public works on a public works project unless registered with the Department of Industrial Relations.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations and/or the Town of Los Gatos.

The Contractor is required to post notices on Public Works requirements.

- 4.5 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Service Provider.
- 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

Elevator Service Co. of Central CA, Inc.
2636 S. Rodeo Gulch Road B
Soquel, CA 95073

or personally delivered to Service Provider to such address or such other address as Service Provider 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 Service Provider. 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 Service Provider have executed this Agreement.

Town of Los Gatos by:

Elevator Service Co. of Central CA, Inc., by:

L. Prevetti
Laurel Prevetti, Town Manager

Mel. East

Recommended by:

Matt Morley
Matt Morley, Director of Parks and Public Works

Contracts
Title

Approved as to Form:

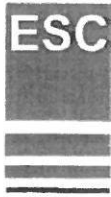
Robert Schultz
Robert Schultz, Town Attorney

Attest:

Shelley Neis 9/27/18
Shelley Neis, CMC, Town Clerk Administrator

ELEVATOR SERVICE CO. OF CENTRAL CALIFORNIA, INC.

2636 S. RODEO GULCH RD. SOQUEL CA 831-475-9181 LIC 390181



TRACTION AND HYDRAULIC ELEVATOR LUBRICATION & INSPECTION AGREEMENT

DATED: June 28, 2018

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

Attn: Jim Harbin

WE PROPOSE to Lubricate and Inspect on the following described equipment:

Two (3) Oil Hydraulic Passenger Elevators, One (1) Dumbwaiter and Two (2) Traction Passenger Elevators

AT: (2) Tractions 100 Villa Ave. Los Gatos, CA	(2) Hydraulic Elevator, (1) Dumbwaiter 110 E. Main St. Los Gatos, CA	(1) Hydraulic Elevator 208 Main St. Los Gatos, CA
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ESCCC and Purchaser, in consideration of the terms set forth herein, agree as follows:

CONTRACT PRICE:

Eight Hundred Twenty-Five Dollars and 00/100 cents (\$825.00) per month

UNDER THIS AGREEMENT

We will maintain the equipment herein described on the following terms and conditions:

WE WILL USE:

Trained personnel directly employed and supervised by us.

WE WILL:

Regularly examine and lubricate as requires; bearing; hydraulic and traction machines, selectors, governors, tension frame sheaves, signal devices, interlocks and controller. We will also examine and lubricate as required car and counterweight guide rails and make necessary minor adjustments, not requiring disassembly of the unit, at the time of our regular examination. We will furnish the necessary oils and greases, with the exception of hydraulic transmission fluid. Perform monthly fire recall test and logs.

NO WORK:

Parts or supplies, except those specified herein, will be furnished under this agreement. All work is to be performed during regular working hours of regular working days of the elevator trade. In the event that call back service, parts replacement or repairs should be required, you will be billed for labor and material at our regular billing rate.

IT IS AGREED:

In consideration of our performance of the service enumerated herein at the price stated, that nothing shall be construed to mean that we assume any liability on account of accidents or injury to persons or property, except those directly due to our negligent acts or omissions or those of our employees; and that

ELEVATOR SERVICE CO. OF CENTRAL CALIFORNIA, INC.

2636 S. RODEO GULCH RD. SOQUEL CA 95131-475-9181 LIC 390181

your own responsibility for accidents or injuries to persons or property related to the subject equipment is in no way affected by this agreement.

We shall not be liable for any loss, damage or delay due to any cause beyond our reasonable control including, but not limited to acts of government, strikes, lockouts, fire, explosion, theft, floods, earthquake, riot, civil commotion, war, malicious mischief, misuse, or acts of nature.

YOU AGREE:

To give us written notice within twenty-four hours of any accident, alteration or change affecting the equipment and of any change of ownership;

To immediately discontinue the equipment from service when the equipment becomes unsafe or operates in a manner which might cause injury to a user;

To maintain surveillance of the equipment for such purpose.

HOURS OF SERVICE:

All work covered under this Agreement is to be performed during the regular working hours of regular working days of the elevator trade, unless otherwise indicated herein.

TERM:

The service specified will be furnished from the effective date stated herein, and shall continue for an initial, non-cancelable term of ONE (1) year thereafter. Either party may terminate this Agreement either at the end of the initial ONE (1) year term or at the end of any subsequent ONE (1) year term by giving the other party ninety (90) days written notice, via certified mail, prior to the expiration date of the Agreement, the expiration date being ONE (1) year from the effective date of this Agreement or ONE (1) year from the effective date of any subsequent renewal term.

RWS
~~Premature cancellation of this Agreement or delayed notice of termination shall constitute a material breach of contract and the entire remaining amount of the contract will accelerate and become due to ESCCC as liquidated damages. In the event of the sale, lease or other transfer of the ownership of the equipment described herein, or the premises in which it is located, Purchaser will provide ESCCC with thirty (30) days written notice of this transaction and Purchaser will notify the new Purchaser of the existence of this Agreement and provide ESCCC with the new Purchaser's complete contract information.~~

ESCCC may, at its sole discretion, temporarily suspend upon written notice or terminate entirely upon thirty (30) days written notice this Agreement at any time due to the Purchaser's breach of contract. In the event of circumstances presenting a safety hazard to the riding public or ESCCC's technicians (including, but not limited to, Purchaser's act of creating or allowing unsafe practices or conditions or Purchaser's failure to authorize necessary repairs or upgrades), ESCCC may immediately terminate this Agreement in its entirety upon written notice.

PRICE ADJUSTMENTS:

The price will be adjusted annually on January 1 of each year of the Agreement. The payment adjustment will reflect the increase or decrease in labor costs.

Current Hourly Rate: \$325.00 As of January 2018

LABOR:

100% of the current price will be increased or decreased by the percent increase or decrease in the straight time hourly labor cost. The straight time labor cost is the sum of the straight time hourly rate plus the cost of fringe benefits (including but not limited to welfare, pension, vacations, paid holidays, insurance, and other union contributions) paid to elevator examiners in the locality the equipment is maintained.

ESCCC:

Reserves the right to additionally adjust the contract price under extraordinary circumstances if the cost of fuel (based on the Producer Price Index of Commodities for Gasoline), insurance or other administrative expenses increase.

ELEVATOR SERVICE CO. OF CENTRAL CALIFORNIA, INC.

2636 S. RODEO GULCH RD. SOQUEL CA 95076 831-475-9181 LIC 390181

PAYMENT TERMS:

Rob

~~Payments are due within ten (10) days of date of invoice. A delinquent payment charge of 1½ % per month, or if such rate is usurious then at the maximum rate under applicable law, shall be applied to delinquent payments. In the event of default of the payment terms, Purchaser agrees to pay the defaulted amount, all attorney fees, collection, and court costs. Failure to pay any sum due by Purchaser within sixty (60) days will be a material breach. ESCCC may declare all sums due or to become due for the unexpired term immediately due and payable as liquidated damages, and until the same are paid, ESCCC may suspend service, and be discharged from further obligations under the contract. If ESCCC exercises its right to suspend service, ESCCC shall not be responsible for injury or damage resulting from the lack of service. When service is resumed, Purchaser will be responsible for any costs ESCCC incurs as a result of the lapse in service, including inspection and repairs.~~

These payment terms shall also be applicable to any charges for work outside the scope of this Agreement.

THIS SERVICE SHALL COMMENCE on the _____ day of _____ 2018.

PURCHASER:

Elevator Service Co. of Central California, Inc.:

Accepted in Duplicate:

By: _____ 20_____

By:

Melissa Eastman

Melissa Eastman / Contract Specialist

Title

Approved:

By: _____



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 17

DATE: June 7, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Roadside Fire Fuel Reduction (Project 812-0130):
a. Authorize a FY 2021/22 Expenditure Budget Adjustments in the Capital in the Amount of \$75,000 for the Roadside Fire Fuel Reduction Project (411-812-0130); and
b. Authorize the Town Manager to Apply for FEMA's Hazard Mitigation Grant Program, Asking for Funds for Roadside Vegetation Management

RECOMMENDATION:

Staff recommends that the Town Council authorize the following actions for Los Gatos Roadside Vegetation Management:

- a. Authorize a FY 2021/22 Expenditure Budget Adjustment in the amount of \$75,000 for the Roadside Fire Fuel Reduction Project (411-812-0130); and
- b. Authorize the Town Manager to apply for a FEMA (Federal Emergency Management Agency's) Hazard Mitigation Grant Program (HMGP) (DR-4458), requesting funds for roadside vegetation management.

BACKGROUND:

The combination of increasing development in or near wildlands, the accumulation of wildland fuels, a drying and warming climate, longer fire seasons, and rugged terrain has resulted in significant wildfire risk to communities located in or near the wildland urban interface (WUI). The WUI area is best described as a wildland-urban intermix with homes scattered amongst wildland fuels. The Town's WUI planning area includes primarily Very High Fire Hazard Severity Zone areas, as defined by CalFire and the Town of Los Gatos Fire Prevention and Protection Ordinance (CalFire 2008; Town of Los Gatos 2019; 2016, Amended 2020).

PREPARED BY: Hannah Tarling
Emergency Services Coordinator

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

BACKGROUND (continued):

Considering the high risk of wildfire to Town residents, property and economy, Town staff propose applying for the FEMA HMPG with a project titled, Los Gatos Hazardous Fuels Reduction Plan. This plan would remove hazardous vegetation and create defensible space around approximately 24.4 miles of Town-owned hillside roadways that have been identified by the Town and its residents as roadways of high concern and are further identified in the Town's Roadside Vegetation Management Plan.

At the end of 2020, the Town addressed approximately 6.5 miles of WUI roadway. Significant amounts of WUI roadway remain for future phases of the project.

DISCUSSION:

On May 6, 2021, Town staff submitted a Notice of Interest (NOI) to the California Office of Emergency Services (CalOES) for a wildfire mitigation grant, in the Hazard Mitigation Grant Program for disaster DR-4558. CalOES approved the NOI, allowing the Town to apply to the grant program. The Los Gatos Hazardous Fuels Reduction project has an estimated total cost of \$2,300,000, requiring a 25% local cost share of \$575,000. While the Town Council has budgeted for \$500,000 for vegetation management, staff is recommending an additional \$75,000 allocation to move forward with the Town's full application amount to reduce hazardous fuels in the high-risk wildland urban interface. If the Town is awarded this grant, the project work must be completed within 36 months.

CONCLUSION:

Approval of the recommendation would allow staff to apply for the Hazard Mitigation Grant Program (DR-4558).

COORDINATION:

This project has been coordinated with Parks and Public Works Department and the Town Manager's Office.

FISCAL IMPACT:

Staff is recommending an FY 2021/22 expenditure budget adjustment in the amount of \$75,000 for the Roadside Fire Fuel Reduction Project (411-812-0120) to allow for a 25% local cost share for costs and other expenditures related to the project.

PAGE 3 OF 3

SUBJECT: Roadside Fire Fuel Reduction (Project 812-0130)

DATE: June 7, 2021

FISCAL IMPACT (continued):

The additional funding is available from the identified 50% of Measure G and property sale proceeds dedicated by Town Council for capital projects. This project will require project management and coordination by staff. Staff costs are tracked for all projects. Tracking of staff costs allows for accountability in the costs of projects, recovery of costs from grant funded projects, and identification of future staffing needs.

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA and an environmental analysis has been completed. The project is Statutorily Exempt (Section 15301(c) Existing Streets). A notice of exemption has been filed.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 18

DATE: June 4, 2021

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Capital Improvement Project 813-0235 Downtown Streetscape Revitalization/
Economic Recovery Efforts:

- a. Approve a Contract Amendment with AP&I Design, Inc in the Amount of \$42,192 for a Total Contract Amount not to Exceed \$92,192; and
- b. Approve an Extension to the Application Deadline for Applications to the Parklet Program to July 29, 2021.

RECOMMENDATION:

Capital Improvement Project 813-0235 Downtown Streetscape Revitalization/Economic Recovery Efforts:

- a. Approve a contract amendment with AP&I Design, Inc in the amount of \$42,192 for a total contract amount not to exceed \$92,192; and
- b. Approve an extension to the application deadline for applications to the parklet program to July 29, 2021.

BACKGROUND:

On April 20, 2021, the Town Council discussed the status of parklets in the downtown and approved an increase in parklet subsidy per business to \$40,000 or 75% of the total cost for semi-permanent parklets.

On March 15, 2021, the Town entered an agreement with AP&I Design, Inc. in the amount of \$49,000 for design of semi-permanent parklets under previous Council direction. This agreement provides base semi-permanent parklet design documents to help streamline permitting review and reduce costs to businesses for up to ten parklets.

PREPARED BY: Matt Morley
Parks and Public Works Director

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

PAGE 2 OF 2

SUBJECT: Contract Amendment with AP&I Design

DATE: June 4, 2021

BACKGROUND (continued):

With the increased subsidy, the demand for parklets has increased from the original anticipated number to an upper potential of 26 parklets.

DISCUSSION:

The increased interest in parklets will require additional work from the project architects, AP&I Design. The team was originally selected based on their experience in designing previous parklets for businesses and the ability for that team to quickly adjust the template and move the process forward. Staff recommends continuing and expanding this agreement to accommodate the additional scope.

In addition, staff recommends extending the deadline for businesses to submit their applications from the current date of June 30 to July 29, 2021. This extension will allow businesses to fully commit to the expense of the semi-permanent parklets. The required timeline for final construction will remain December 31, 2022.

CONCLUSION:

The addition to the design contract and the extension to the application deadline will facilitate the increased demand and installation of semi-permanent parklets in the downtown.

COORDINATION:

This project is coordinated with the Economic Vitality Manager and the Community Development Department.

FISCAL IMPACT:

Funding for this project has been previously identified from the Capital Improvement Project titled Downtown Streetscape/Economic Recovery Efforts.

ENVIRONMENTAL ASSESSMENT:

The actions associated with this item are not a project defined under CEQA, and no further action is required.

Attachments:

1. Amendment to the Agreement
2. Original Agreement

FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES

This FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES is dated for identification this 15th day of June 2021, and amends that certain Agreement for Consultant Services dated March 15, 2021 , made by and between the Town of Los Gatos, ("Town,") and AP+I Design, Inc. ("Consultant").

RECITALS

- A. Town and Consultant entered into an Agreement for Consultant Services on March 15, 2021, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town desires to amend the agreement to increase the scope of work and provide additional compensation.

AMENDMENT

- 2.1 Scope of Services is amended to provide five (5) additional parklets as described in Exhibit B.
- 2.6 Compensation is amended to include an additional **\$42,192**, for a total agreement amount not to exceed \$91,192

All other terms and conditions of the Agreement remain in full force and effect.

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

Town of Los Gatos

AP+I Design, Inc., by:

By: _____
Laurel Prevetti, Town Manager

Name

Department Approval:

Title

Matt Morley
Director of Parks and Public Works

Approved as to Form:

Attest:

Robert Schultz, Town Attorney

Shelley Neis, MMC, CPMC, Town Clerk



06.07.21
Job No. 21026

Mr. Matt Morley
The Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Attention: Matt Morley
Subject: Los Gatos Parklets – Request for Additional Fee No. 1

Dear Mr. Morley:

We are submitting this request for additional fee based on the following out of scope services.

The town of Los Gatos has determined that there is likely to be additional parklets beyond the original ten planned for in the proposal. In order to keep cost to the business owner down, the town has opted to prepay for a portion of the use fee for parklets. This request for additional fee allows for the prepayment of additional parklets in either five or ten parklet increments.

See below for both options which may be taken individually or in combination.

Business owners will still contract directly with AP+I for the remainder of the use fee and to produce site specific drawings. See business owner fee included for reference only.

COMPENSATION 5 ADDITIONAL PARKLETS:

Architectural Fees (Partial Use Fee up to 5 parklets)	\$5,912
Structural Fees (Partial Use Fee up to 5 parklets)	\$4,636
Sub Total	\$10,548
Reimbursable Expenses (Incl. above)	\$0
Total	\$10,548

Contract Summary

Original Contract	\$46,197
RAF #1 - 5 Additional Parklets	\$10,548
Total	\$56,745

COMPENSATION 10 ADDITIONAL PARKLETS:

Architectural Fees (Partial Use Fee up to 10 parklets)	\$11,823
Structural Fees (Partial Use Fee up to 10 parklets)	\$9,273
Sub Total	\$21,096
Reimbursable Expenses (Incl. above)	\$0
Total	\$21,096

Contract Summary

Original Contract	\$46,197
RAF #1 - 10 Additional Parklets	\$21,096
Total	\$67,293

COMPENSATION BUSINESS OWNER FEE (FOR REFERENCE ONLY):

Contract Documents	\$ 1,519
Construction Administration (hourly not-to-exceed)	\$ 540
Sub Total	\$ 2,059
Structural Engineering	\$ 1,800
Errors and Omissions Insurance	\$ 41
Total	\$ 3,900
Reimbursable Expenses (Estimate)	\$ 850

Please call me to discuss at your earliest convenience. Thank you.

Very truly yours,

Allison Young, AIA
Associate Principal

Signature

Date

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on March 15, 2021 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and AP+I Design, Inc., ("Consultant"), whose address is 117 Easy Street, Mountain View, CA 94043. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide professional architectural design services for the Town of Los Gatos Parklet Program.
- 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 March 2, 2021, 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 March 25, 2021 through Dec 31, 2022. Consultant shall perform the services described in Exhibit A.
- 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 \$49,000**, 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

AP+I Design, Inc.
117 Easy Street
Mountain View, CA 94043

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:

DocuSigned by:

Laurel Prevetti

3/25/2021

Laurel Prevetti, Town Manager

DocuSigned by:

C. Sandman

3/16/2021

Carol Sandman - President

Recommended by:

DocuSigned by:

Matt Morley

3/24/2021

Matt Morley, Director of Parks and Public Works

Carol Sandman - President

Printed Name and Title

Approved as to Form:

DocuSigned by:

Robert W. Schultz

3/24/2021

Robert Schultz, Town Attorney

Attest:

DocuSigned by:

Shelley Neis

3/25/2021

Shelley Neis, MMC, CPMC, Town Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 19

DATE: June 4, 2021

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Following Actions for Landscape and Lighting Assessment Districts No. 1 and 2:

- a. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Blackwell Drive Benefit Zone.
- b. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Kennedy Meadows Benefit Zone.
- c. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Santa Rosa Heights Benefit Zone.
- d. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 1-Vasona Heights Benefit Zone.
- e. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 1-Hillbrook Drive Benefit Zone.
- f. Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 2-Gemini Court Benefit Zone.

PREPARED BY: Stefanie Hockemeyer
Executive Assistant

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

RECOMMENDATION:

Authorize the Following Actions for Landscape and Lighting Assessment Districts No. 1 and 2:

- a. Adopt a resolution (Attachment 1) confirming the diagram and assessments and levying and authorizing collection of assessments for Landscape and Lighting Assessment District No. 1- Blackwell Drive Benefit Zone.
- b. Adopt a resolution (Attachment 2) confirming the diagram and assessments and levying and authorizing collection of assessments for Landscape and Lighting Assessment District No. 1- Kennedy Meadows Benefit Zone.
- c. Adopt a resolution (Attachment 3) confirming the diagram and assessments and levying and authorizing collection of assessments for Landscape and Lighting Assessment District No. 1- Santa Rosa Heights Benefit Zone.
- d. Adopt a resolution (Attachment 4) confirming the diagram and assessments and levying and authorizing collection of assessments for Landscape and Lighting Assessment District No. 1- Vasona Heights Benefit Zone.
- e. Adopt a resolution (Attachment 5) confirming the diagram and assessments and levying and authorizing collection of assessments for Landscape and Lighting Assessment District No. 1- Hillbrook Drive Benefit Zone.
- f. Adopt a resolution (Attachment 6) confirming the diagram and assessments and levying and authorizing collection of assessments for Landscape and Lighting Assessment District No. 2- Gemini Court Benefit Zone.

BACKGROUND:

On April 20, 2021, the Town Council initiated the annual process of renewing the Landscape and Lighting Assessment Districts No. 1 and 2 for the fiscal year commencing July 1, 2021. The Districts are comprised of six distinct zones of benefit, five of which are included in District No. 1, and one included in District No. 2. Maps of each zone are contained in the Engineer's Report (Attachment 7). The primary purpose of the Districts is to provide for the ongoing maintenance and care of landscaped areas that especially benefit the properties within each of the zones. These services are performed by a contractor retained by the Town on behalf of the property owners. For a specific description of the services provided in each zone, please refer to the attached Engineer's Report.

On May 4, 2021, Council received and approved the Engineer's Report and adopted Resolutions confirming diagrams and assessments and levying and authorizing collection of assessments for Landscape and Lighting Districts for FY 2021/22 and set June 15, 2021 at 7:00 p.m. as the date and time for the required Public Hearing on the proposed assessments.

DISCUSSION:

The Notice of Intention to Levy Annual Assessments for Fiscal Year 2021/22 was published in the Los Gatos Weekly on June 4 and June 11, 2021. Additionally, notices of the proposed assessments and of the scheduled public hearing were mailed to each of the property owners in the Districts, and to date, no protests or other written communication have been received. If communication is received prior to the hearing, it will be presented to the Council for consideration at the hearing.

The following table shows the number of parcels for each benefit zone and the proposed FY 2021/22 assessments:

Benefit Zone	No. of Parcels	Per Parcel Assessment
Blackwell Drive	5	\$632
Kennedy Meadows	15	\$685
Santa Rosa Heights	15	\$300
Vasona Heights	33	\$295
Hillbrook	34	\$175
Gemini Court	20	\$230

CONCLUSION:

Staff recommends that the Town Council adopt the six resolutions (Attachments 1-6) to continue the annual process of renewing the Landscape and Lighting Assessment Districts 1 and 2 for Fiscal Year 2021/22.

ALTERNATIVES:

If the Council chooses not to adopt the six resolutions, then the renewal process would halt and staff would follow the alternative direction given by the Council. If the Council were to decide not to renew the Assessment Districts, staff would look to Council for a policy direction about whether the services currently provided by the Districts should continue and how.

The two most likely options that the Council could choose would be to either:

1. Give the responsibility for providing the services back to the property owners within the districts, or
2. Assume responsibility for providing the services through the Town's General Fund Operating Budget.

ALTERNATIVE (continued):

As the Districts provide for higher levels of landscaping and lighting services within the specific benefit zones than in other areas of the Town, staff does not recommend either of these two approaches.

FISCAL IMPACT:

There are no direct fiscal impacts on the Town's General Fund as a result of administering the Landscape and Lighting Assessment Districts. All the costs associated with the Districts are recovered via the assessments levied against the property owners within the Districts. There are no proposed increases in any of the parcel assessments for FY 2021/22 that would require a ballot vote under Proposition 218.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Resolution Confirming Diagram and Assessment and Levying and Authorizing Collection of Assessments – Blackwell Drive Benefit Zone.
2. Resolution Confirming Diagram and Assessment and Levying and Authorizing Collection of Assessments – Kennedy Meadows Drive Benefit Zone.
3. Resolution Confirming Diagram and Assessment and Levying and Authorizing Collection of Assessments – Santa Rosa Heights Benefit Zone.
4. Resolution Confirming Diagram and Assessment and Levying and Authorizing Collection of Assessments – Vasona Heights Benefit Zone.
5. Resolution Confirming Diagram and Assessment and Levying and Authorizing Collection of Assessments – Hillbrook Drive Benefit Zone.
6. Resolution Confirming Diagram and Assessment and Levying and Authorizing Collection of Assessments – Gemini Court Benefit Zone.
7. Engineer's Report for Fiscal Year 2021/22.

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
CONFIRMING DIAGRAM AND ASSESSMENT,
AND LEVYING AND AUTHORIZING COLLECTION OF ASSESSMENTS FOR
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1 -
BLACKWELL DRIVE BENEFIT ZONE
FOR FISCAL YEAR 2021/22**

WHEREAS, on April 20, 2021, the Town Council ordered the Town Engineer to prepare and file a report regarding Landscape and Lighting Assessment District No. 1 - Blackwell Drive Benefit Zone regarding the improvements in the District and proposed assessments to support those improvements; and

WHEREAS, the Town Engineer prepared and filed that report; and

WHEREAS, the Town Council considered and approved that report; and

WHEREAS, the Engineer's Report contains a detailed description of the improvements in the District, the boundaries of the District, and the proposed assessments upon assessable lots and parcels of land within the District; and

WHEREAS, on May 4, 2021, the Town Council adopted Resolution No. 2021-013 declaring its intention to levy and collect assessments in Landscape and Lighting District No. 1 - Blackwell Drive Benefit Zone, and set the matter for public hearing in accordance with State law; and

WHEREAS, notice of the public hearing was duly mailed and published in accordance with State law; and

WHEREAS, the public hearing on the proposed levy of assessments was held by the Town Council on June 15, 2021, at which time all interested persons present were heard; and

WHEREAS, the proposed assessments are not proposed to be increased from any previous year; and

WHEREAS, the Town Council has received and considered all written and oral statements and protests regarding the proposed assessment.

ATTACHMENT 1

NOW THEREFORE, BE IT RESOLVED:

1. The diagram and assessment attached hereto as Parts C and D are approved.
2. This Resolution shall constitute the levy of assessment for Landscape and Lighting Assessment District No. 1 - Blackwell Drive Benefit Zone, for Fiscal Year 2021/22.
3. The Town Clerk shall transmit a certified copy of this Resolution to the Tax Collector of Santa Clara County for entry on the County Assessment Roll opposite each lot or parcel of land in the amount assessed pursuant to the Resolution, and collection pursuant to Streets and Highways Code Sec. 22646 and payment to the Town pursuant to Streets and Highways Code Sec. 22647.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos held on the 15th day of June 2021 by the following vote:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK
LOS GATOS, CALIFORNIA

DATE: _____

PART C

ASSESSMENT ROLL FISCAL YEAR 2021/22

BLACKWELL DRIVE BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$632	424-12-123
Lot 2	632	424-12-124
Lot 3	632	424-12-125
Lot 4	632	424-12-126
Lot 5	632	424-12-127
Total Assessment:	\$3,160	

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

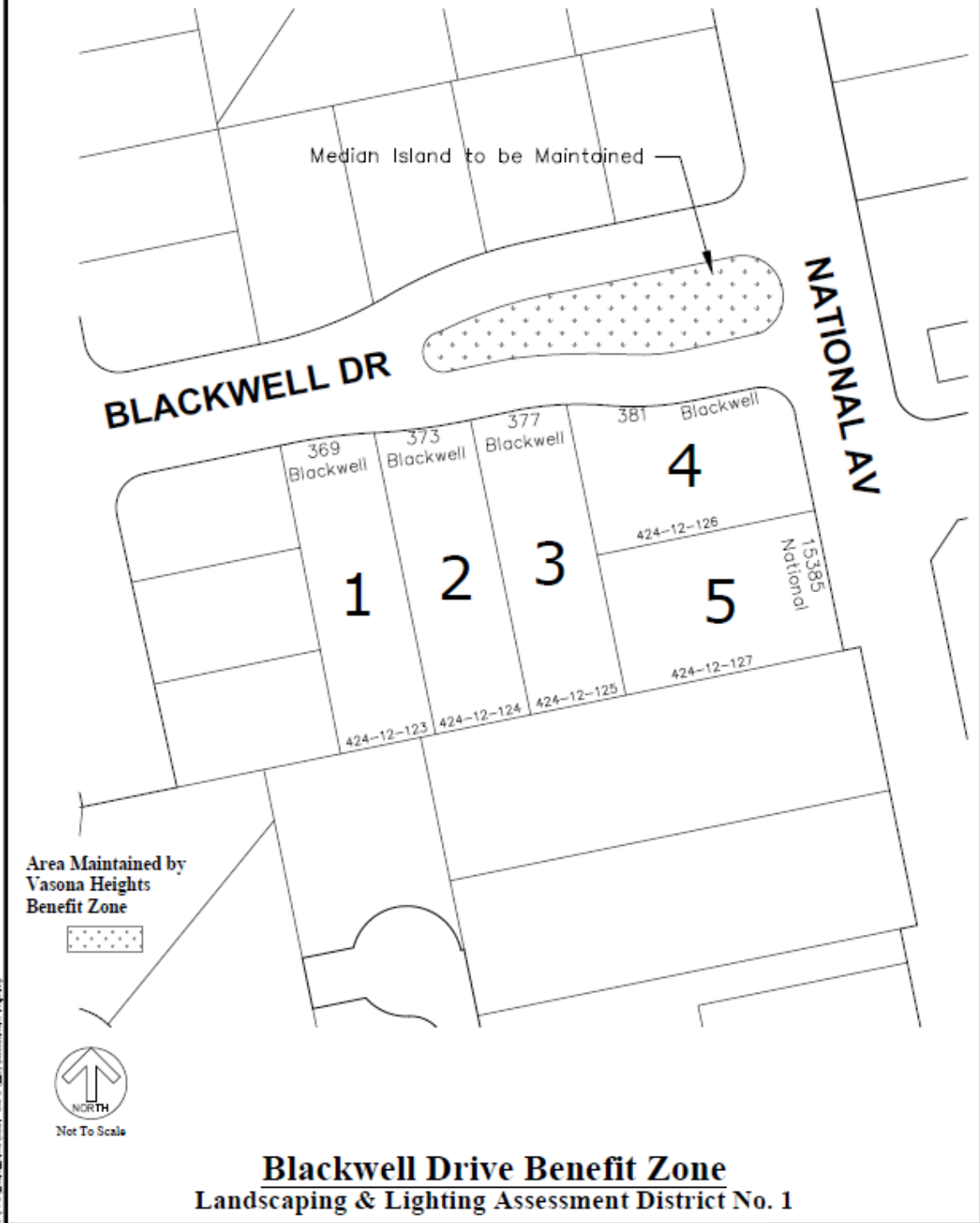
METHOD OF APPORTIONMENT OF ASSESSMENT

The total amount of the assessment was apportioned equally to all the lots within the Blackwell Drive Benefit Zone of Landscape and Lighting Assessment District No. 1.

PROPERTY OWNERS LIST

APN	Owner
42412123	HEPLER BRAD D & UMALI PAMELA
42412124	VUPPUNUTULA VENKAT REDDY AND REDDY SAHITHI
42412125	URRICARIET CHRISTIAN M & MARTINEZ-VISBAL
42412126	JOSHI ANILA & ROHIT
42412127	MORADI MOSTAFA

PART "D"
Assessment Diagram



Area Maintained by
Vasona Heights
Benefit Zone



Not To Scale

Blackwell Drive Benefit Zone
Landscaping & Lighting Assessment District No. 1

VA_Venue_02/20/2025_14:07-14:08_0001 Assessment.dwg.dwg

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
CONFIRMING DIAGRAM AND ASSESSMENT,
AND LEVYING AND AUTHORIZING COLLECTION OF ASSESSMENTS FOR
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1 -
KENNEDY MEADOWS BENEFIT ZONE
FOR FISCAL YEAR 2021/22**

WHEREAS, on April 20, 2021, the Town Council ordered the Town Engineer to prepare and file a report regarding Landscape and Lighting Assessment District No. 1 - Kennedy Meadows Benefit Zone regarding the improvements in the District and proposed assessments to support those improvements; and

WHEREAS, the Town Engineer prepared and filed that report; and

WHEREAS, the Town Council considered and approved that report; and

WHEREAS, the Engineer's Report contains a detailed description of the improvements in the District, the boundaries of the District, and the proposed assessments upon assessable lots and parcels of land within the District; and

WHEREAS, on May 4, 2021, the Town Council adopted Resolution No. 2021-014 declaring its intention to levy and collect assessments in Landscape and Lighting District No. 1 - Kennedy Meadows Benefit Zone, and set the matter for public hearing in accordance with State law; and

WHEREAS, notice of the public hearing was duly mailed and published in accordance with State law; and

WHEREAS, the public hearing on the proposed levy of assessments was held by the Town Council on June 15, 2021, at which time all interested persons present were heard; and

WHEREAS, the proposed assessments are not proposed to be increased from any previous year; and

WHEREAS, the Town Council has received and considered all written and oral statements and protests regarding the proposed assessment.

ATTACHMENT 2

NOW THEREFORE, BE IT RESOLVED:

1. The diagram and assessment attached hereto as Parts C and D are approved.
2. This Resolution shall constitute the levy of assessment for Landscape and Lighting Assessment District No. 1 - Kennedy Meadows Benefit Zone, for Fiscal Year 2021/22.
3. The Town Clerk shall transmit a certified copy of this Resolution to the Tax Collector of Santa Clara County for entry on the County Assessment Roll opposite each lot or parcel of land in the amount assessed pursuant to the Resolution, and collection pursuant to Streets and Highways Code Sec. 22646 and payment to the Town pursuant to Streets and Highways Code Sec. 22647.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos held on the 15th day of June 2021 by the following vote:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK
LOS GATOS, CALIFORNIA

DATE: _____

PART C

ASSESSMENT ROLL FISCAL YEAR 2021/22

KENNEDY MEADOWS BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$685.00	532-18-050
Lot 2	685.00	532-18-049
Lot 3	685.00	532-18-048
Lot 4	685.00	532-18-047
Lot 5	685.00	532-18-052
Lot 6	685.00	532-18-063
Lot 7	685.00	532-18-062
Lot 8	685.00	532-18-061
Lot 9	685.00	532-18-060
Lot 10	685.00	532-18-059
Lot 11	685.00	532-18-058
Lot 12	685.00	532-18-057
Lot 13	685.00	532-18-056
Lot 14	685.00	532-18-055
Lot 15	685.00	532-18-054
Total Assessment:	\$10,275	

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

METHOD OF APPORTIONMENT OF ASSESSMENT

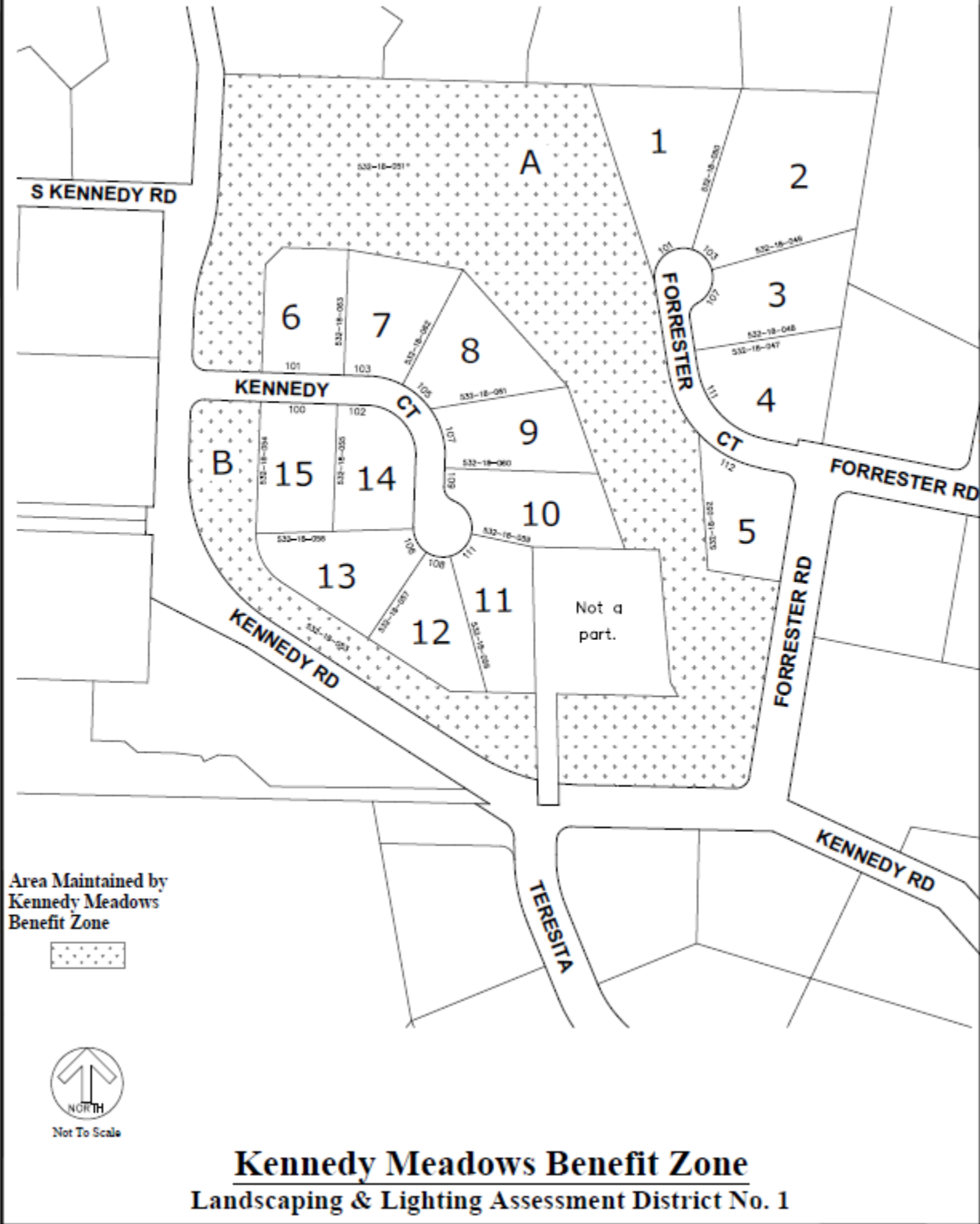
The total amount of the assessment was apportioned equally to all the lots within Kennedy Meadows Benefit Zone of Landscape and Lighting Assessment District No. 1.

KENNEDY MEADOWS BENEFIT ZONE

PROPERTY OWNERS LIST

APN	Owner
53218047	DAMORE EDWARD & KIMBERLY
53218048	Wiederhold Robert P & Melinda A Trustee
53218049	Jeevunjee Adam & Mariya
53218050	HIRSCHMAN WILLIAM AND DODSON ELIZABETH TRUS
53218052	MONTECILLO FAMILY TRUST
53218054	HACKER MARK K TRUSTEE
53218055	JENKINS WILLIAM D JR & JULIE C
53218056	LOS GATOS SARATOGA LLC SERIES A
53218057	Lundstrom Stephanie & Paul
53218058	CALI A STEVE & LORI A TRUSTEE
53218059	HUMPHRIES SIMON & SHEILA H TRUSTEE
53218060	HUBLOU RANI
53218061	SCHENKEL SCOTT F & KIMBERLY L TRUSTEE
53218062	THOMPSON PETER B & SHEILA K
53218063	BIBAUD SCOTT A & SUSAN M TRUSTEE

PART "D"
Assessment Diagram



\\snp\EB\EB\proj\assess\1525\Assessment\fig.dwg

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
CONFIRMING DIAGRAM AND ASSESSMENT,
AND LEVYING AND AUTHORIZING COLLECTION OF ASSESSMENTS FOR
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1 -
SANTA ROSA HEIGHTS BENEFIT ZONE
FOR FISCAL YEAR 2021/22**

WHEREAS, on April 20, 2021, the Town Council ordered the Town Engineer to prepare and file a report regarding Landscape and Lighting Assessment District No. 1 - Santa Rosa Heights Benefit Zone regarding the improvements in the District and proposed assessments to support those improvements; and

WHEREAS, the Town Engineer prepared and filed that report; and

WHEREAS, the Town Council considered and approved that report; and

WHEREAS, the Engineer's Report contains a detailed description of the improvements in the District, the boundaries of the District, and the proposed assessments upon assessable lots and parcels of land within the District; and

WHEREAS, on May 4, 2021, the Town Council adopted Resolution No. 2021-015 declaring its intention to levy and collect assessments in Landscape and Lighting District No. 1 - Santa Rosa Heights Benefit Zone, and set the matter for public hearing in accordance with State law; and

WHEREAS, notice of the public hearing was duly mailed and published in accordance with State law; and

WHEREAS, the public hearing on the proposed levy of assessments was held by the Town Council on June 15, 2021, at which time all interested persons present were heard; and

WHEREAS, the proposed assessments are not proposed to be increased from any previous year; and

WHEREAS, the Town Council has received and considered all written and oral statements and protests regarding the proposed assessment.

ATTACHMENT 3

1. The diagram and assessment attached hereto as Parts C and D are approved.
2. This Resolution shall constitute the levy of assessment for Landscape and Lighting Assessment District No. 1 - Santa Rosa Heights Benefit Zone, for Fiscal Year 2021/22.
3. The Town Clerk shall transmit a certified copy of this Resolution to the Tax Collector of Santa Clara County for entry on the County Assessment Roll opposite each lot or parcel of land in the amount assessed pursuant to the Resolution, and collection pursuant to Streets and Highways Code Sec. 22646 and payment to the Town pursuant to Streets and Highways Code Sec. 22647.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos held on the 15th day of June 2021 by the following vote:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK
LOS GATOS, CALIFORNIA

DATE: _____

PART C

ASSESSMENT ROLL FISCAL YEAR 2021/22

SANTA ROSA HEIGHTS BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$300.00	537-31-001
Lot 2	300.00	537-31-002
Lot 3	300.00	537-31-003
Lot 4	300.00	537-31-022
Lot 5	300.00	537-31-023
Lot 6	300.00	537-31-006
Lot 7	300.00	537-31-007
Lot 8	300.00	537-31-008
Lot 9	300.00	537-31-009
Lot 10	300.00	537-31-010
Lot 11	300.00	537-31-011
Lot 12	300.00	537-31-012
Lot 13	300.00	537-31-013
Lot 14	300.00	537-31-014
Lot 15	300.00	537-31-015
Total Assessment:	\$4,500	

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

METHOD OF APPORTIONMENT OF ASSESSMENT

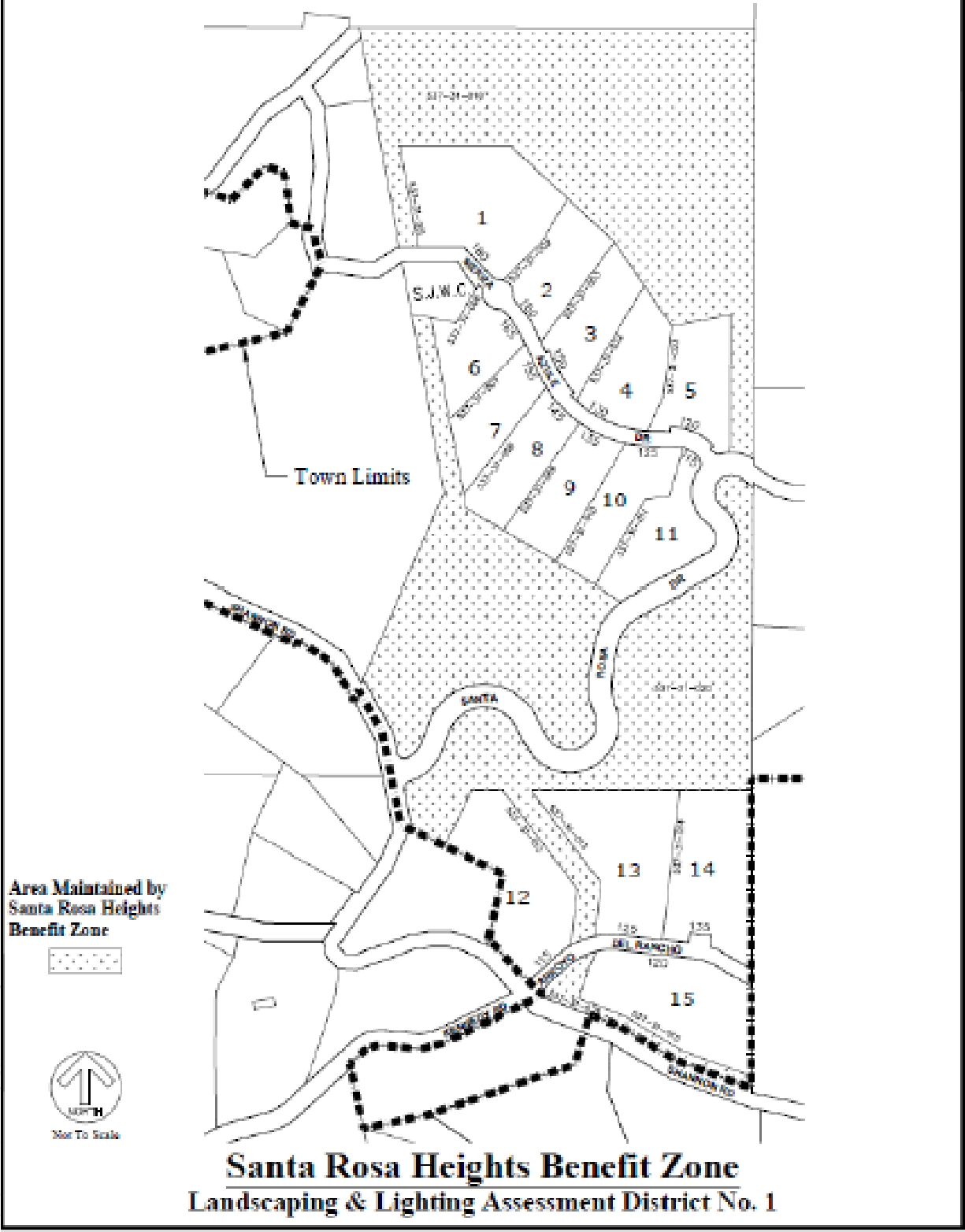
The total amount of the assessment was apportioned equally to all the lots within Santa Rosa Heights Benefit Zone of Landscape and Lighting Assessment District No. 1.

SANTA ROSA HEIGHTS BENEFIT ZONE

PROPERTY OWNERS LIST

APN	Owner
53731001	JAIN VIVEK TRUSTEE
53731002	ENTIN BRUCE L & PESIA TRUSTEE
53731003	SILVESTRI CHESTER J & IRENE N TRUSTEE
53731006	HWANG MING-YUN & JENNY WEN-CHI TRUSTEE
53731007	Zohouri Saeed Trustee
53731008	KERSCHBAUM MANFRED J
53731009	Tahmassebi Family Trust
53731010	COX JEREMY & JILL
53731011	SINGH JAGDEEP & ROSHNI TRUSTEE
53731012	PANCHAL NATWARLAL M & GITA N
53731013	JOSEPH AND SUSAN P LAM
53731014	HERNANDEZ JOHN B & JACKSON EVA TRUSTEE
53731015	AMARAL ROBERT H JR TRUSTEE
53731022	POULOS LOUIS
53731023	RAJAN SHANTHI

PART "D"
Assessment Diagram



Santa Rosa Heights Benefit Zone
Landscaping & Lighting Assessment District No. 1

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
CONFIRMING DIAGRAM AND ASSESSMENT,
AND LEVYING AND AUTHORIZING COLLECTION OF ASSESSMENTS FOR
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1 -
VASONA HEIGHTS BENEFIT ZONE
FOR FISCAL YEAR 2021/22**

WHEREAS, on April 20, 2021, the Town Council ordered the Town Engineer to prepare and file a report regarding Landscape and Lighting Assessment District No. 1 - Vasona Heights Benefit Zone regarding the improvements in the District and proposed assessments to support those improvements; and

WHEREAS, the Town Engineer prepared and filed that report; and

WHEREAS, the Town Council considered and approved that report; and

WHEREAS, the Engineer's Report contains a detailed description of the improvements in the District, the boundaries of the District, and the proposed assessments upon assessable lots and parcels of land within the District; and

WHEREAS, on May 4, 2021, the Town Council adopted Resolution No. 2021-016 declaring its intention to levy and collect assessments in Landscape and Lighting District No. 1 - Vasona Heights Benefit Zone, and set the matter for public hearing in accordance with State law; and

WHEREAS, notice of the public hearing was duly mailed and published in accordance with State law; and

WHEREAS, the public hearing on the proposed levy of assessments was held by the Town Council on June 15, 2021, at which time all interested persons present were heard; and

WHEREAS, the proposed assessments are not proposed to be increased from any previous year; and

WHEREAS, the Town Council has received and considered all written and oral statements and protests regarding the proposed assessment,

ATTACHMENT 4

1. The diagram and assessment attached hereto as Parts C and D are approved.
2. This Resolution shall constitute the levy of assessment for Landscape and Lighting Assessment District No. 1 - Vasona Heights Benefit Zone, for Fiscal Year 2021/22.
3. The Town Clerk shall transmit a certified copy of this Resolution to the Tax Collector of Santa Clara County for entry on the County Assessment Roll opposite each lot or parcel of land in the amount assessed pursuant to the Resolution, and collection pursuant to Streets and Highways Code Sec. 22646 and payment to the Town pursuant to Streets and Highways Code Sec. 22647.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos held on the 15th day of June 2021 by the following vote:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK
LOS GATOS, CALIFORNIA

DATE: _____

PART C
ASSESSMENT ROLL
FISCAL YEAR 2021/22

VASONA HEIGHTS BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$295.00	529-13-056
Lot 2	295.00	529-13-055
Lot 3	295.00	529-13-054
Lot 4	295.00	529-13-053
Lot 5	295.00	529-13-052
Lot 6	295.00	529-13-051
Lot 7	295.00	529-13-049
Lot 8	295.00	529-13-048
Lot 9	295.00	529-13-047
Lot 10	295.00	529-13-046
Lot 11	295.00	529-13-044
Lot 12	295.00	529-13-043
Lot 13	295.00	529-13-042
Lot 14	295.00	529-13-041
Lot 15	295.00	529-13-040
Lot 16	295.00	529-13-039
Lot 17	295.00	529-13-038
Lot 18	295.00	529-13-037
Lot 19	295.00	529-13-036
Lot 20	295.00	529-13-035
Lot 21	295.00	529-13-060
Lot 22	295.00	529-13-061
Lot 23	295.00	529-13-032
Lot 24	295.00	529-13-031
Lot 25	295.00	529-13-030
Lot 26	295.00	529-13-029
Lot 27	295.00	529-13-028
Lot 28	295.00	529-13-063
Lot 29	295.00	529-13-062
Lot 30	295.00	529-13-022
Lot 31	295.00	529-13-021
Lot 32	295.00	529-13-058
Lot 33	295.00	529-13-059
Total Assessment:	\$9,735.00	

METHOD OF APPORTIONMENT OF ASSESSMENT

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

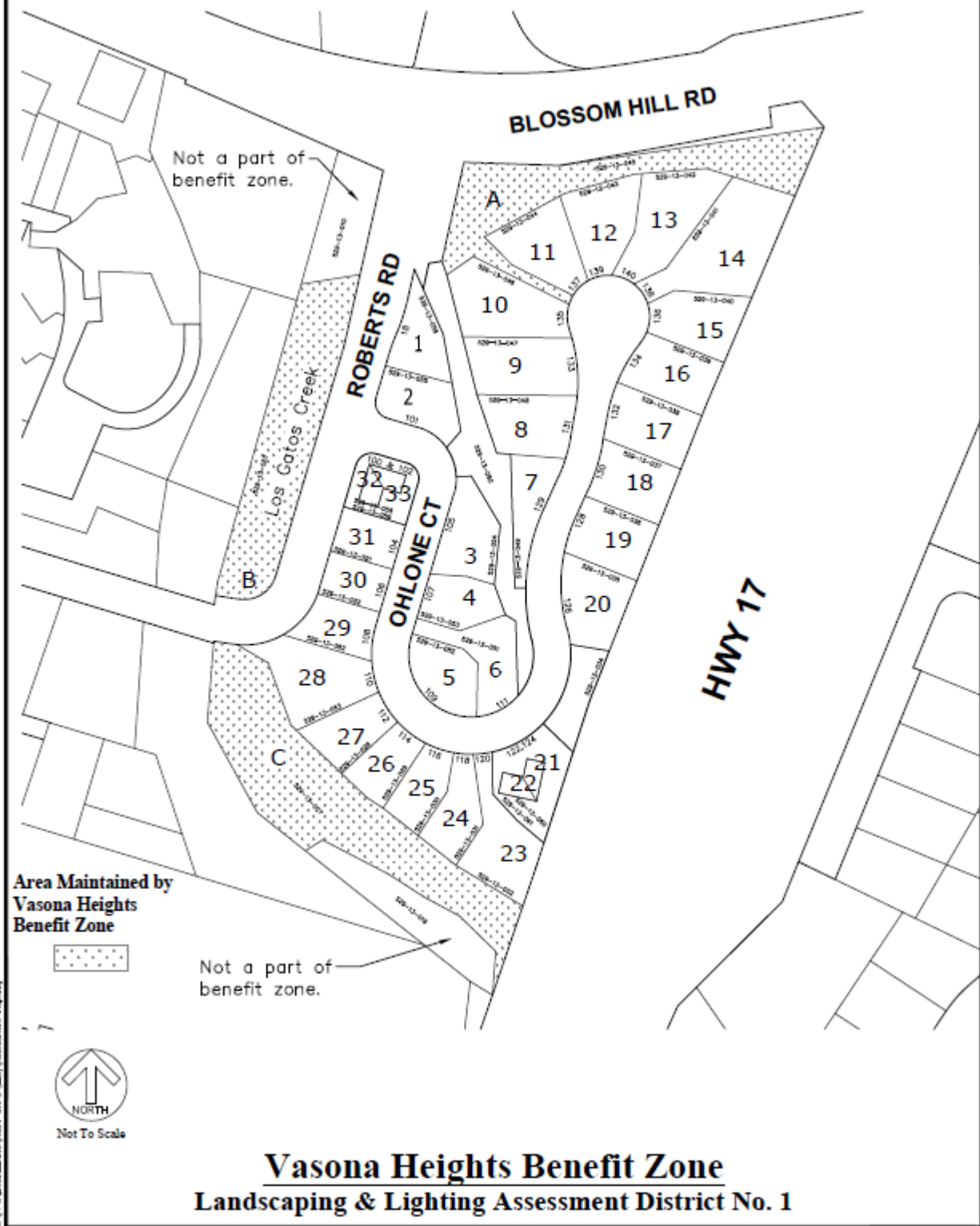
The total amount of the assessment was apportioned equally to all the lots within Vasona Heights Benefit Zone of Landscape and Lighting Assessment District No. 1.

VASONA HEIGHTS BENEFIT ZONE

PROPERTY OWNERS LIST

APN	Owner
52913021	Figueroa Roberto E & Regina G
52913022	LEVENSON LINDA
52913028	GIANNAKOPOULOU K FAMILY TRUST
52913029	DION THOMAS M & CARRIE A
52913030	Fan James & Cynthia R
52913031	KLINE DANIEL
52913032	FISK ROY W & LYNN M TRUSTEE
52913035	CHENG JULIE W TRUST
52913036	LEVY MATTHEW & MONITA
52913037	MCCLOSKEY 2014 FAMILY TRUST
52913038	GAVIN JAMES A & KIM J TRUSTEE
52913039	SCHROEDER JACOB AND HOLLY TRUSTEE
52913040	Boesenberg Alex & Michele Trustee
52913041	SMART JOHN A & BETH A
52913042	PETER G AND TASSIA H BABALIS TRUSTEE
52913043	SMEDT RODNEY C & KATHLEEN E
52913044	ROMUALDAS V BRIZGYS TRUSTEE & ET AL
52913046	RAMEZANE DOUGLAS
52913047	RAMI AND KATHERINE TUYET KANAMA
52913048	WOO SHIRLEY Y TRUSTEE
52913049	ERDEI NICOLAE M JR
52913051	FLECK MATHIAS S AND CAROLINE C
52913052	ABY FAMILY TRUST
52913053	PALFALVI BELA E & LORI C TRUSTEE
52913054	SCHUMACHER JAMES V & CATHY O
52913055	Davidian Alec & Brown Alana C
52913056	BODE JON A & JULEE A TRUSTEE
52913058	Montgomery Michael L Trustee
52913059	ANDERSON MARILYN J
52913060	SILVA DENISE
52913061	HALPIN TIM & SHERRI
52913062	SHELL MARY TRUSTEE
52913063	SAMARA MAJEED S TRUSTEE

PART "D"
Assessment Diagram



RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
CONFIRMING DIAGRAM AND ASSESSMENT,
AND LEVYING AND AUTHORIZING COLLECTION OF ASSESSMENTS FOR
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1 -
HILLBROOK DRIVE BENEFIT ZONE
FOR FISCAL YEAR 2021/22**

WHEREAS, on April 20, 2021, the Town Council ordered the Town Engineer to prepare and file a report regarding Landscape and Lighting Assessment District No. 1 - Hillbrook Drive Benefit Zone regarding the improvements in the District and proposed assessments to support those improvements; and

WHEREAS, the Town Engineer prepared and filed that report; and

WHEREAS, the Town Council considered and approved that report; and

WHEREAS, the Engineer's Report contains a detailed description of the improvements in the District, the boundaries of the District, and the proposed assessments upon assessable lots and parcels of land within the District; and

WHEREAS, on May 4, 2021, the Town Council adopted Resolution No. 2021-017 declaring its intention to levy and collect assessments in Landscape and Lighting District No. 1 - Hillbrook Drive Benefit Zone, and set the matter for public hearing in accordance with State law; and

WHEREAS, notice of the public hearing was duly mailed and published in accordance with State law; and

WHEREAS, the public hearing on the proposed levy of assessments was held by the Town Council on June 15, 2021, at which time all interested persons present were heard; and

WHEREAS, the proposed assessments are not proposed to be increased from any previous year; and

WHEREAS, the Town Council has received and considered all written and oral statements and protests regarding the proposed assessment.

ATTACHMENT 5

1. The diagram and assessment attached hereto as Parts C and D are approved.
2. This Resolution shall constitute the levy of assessment for Landscape and Lighting Assessment District No. 1 - Hillbrook Drive Benefit Zone, for Fiscal Year 2021/22.
3. The Town Clerk shall transmit a certified copy of this Resolution to the Tax Collector of Santa Clara County for entry on the County Assessment Roll opposite each lot or parcel of land in the amount assessed pursuant to the Resolution, and collection pursuant to Streets and Highways Code Sec. 22646 and payment to the Town pursuant to Streets and Highways Code Sec. 22647.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos held on the 15th day of June 2021 by the following vote:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK
LOS GATOS, CALIFORNIA

DATE: _____

**PART C
ASSESSMENT ROLL
FISCAL YEAR 2021/22**

HILLBROOK BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$175.00	523-11-027
Lot 2	175.00	523-11-026
Lot 3	175.00	523-11-025
Lot 4	175.00	523-11-024
Lot 5	175.00	523-11-023
Lot 6	175.00	523-11-022
Lot 7	175.00	523-11-021
Lot 8	175.00	523-11-020
Lot 9	175.00	523-11-019
Lot 10	175.00	523-11-018
Lot 11	175.00	523-07-030
Lot 12	175.00	523-07-029
Lot 13	175.00	523-07-028
Lot 14	175.00	523-07-027
Lot 15	175.00	523-07-026
Lot 16	175.00	523-07-025
Lot 17	175.00	523-07-024
Lot 18	175.00	523-07-023
Lot 19	175.00	523-07-022
Lot 20	175.00	523-07-021
Lot 21	175.00	523-07-020
Lot 22	175.00	523-07-019
Lot 23	175.00	523-07-018
Lot 24	175.00	523-07-017
Lot 25	175.00	523-07-016
Lot 26	175.00	523-07-015
Lot 27	175.00	523-07-014
Lot 28	175.00	523-07-013
Lot 29	175.00	523-07-012
Lot 30	175.00	523-07-011
Lot 31	175.00	523-07-010
Lot 32	175.00	523-07-009
Lot 33	175.00	523-07-008
Lot 34	175.00	523-07-007
Total Assessment:	\$5,950	

**ASSESSMENT ROLL
FISCAL YEAR 2021/22**

HILLBROOK BENEFIT ZONE

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

METHOD OF APPORTIONMENT OF ASSESSMENT

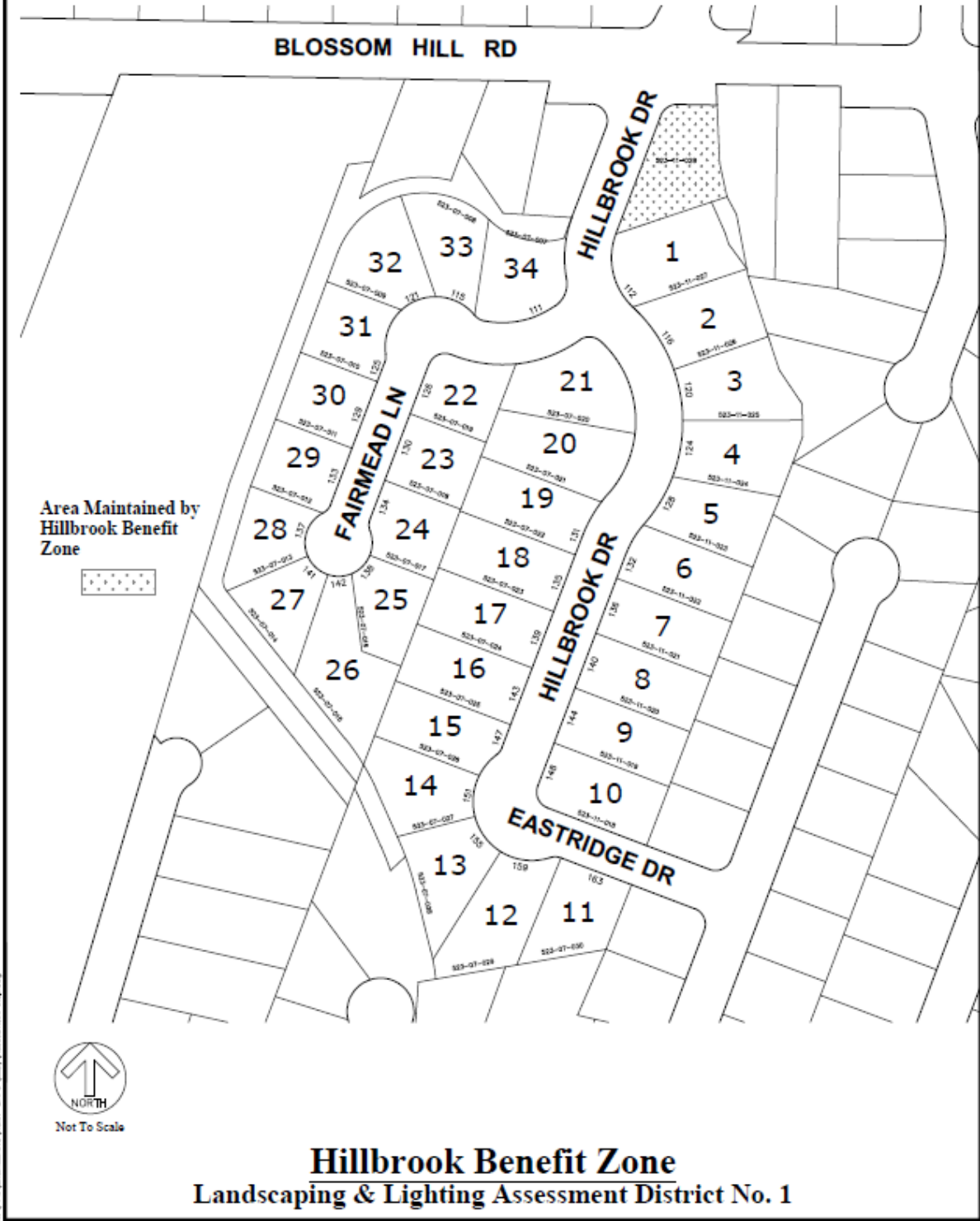
The total amount of the assessment was apportioned equally to all the lots within Landscape and Lighting Assessment District No. 1--Hillbrook Benefit Zone.

HILLBROOK BENEFIT ZONE

PROPERTY OWNERS LIST

APN	Owner
52307007	SCHNEIDER LINDA TRUSTEE
52307008	DESANTIS JUSTIN
52307009	BERGKAMP JAMES J & KIMBERLY L TRUSTEE
52307010	VOSSEN STEPHAN & BOSSEN INGRID
52307011	Zhou Wen & Huang Shitao
52307012	Foster Troy
52307013	PRASHAD-GASPAR NEERJA
52307014	STEELE NANCY J TRUSTEE
52307015	KIRK JENNIFER TRUSTEE & ET AL
52307016	AGARWAL ASHU VIKAS AND SHALANI VIKAS TRUSTE
52307017	WHEELER MAXON R AND KIMBERLY A TRUSTEE
52307018	JIA TAO
52307019	ESCOBAR BENITO & REBECCA J
52307020	Biller Jason & Jenny Dai Trustee
52307021	SCHNEIDER JOHN O & CONDIT MICHAELA L
52307022	GABEL ROBERT L TRUSTEE
52307023	COLETTE Q LACKOVIC TRUSTEE
52307024	HARWOOD MICHAEL & ELIZABETH
52307025	JIN ROBERT X & LISA H
52307026	MCCOY JEROME & SHERYL D
52307027	Spiteri R J & L C Trust
52307028	RUHLE PHILIP G & NANCY A TTEES
52307029	MUNNERLYN AUDREY L
52307030	ZOLLA HOWARD G & CAROL E TRUSTEE
52311018	PEARSON LORELDA M
52311019	BAHR STACEY & IRA
52311020	WINOTO RENALDI
52311021	PANAGOPOULOS THEODOROS
52311022	PANDIPATI FAMILY TRUST
52311023	PARHAM SEAN TRUSTEE
52311024	FALCONA LLC
52311025	Fallon Donald J Trustee
52311026	CORDELL ROBERT Q II TRUSTEE
52311027	Braddi Micaela & Erin

PART "D"
Assessment Diagram



RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
CONFIRMING DIAGRAM AND ASSESSMENT,
AND LEVYING AND AUTHORIZING COLLECTION OF ASSESSMENTS FOR
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 2 -
GEMINI COURT BENEFIT ZONE
FOR FISCAL YEAR 2021/22**

WHEREAS, on April 20, 2021, the Town Council ordered the Town Engineer to prepare and file a report regarding Landscape and Lighting Assessment District No. 2 - Gemini Court Drive Benefit Zone regarding the improvements in the District and proposed assessments to support those improvements; and

WHEREAS, the Town Engineer prepared and filed that report; and

WHEREAS, the Town Council considered and approved that report; and

WHEREAS, the Engineer's Report contains a detailed description of the improvements in the District, the boundaries of the District, and the proposed assessments upon assessable lots and parcels of land within the District; and

WHEREAS, on May 4, 2021, the Town Council adopted Resolution No. 2021-018 declaring its intention to levy and collect assessments in Landscape and Lighting District No. 2 - Gemini Court Benefit Zone, and set the matter for public hearing in accordance with State law; and

WHEREAS, notice of the public hearing was duly mailed and published in accordance with State law; and

WHEREAS, the public hearing on the proposed levy of assessments was held by the Town Council on June 15, 2021, at which time all interested persons present were heard; and

WHEREAS, the proposed assessments are not proposed to be increased from any previous year; and

WHEREAS, the Town Council has received and considered all written and oral statements and protests regarding the proposed assessment.

ATTACHMENT 6

NOW THEREFORE, BE IT RESOLVED:

1. The diagram and assessment attached hereto as Parts C and D are approved.
2. This Resolution shall constitute the levy of assessment for Landscape and Lighting Assessment District No. 2 - Gemini Court Benefit Zone, for Fiscal Year 2021/22.
3. The Town Clerk shall transmit a certified copy of this Resolution to the Tax Collector of Santa Clara County for entry on the County Assessment Roll opposite each lot or parcel of land in the amount assessed pursuant to the Resolution, and collection pursuant to Streets and Highways Code Sec. 22646 and payment to the Town pursuant to Streets and Highways Code Sec. 22647.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos held on the 15th day of June 2021 by the following vote:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK
LOS GATOS, CALIFORNIA

DATE: _____

PART C

**ASSESSMENT ROLL
FISCAL YEAR 2021/22**

GEMINI COURT BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$230.00	567-64-051
Lot 2	230.00	567-64-050
Lot 3	230.00	567-64-049
Lot 4	230.00	567-64-048
Lot 5	230.00	567-64-047
Lot 6	230.00	567-64-046
Lot 7	230.00	567-64-045
Lot 8	230.00	567-64-044
Lot 9	230.00	567-64-054
Lot 10	230.00	567-64-053
Lot 11	230.00	567-64-052
Lot 12	230.00	567-64-042
Lot 13	230.00	567-64-041
Lot 14	230.00	567-64-040
Lot 15	230.00	567-64-039
Lot 16	230.00	567-64-038
Lot 17	230.00	567-64-037
Lot 18	230.00	567-64-036
Lot 19	230.00	567-64-035
Lot 20	230.00	567-64-034
Total Assessment:	\$4,600.00	

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

METHOD OF APPORTIONMENT OF ASSESSMENT

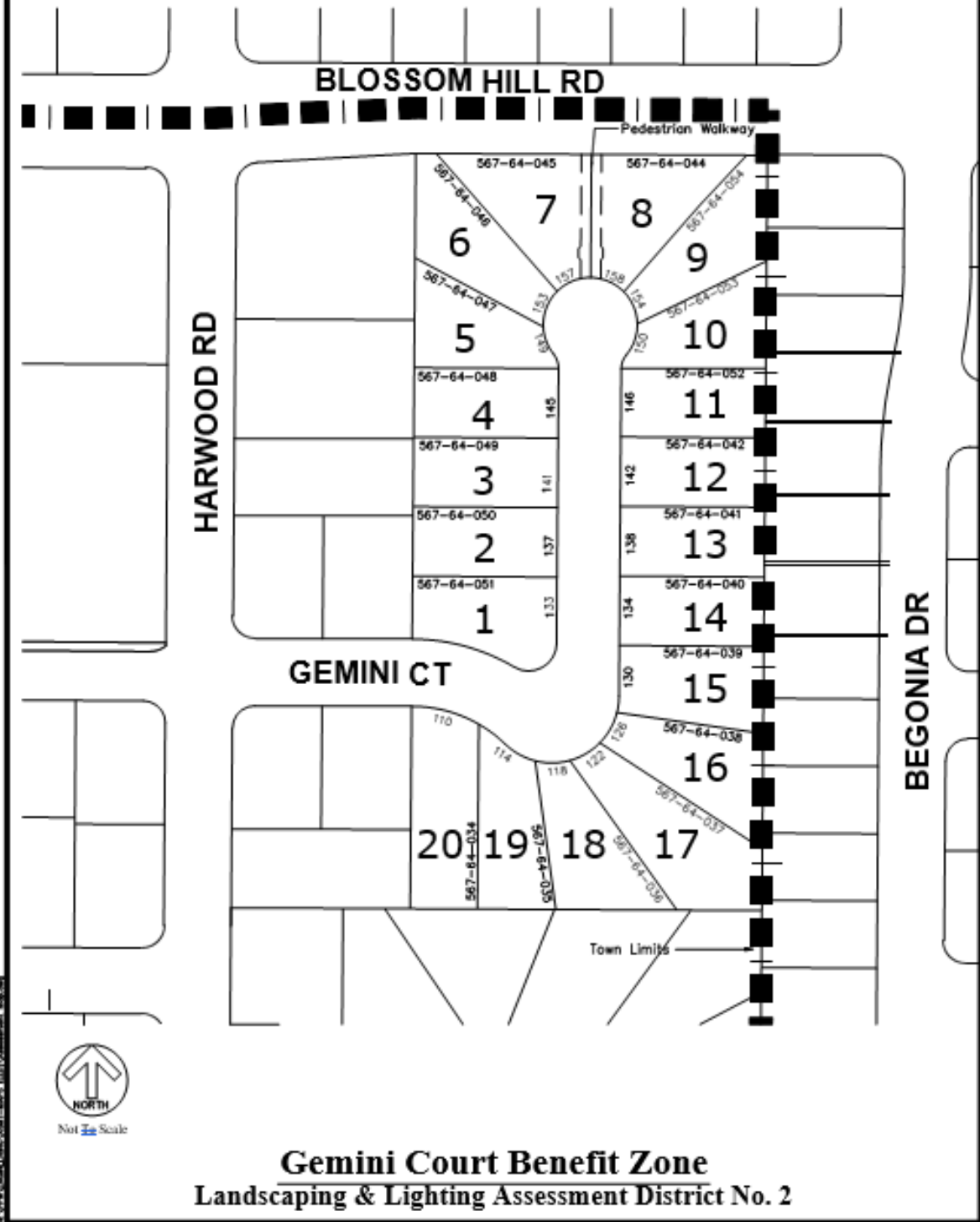
The total amount of the assessment was apportioned equally to all the lots within the Gemini Court Benefit Zone of Landscape and Lighting Assessment District No. 2.

GEMINI COURT BENEFIT ZONE

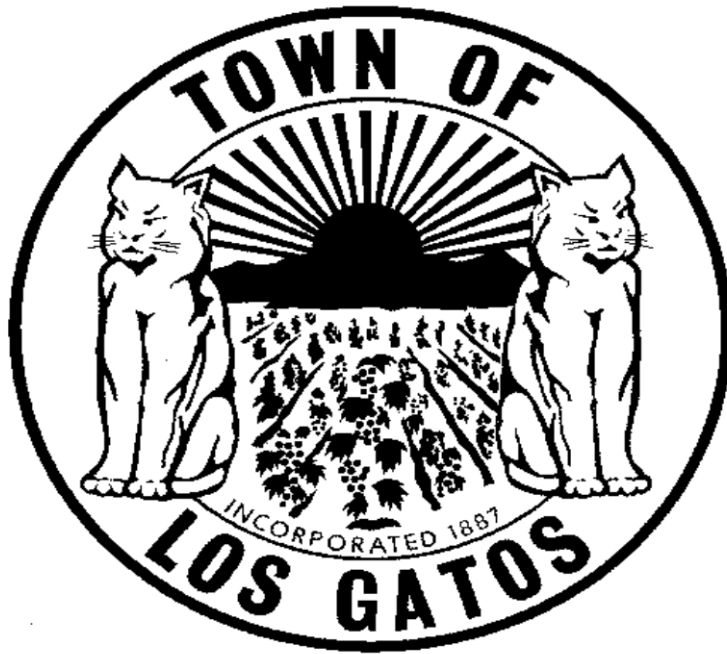
PROPERTY OWNERS LIST

APN	Owner
56764034	POWERS RICHARD J & SHELLEY A TRUSTEE
56764035	KIM SUNG D & HAE R
56764036	SALMINEN SATU & JANNE
56764037	FLISS JOHN R & SHERI B
56764038	SERRANO FRANCISCO TRUSTEE
56764039	SCOGGIN MICHAEL D
56764040	KSJ INC
56764041	Bidabadi Joe B & Homa
56764042	RAPISARDA FRED TRUSTEE
56764044	DAVIDSON SHARON LYNNE TRUSTEE
56764045	BOLOTIN IGOR & VICTORIA
56764046	NGUYEN STEVE
56764047	LAU STEVEN & HWANG JANE T
56764048	Moonesan Mohammad-Saleh
56764049	MORGAN ROBERT G JR & HIATT JEANNE K
56764050	MOGANNAM EVELYN E TRUSTEE
56764051	BAKER KENNETH TRUSTEE
56764052	RAOUL BADAQUI TRUSTEE & ET AL
56764053	Zhou Guoquan & Huang Xu
56764054	AU KEVIN J

PART "D"
Assessment Diagram



Gemini Court Benefit Zone
Landscaping & Lighting Assessment District No. 2



**Landscape and Lighting
Assessment Districts No. 1 and 2**

**Fiscal Year
2021/22**

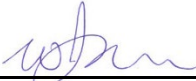
ENGINEER'S REPORT

ATTACHMENT 7

ENGINEER'S REPORT

LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1 AND 2 (Pursuant to the Landscape and Lighting Act of 1972)


The Engineer of Work respectfully submits the enclosed report as directed by the Town Council.




WOOJAE KIM
Town Engineer

April 23, 2021
DATE

I HEREBY CERTIFY that the enclosed Engineer's Report, with Assessment and Assessment Diagram thereto attached was filed with me on the 4th day of May, 2021.


TOWN CLERK, Town of Los Gatos
Santa Clara County, California

I HEREBY CERTIFY that the enclosed Engineer's Report, with Assessment and Assessment Diagram thereto attached, was approved and confirmed by the Town Council of the Town of Los Gatos, California on the 4th day of May 2021, by Resolution No. 2021- 012


TOWN CLERK, Town of Los Gatos
Santa Clara County, California

I HEREBY CERTIFY that the enclosed Engineer's Report, with Assessment and Assessment Diagram thereto attached was filed with the County Assessor of the County of Santa Clara on the _____ day of _____, 2021.



**Landscape and Lighting
Assessment District No. 1**

**BLACKWELL DRIVE
BENEFIT ZONE**

**Fiscal Year
2021/22**

ENGINEER'S REPORT

**ENGINEER'S REPORT
FISCAL YEAR 2021/22**

LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1
(Pursuant to the Landscaping and Lighting Act of 1972)

BLACKWELL DRIVE BENEFIT ZONE

WooJae Kim, Town Engineer for Landscape and Lighting Assessment District No. 1, Town of Los Gatos, Santa Clara County, California, makes this report, as directed by the Town Council, pursuant to Section 22566, et seq. of the Streets and Highways Code (Landscaping and Lighting Act of 1972).


The improvements that are the subject of this report are briefly described as follows:

Maintaining the landscaping in the median island constructed as a part of Tract No. 8306 and maintaining the streetlights installed along Blackwell Drive and National Avenue as a part of Tract No. 8306.

This report consists of four parts, as follows:

- PART A: Plans and specifications for the improvements are filed in the Clerk Department. Although separately bound, the plans and specifications are a part of this report and are included in it by reference.
- PART B: An estimate of the cost of the improvements.
- PART C: An assessment of the estimated cost of the improvements on each benefited parcel within the assessment district, the method by which the Engineer of Work has determined the proposed assessment against each parcel, and a list of the owners of real property within this assessment district, as shown on the last equalized assessment roll for taxes, or as known to the Town Clerk.
- PART D: A diagram showing all of the parcels of real property within this assessment district. The diagram is keyed to Part C by assessment number.

Respectfully submitted,



WOOJAE KIM
Town Engineer

April 23, 2021
DATE

PART A

FISCAL YEAR 2021/22

PLANS, SPECIFICATIONS AND REPORTS

BLACKWELL DRIVE BENEFIT ZONE

Plans and specifications for the improvements are those prepared by Greg G. Ing, and Associates, dated February 16, 1990. These plans and specifications have been filed separately in the Clerk Department of the Town of Los Gatos and are incorporated in the Report by reference.

PART B			
ESTIMATE OF THE COST OF IMPROVEMENTS			
FISCAL YEAR 2020/21			
BLACKWELL DRIVE BENEFIT ZONE			
Fiscal Year 2019/20 Resources			
	Fund Balance 6/30/19	\$	13,488
	Assessment		3,160
	Delinquent Assessment		0
	Penalties/Late Fees		0
	Interest		229
	Total Resources Available for FY 2019/20	\$	16,877
Fiscal Year 2019/20 Expenses			
	Santa Clara County Collection Fee	\$	32
	Publication & Notification Charges		0
	Light Pole Maintenance		0
	Electric Utility		0
	San Jose Water		904
	Landscape Contractor		1,705
	Town Administrative Charges		460
	Total Expenses for FY 2019/20	\$	3,101
	Ending Fund Balance for FY 2019/20	\$	13,776
Fiscal Year 2020/21 Estimated Resources			
	Fund Balance 6/30/20	\$	13,776
	Assessment		3,160
	Interest		50
	Total Estimated Resources Available for FY 2020/21	\$	16,986
Fiscal Year 2020/21 Estimated Expenses			
	Santa Clara County Collection Fee	\$	32
	Publication & Notification Charges		300
	Tree Services		0
	Weed Abatement		0
	Light Pole Maintenance		0
	Electric Utility		0
	San Jose Water		910
	Landscape Contractor		1,705
	District Capital Improvement		0
	Town Administrative Charges		460
	Total Estimated Expenses for FY 2020/21	\$	3,407
	Estimated Ending Fund Balance for FY 2020/21	\$	13,579

PART C

**ASSESSMENT ROLL
FISCAL YEAR 2021/22**

BLACKWELL DRIVE BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$632	424-12-123
Lot 2	632	424-12-124
Lot 3	632	424-12-125
Lot 4	632	424-12-126
Lot 5	632	424-12-127
Total Assessment:	\$3,160	

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

METHOD OF APPORTIONMENT OF ASSESSMENT

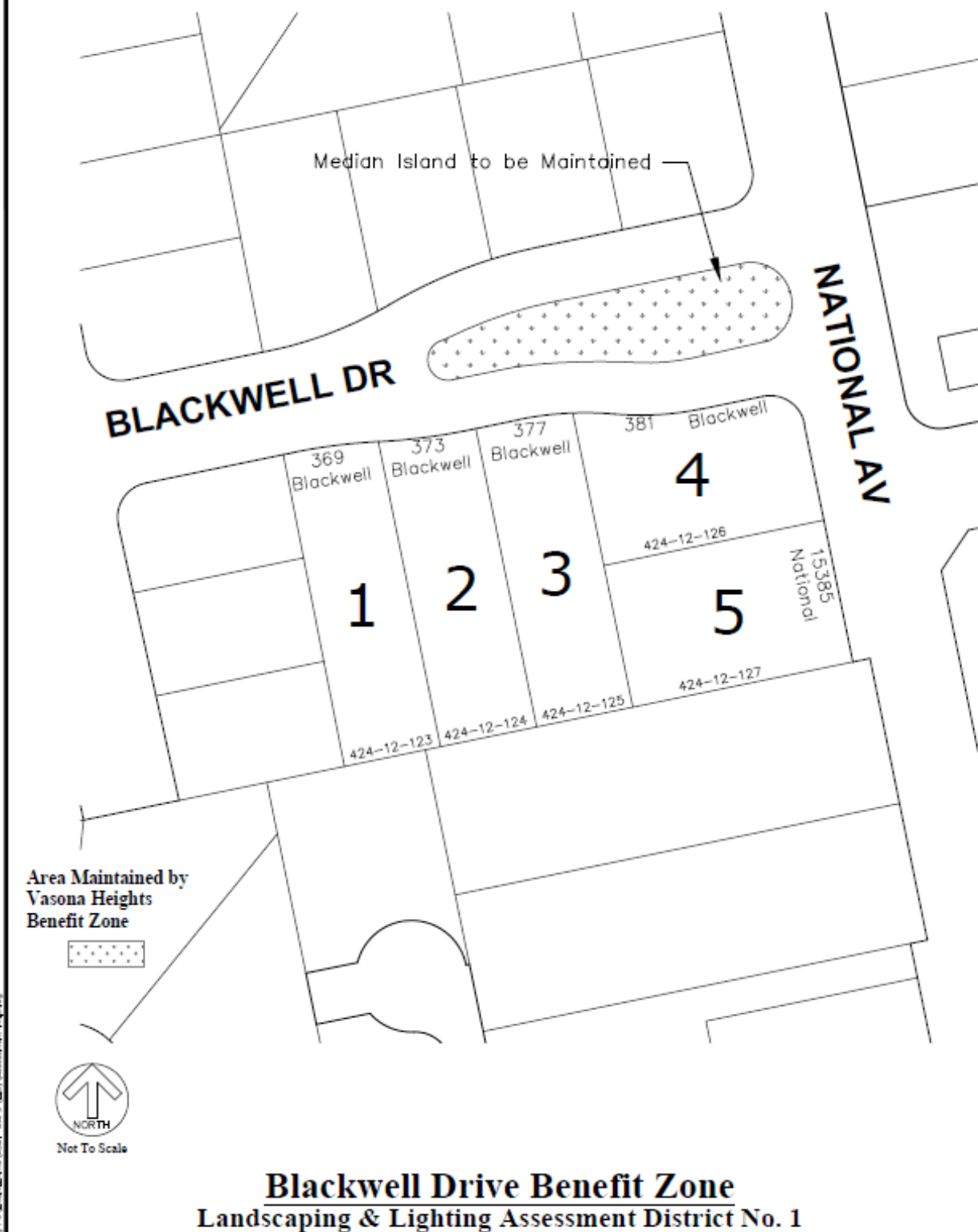
The total amount of the assessment was apportioned equally to all the lots within the Blackwell Drive Benefit Zone of Landscape and Lighting Assessment District No. 1.

BLACKWELL DRIVE BENEFIT ZONE

PROPERTY OWNERS LIST

APN	Owner
42412123	HEPLER BRAD D & UMALI PAMELA
42412124	VUPPUNUTULA VENKAT REDDY AND REDDY SAHITHI
42412125	URRICARIET CHRISTIAN M & MARTINEZ-VISBAL
42412126	JOSHI ANILA & ROHIT
42412127	MORADI MOSTAFA

PART "D"
Assessment Diagram



Blackwell Drive Benefit Zone
Landscaping & Lighting Assessment District No. 1

11/15/2016 2:28:13 PM C:\Users\jgibson\Documents\111011 Assessment - map.dwg



**Landscape and Lighting
Assessment District No. 1**

**KENNEDY MEADOWS
BENEFIT ZONE**

**Fiscal Year
2021/22**

ENGINEER'S REPORT

**ENGINEER'S REPORT
FISCAL YEAR 2021/22**

LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1
(Pursuant to the Landscaping and Lighting Act of 1972)

KENNEDY MEADOWS BENEFIT ZONE

WooJae Kim, Town Engineer for Landscape and Lighting Assessment District No. 1--Kennedy Meadows Benefit Zone, Town of Los Gatos, Santa Clara County, California, makes this report, as directed by the Town Council, pursuant to Section 22566, et seq. of the Streets and Highways Code (Landscaping and Lighting Act of 1972).


The improvements that are the subject of this report are briefly described as follows:

The maintenance of trees, landscaping, irrigation systems, trail and street lights within open space areas (Parcels A and B) and along Kennedy Court and Forrester Court, as shown on the approved improvement for Tract No. 8612, Los Gatos, California and the riparian and wetlands area described in the report by H. T. Harvey Associates, dated November 11, 1994.

This report consists of four parts, as follows:

- PART A: Plans and specifications for the improvements and the report by H. T. Harvey Associates are filed in the Clerk Department. Although separately bound, the plans, specifications and H.T. Harvey report are a part of this report and are included in it by reference.
- PART B: An estimate of the cost of the improvements, including interest on the funds advanced to the benefit zone by the Town.
- PART C: An assessment of the estimated cost of the improvements on each benefited parcel within the assessment district, the method by which the Engineer of Work has determined the amount proposed to be assessed against each parcel, and a list of the owners of real property within this assessment district, as shown on the last equalized assessment roll for taxes, or as known to the Town Clerk.
- PART D: A diagram showing all of the parcels of real property within this assessment district. The diagram is keyed to Part C by assessment number.

Respectfully submitted,



WOOJAE KIM
Town Engineer

April 23, 2021
DATE

PART A

FISCAL YEAR 2021/22

PLANS, SPECIFICATIONS AND REPORTS

KENNEDY MEADOWS BENEFIT ZONE

Plans and specifications for the improvements are those prepared by Nowack and Associates, Civil Engineers, dated September 21, 1994, their job number 90-263C, pages 1 - 11. These plans and specifications have been filed separately in the Clerk Department of the Town of Los Gatos and are incorporated in the Report by reference.

The wetlands mitigation and monitoring plan was prepared by H.T. Harvey & Associates, Ecological Consultants, dated November 11, 1994, their file number 733-04, 11 pages. A revised wetlands mitigation plan is contained in a letter to the U.S. Army Corp of Engineers and California Regional Water Quality Control Board dated August 30, 1995 and as-built plans in a letter dated February 21, 1995. The original report and letters have been filed separately in the Clerk Department of the Town of Los Gatos and are incorporated in this Report by reference.

PART B			
ESTIMATE OF THE COST OF IMPROVEMENTS			
FISCAL YEAR 2020/21			
KENNEDY MEADOWS BENEFIT ZONE			
Fiscal Year 2019/20 Resources			
	Fund Balance 6/30/19	\$	37,926
	Assessment		10,275
	Delinquent Assessment		0
	Penalties/Late Fees		0
	Interest		651
	Total Resources Available for FY 2019/20	\$	48,852
Fiscal Year 2019/20 Expenses			
	Santa Clara County Collection Fee	\$	103
	Publication & Notification Charges		0
	Light Pole Maintenance		0
	Electric Utility		0
	San Jose Water		1,552
	Landscape Contractor		5,292
	Town Administrative Charges		1,510
	Improvements (Trail)		0
	Total Expenses for FY 2019/20	\$	8,457
	Ending Fund Balance for FY 2019/20	\$	40,395
Fiscal Year 2020/21 Estimated Resources			
	Fund Balance 6/30/20	\$	40,395
	Assessment		10,275
	Interest		330
	Total Estimated Resources Available for FY 2020/21	\$	51,000
Fiscal Year 2020/21 Estimated Expenses			
	Santa Clara County Collection Fee	\$	103
	Publication & Notification Charges		300
	Tree Services		0
	Light Pole Maintenance		0
	Electric Utility		0
	San Jose Water		1,000
	Landscape Contractor		11,460
	Maintenance		16,089
	Town Administrative Charges		1,510
		\$	30,462
	Total Estimated Expenses for FY 2020/21		
		\$	20,538
	Estimated Ending Fund Balance for FY 2020/21		

PART C

ASSESSMENT ROLL FISCAL YEAR 2021/22

KENNEDY MEADOWS BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$685.00	532-18-050
Lot 2	685.00	532-18-049
Lot 3	685.00	532-18-048
Lot 4	685.00	532-18-047
Lot 5	685.00	532-18-052
Lot 6	685.00	532-18-063
Lot 7	685.00	532-18-062
Lot 8	685.00	532-18-061
Lot 9	685.00	532-18-060
Lot 10	685.00	532-18-059
Lot 11	685.00	532-18-058
Lot 12	685.00	532-18-057
Lot 13	685.00	532-18-056
Lot 14	685.00	532-18-055
Lot 15	685.00	532-18-054
Total Assessment:	\$10,275	

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

METHOD OF APPORTIONMENT OF ASSESSMENT

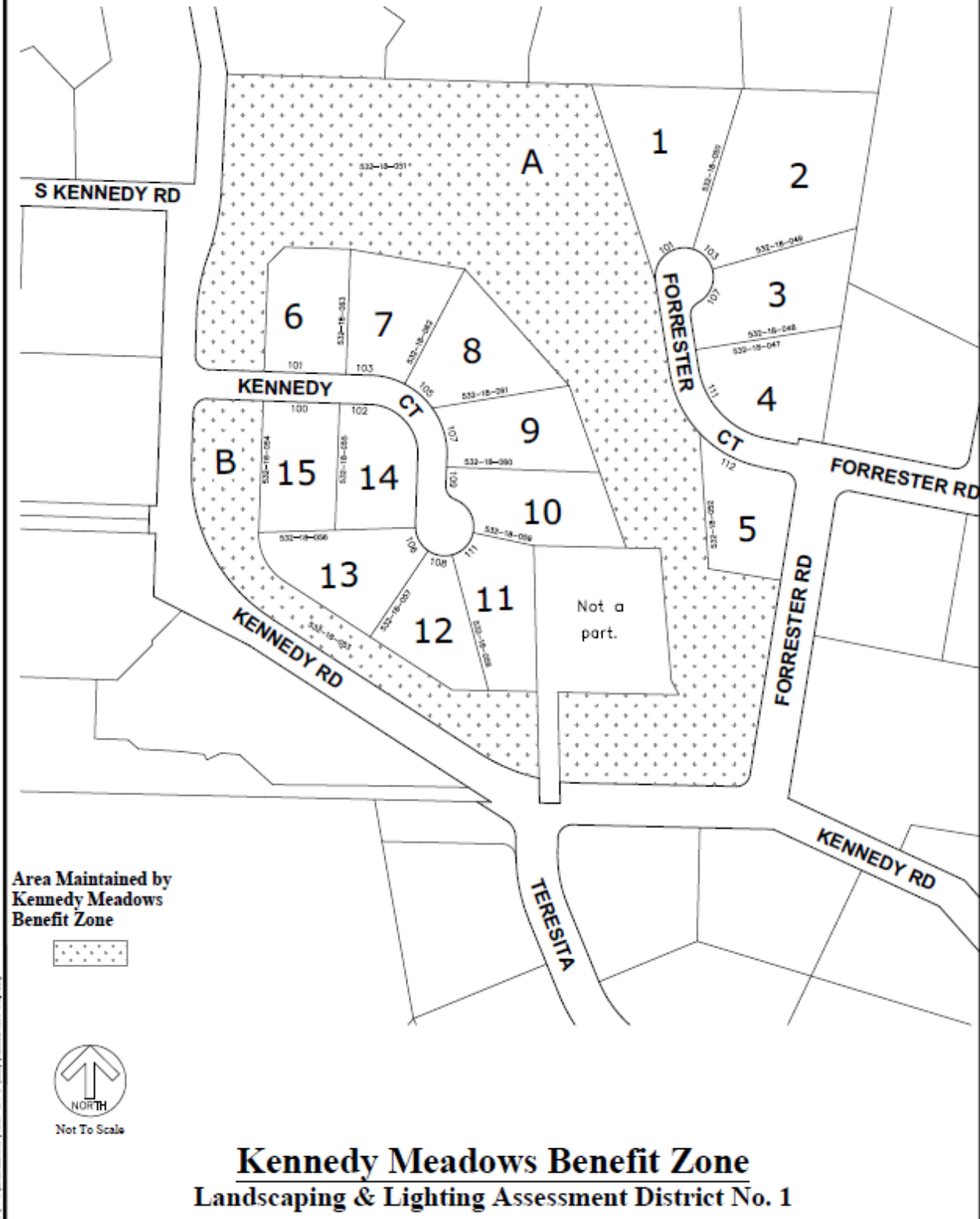
The total amount of the assessment was apportioned equally to all the lots within Kennedy Meadows Benefit Zone of Landscape and Lighting Assessment District No. 1.

KENNEDY MEADOWS BENEFIT ZONE

PROPERTY OWNERS LIST

APN	Owner
53218047	DAMORE EDWARD & KIMBERLY
53218048	Wiederhold Robert P & Melinda A Trustee
53218049	Jeevunjee Adam & Mariya
53218050	HIRSCHMAN WILLIAM AND DODSON ELIZABETH TRUS
53218052	MONTECILLO FAMILY TRUST
53218054	HACKER MARK K TRUSTEE
53218055	JENKINS WILLIAM D JR & JULIE C
53218056	LOS GATOS SARATOGA LLC SERIES A
53218057	Lundstrom Stephanie & Paul
53218058	CALI A STEVE & LORI A TRUSTEE
53218059	HUMPHRIES SIMON & SHEILA H TRUSTEE
53218060	HUBLOU RANI
53218061	SCHENKEL SCOTT F & KIMBERLY L TRUSTEE
53218062	THOMPSON PETER B & SHEILA K
53218063	BIBAUD SCOTT A & SUSAN M TRUSTEE

PART "D"
Assessment Diagram



Kennedy Meadows Benefit Zone
Landscaping & Lighting Assessment District No. 1



**Landscape and Lighting
Assessment District No. 1**

**SANTA ROSA HEIGHTS
BENEFIT ZONE**

**Fiscal Year
2021/22**

ENGINEER'S REPORT

**ENGINEER'S REPORT
FISCAL YEAR 2021/22**

LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1
(Pursuant to the Landscaping and Lighting Act of 1972)

SANTA ROSA HEIGHTS BENEFIT ZONE

WooJae Kim, Town Engineer for Landscape and Lighting Assessment District No. 1--Santa Rosa Heights Benefit Zone, Town of Los Gatos, Santa Clara County, California, makes this report, as directed by the Town Council, pursuant to Section 22566, et seq. of the Streets and Highways Code (Landscaping and Lighting Act of 1972).


The improvements that are the subject of this report are briefly described as follows:

The maintenance of trees, landscaping, trail and retaining walls, as shown on the approved improvement plans for Tract No. 8400, Los Gatos, California.

This report consists of four parts, as follows:

- PART A: Plans and specifications for the improvements are filed in the Clerk Department. Although separately bound, the plans and specifications are a part of this report and are included in it by reference.
- PART B: An estimate of the cost of the improvements.
- PART C: An assessment of the estimated cost of the improvements on each benefited parcel within the assessment district, the method by which the Engineer of Work has determined the amount proposed to be assessed against each parcel, and a list of the owners of real property within this assessment district, as shown on the last equalized assessment roll for taxes, or as known to the Town Clerk.
- PART D: A diagram showing all of the parcels of real property within this assessment district. The diagram is keyed to Part C by assessment number.

Respectfully submitted,



WOOJAE KIM
Town Engineer

April 23, 2021
DATE

PART A

FISCAL YEAR 2021/22

PLANS, SPECIFICATIONS AND REPORTS

SANTA ROSA HEIGHTS BENEFIT ZONE

Plans and specifications for the improvements are those prepared by Nowack & Associates, dated February 1991, their job number 90-295. These plans and specifications have been filed separately in the Clerk Department of the Town of Los Gatos and are incorporated in the Report by reference.

PART B	
ESTIMATE OF THE COST OF IMPROVEMENTS	
FISCAL YEAR 2020/21	
SANTA ROSA HEIGHTS BENEFIT ZONE	
Fiscal Year 2019/20 Resources	
Fund Balance 6/30/19	\$ 54,659
Assessment	4,365
Delinquent Assessment	0
Penalties/Late Fees	29
Interest	905
Total Resources Available for FY 2019/20	\$ 59,958
Fiscal Year 2019/20 Expenses	
Santa Clara County Collection Fee	\$ 45
Publication & Notification Charges	0
Light Pole Maintenance	0
Electric Utility	0
San Jose Water	0
Landscape Contractor	8,467
Town Administrative Charges	660
Total Expenses for FY 2019/20	\$ 9,172
Ending Fund Balance for FY 2019/20	\$ 50,786
Fiscal Year 2020/21 Estimated Resources	
Fund Balance 6/30/20	\$ 50,786
Assessment	4,500
Interest	500
Total Estimated Resources Available for FY 2020/21	\$ 55,786
Fiscal Year 2020/21 Estimated Expenses	
Santa Clara County Collection Fee	\$ 45
Publication & Notification Charges	300
Tree Services	0
Weed Abatement	0
Light Pole Maintenance	0
Electric Utility	0
San Jose Water	0
Landscape Contractor	9,424
Town Administrative Charges	660
District Capital Improvements	0
Total Estimated Expenses for FY 2020/21	\$ 10,429
Estimated Ending Fund Balance for FY 2020/21	\$ 45,357

PART C

**ASSESSMENT ROLL
FISCAL YEAR 2021/22**

SANTA ROSA HEIGHTS BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$300.00	537-31-001
Lot 2	300.00	537-31-002
Lot 3	300.00	537-31-003
Lot 4	300.00	537-31-022
Lot 5	300.00	537-31-023
Lot 6	300.00	537-31-006
Lot 7	300.00	537-31-007
Lot 8	300.00	537-31-008
Lot 9	300.00	537-31-009
Lot 10	300.00	537-31-010
Lot 11	300.00	537-31-011
Lot 12	300.00	537-31-012
Lot 13	300.00	537-31-013
Lot 14	300.00	537-31-014
Lot 15	300.00	537-31-015
Total Assessment:	\$4,500	

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

METHOD OF APPORTIONMENT OF ASSESSMENT

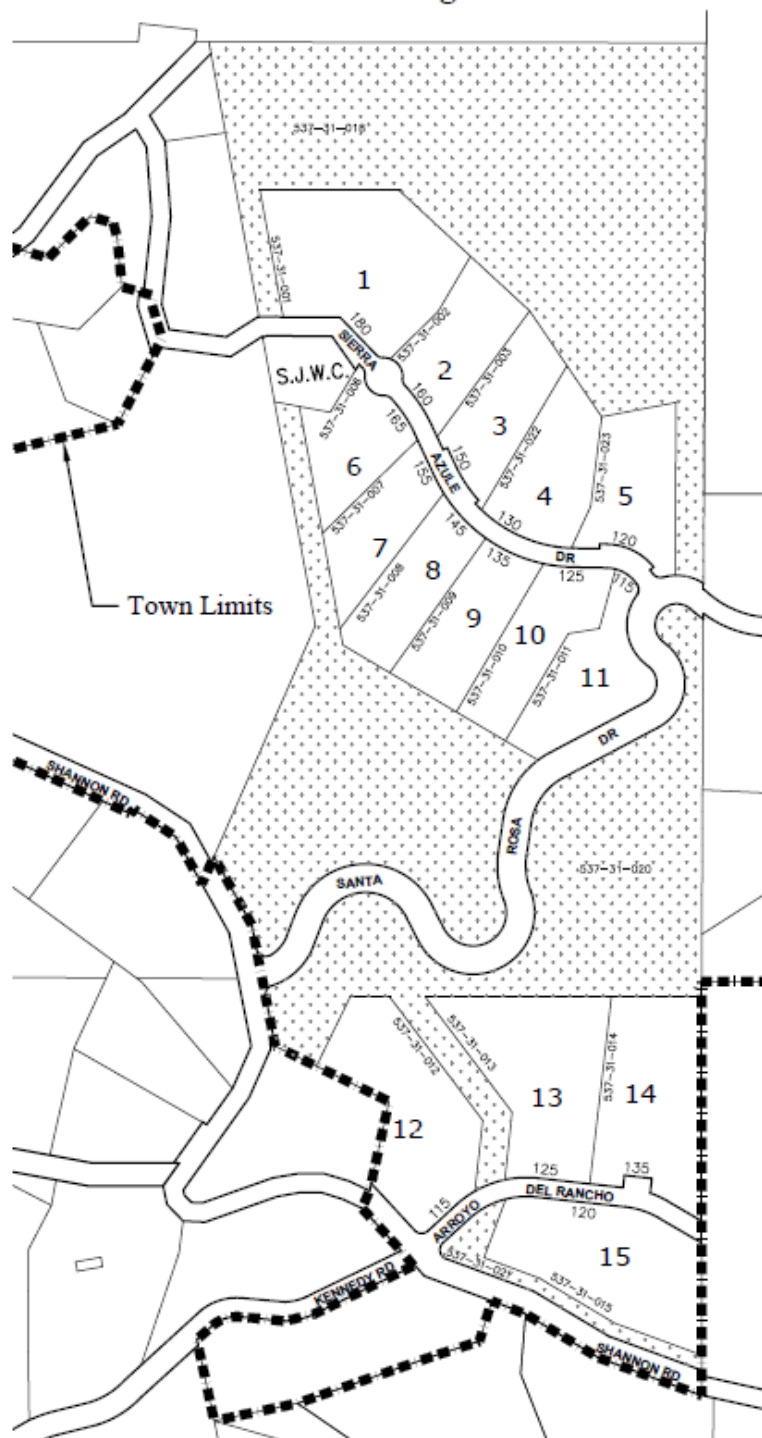
The total amount of the assessment was apportioned equally to all the lots within Santa Rosa Heights Benefit Zone of Landscape and Lighting Assessment District No. 1.

SANTA ROSA HEIGHTS BENEFIT ZONE

PROPERTY OWNERS LIST

APN	Owner
53731001	JAIN VIVEK TRUSTEE
53731002	ENTIN BRUCE L & PESIA TRUSTEE
53731003	SILVESTRI CHESTER J & IRENE N TRUSTEE
53731006	HWANG MING-YUN & JENNY WEN-CHI TRUSTEE
53731007	Zohouri Saeed Trustee
53731008	KERSCHBAUM MANFRED J
53731009	Tahmassebi Family Trust
53731010	COX JEREMY & JILL
53731011	SINGH JAGDEEP & ROSHNI TRUSTEE
53731012	PANCHAL NATWARLAL M & GITA N
53731013	JOSEPH AND SUSAN P LAM
53731014	HERNANDEZ JOHN B & JACKSON EVA TRUSTEE
53731015	AMARAL ROBERT H JR TRUSTEE
53731022	POULOS LOUIS
53731023	RAJAN SHANTHI

PART "D"
Assessment Diagram



Area Maintained by
Santa Rosa Heights
Benefit Zone



Not To Scale

Santa Rosa Heights Benefit Zone
Landscaping & Lighting Assessment District No. 1



**Landscaping and Lighting
Assessment District No. 1**

**VASONA HEIGHTS
BENEFIT ZONE**

**Fiscal Year
2021/22**

ENGINEER'S REPORT

**ENGINEER'S REPORT
FISCAL YEAR 2021/22**

LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT NO. 1
(Pursuant to the Landscaping and Lighting Act of 1972)

VASONA HEIGHTS BENEFIT ZONE

WooJae Kim, Town Engineer for Landscaping and Lighting Assessment District No. 1--Vasona Heights Benefit Zone, Town of Los Gatos, Santa Clara County, California, makes this report, as directed by the Town Council, pursuant to Section 22566, et seq. of the Streets and Highways Code (Landscaping and Lighting Act of 1972).


The improvements that are the subject of this report are briefly described as follows:

The maintenance of trees, landscaping, irrigation systems, trail, emergency access, and retaining wall within open space areas, as shown on the approved improvement for Tract No. 8280, Los Gatos, California.

This report consists of four parts, as follows:

- PART A: Plans and specifications for the improvements are filed in the Clerk Department. Although separately bound, the plans and specifications are a part of this report and are included in it by reference.
- PART B: An estimate of the cost of the improvements.
- PART C: An assessment of the estimated cost of the improvements on each benefited parcel within the assessment district, the method by which the Engineer of Work has determined the amount proposed to be assessed against each parcel, and a list of the owners of real property within this assessment district, as shown on the last equalized assessment roll for taxes, or as known to the Town Clerk.
- PART D: A diagram showing all of the parcels of real property within this assessment district. The diagram is keyed to Part C by assessment number.

Respectfully submitted,



WOOJAE KIM
Town Engineer

April 23, 2021
DATE

PART A

FISCAL YEAR 2021/22

PLANS, SPECIFICATIONS AND REPORTS

VASONA HEIGHTS BENEFIT ZONE

Plans and specifications for the improvements are those prepared by Dillon/Drulias Associates, Landscape Architects, dated April 16, 1990, their job number 8840, pages L1 - L17 and revised planting and irrigation plans as prepared by Greg Ing and Associates, dated November 3, 1992 and revised November 23, 1993. These plans and specifications have been filed separately in the Clerk Department of the Town of Los Gatos and are incorporated in the Report by reference.

PART B	
ESTIMATE OF THE COST OF IMPROVEMENTS	
FISCAL YEAR 2020/21	
VASONA HEIGHTS BENEFIT ZONE	
Fiscal Year 2019/20 Resources	
Fund Balance 6/30/19	\$ 54,233
Assessment	9,750
Delinquent Assessment	0
Penalties/Late Fees	0
Interest	943
Total Resources Available for FY 2019/20	\$ 64,926
Fiscal Year 2019/20 Expenses	
Santa Clara County Collection Fee	\$ 97
Publication & Notification Charges	0
Light Pole Maintenance	0
Electric Utility	0
San Jose Water	1,706
Landscape Contractor	4,434
Town Administrative Charges	1,430
District Capital Improvements	25,079
Total Expenses for FY 2019/20	\$ 32,746
Ending Fund Balance for FY 2019/20	\$ 32,180
Fiscal Year 2020/21 Estimated Resources	
Fund Balance 6/30/20	\$ 32,180
Assessment	9,735
Interest	340
Total Estimated Resources Available for FY 2020/21	\$ 42,255
Fiscal Year 2020/21 Estimated Expenses	
Santa Clara County Collection Fee	\$ 97
Publication & Notification Charges	300
Tree Services	0
Weed Abatement	0
Light Pole Maintenance	0
Electric Utility	0
San Jose Water	2,319
Landscape Contractor	4,498
Town Administrative Charges	1,430
District Capital Improvements	0
Total Estimated Expenses for FY 2020/21	\$ 8,644
Estimated Ending Fund Balance for FY 2020/21	\$ 33,611

**PART C
ASSESSMENT ROLL
FISCAL YEAR 2021/22**

VASONA HEIGHTS BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$295.00	529-13-056
Lot 2	295.00	529-13-055
Lot 3	295.00	529-13-054
Lot 4	295.00	529-13-053
Lot 5	295.00	529-13-052
Lot 6	295.00	529-13-051
Lot 7	295.00	529-13-049
Lot 8	295.00	529-13-048
Lot 9	295.00	529-13-047
Lot 10	295.00	529-13-046
Lot 11	295.00	529-13-044
Lot 12	295.00	529-13-043
Lot 13	295.00	529-13-042
Lot 14	295.00	529-13-041
Lot 15	295.00	529-13-040
Lot 16	295.00	529-13-039
Lot 17	295.00	529-13-038
Lot 18	295.00	529-13-037
Lot 19	295.00	529-13-036
Lot 20	295.00	529-13-035
Lot 21	295.00	529-13-060
Lot 22	295.00	529-13-061
Lot 23	295.00	529-13-032
Lot 24	295.00	529-13-031
Lot 25	295.00	529-13-030
Lot 26	295.00	529-13-029
Lot 27	295.00	529-13-028
Lot 28	295.00	529-13-063
Lot 29	295.00	529-13-062
Lot 30	295.00	529-13-022
Lot 31	295.00	529-13-021
Lot 32	295.00	529-13-058
Lot 33	295.00	529-13-059
Total Assessment:	\$9,735.00	

METHOD OF APPORTIONMENT OF ASSESSMENT

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

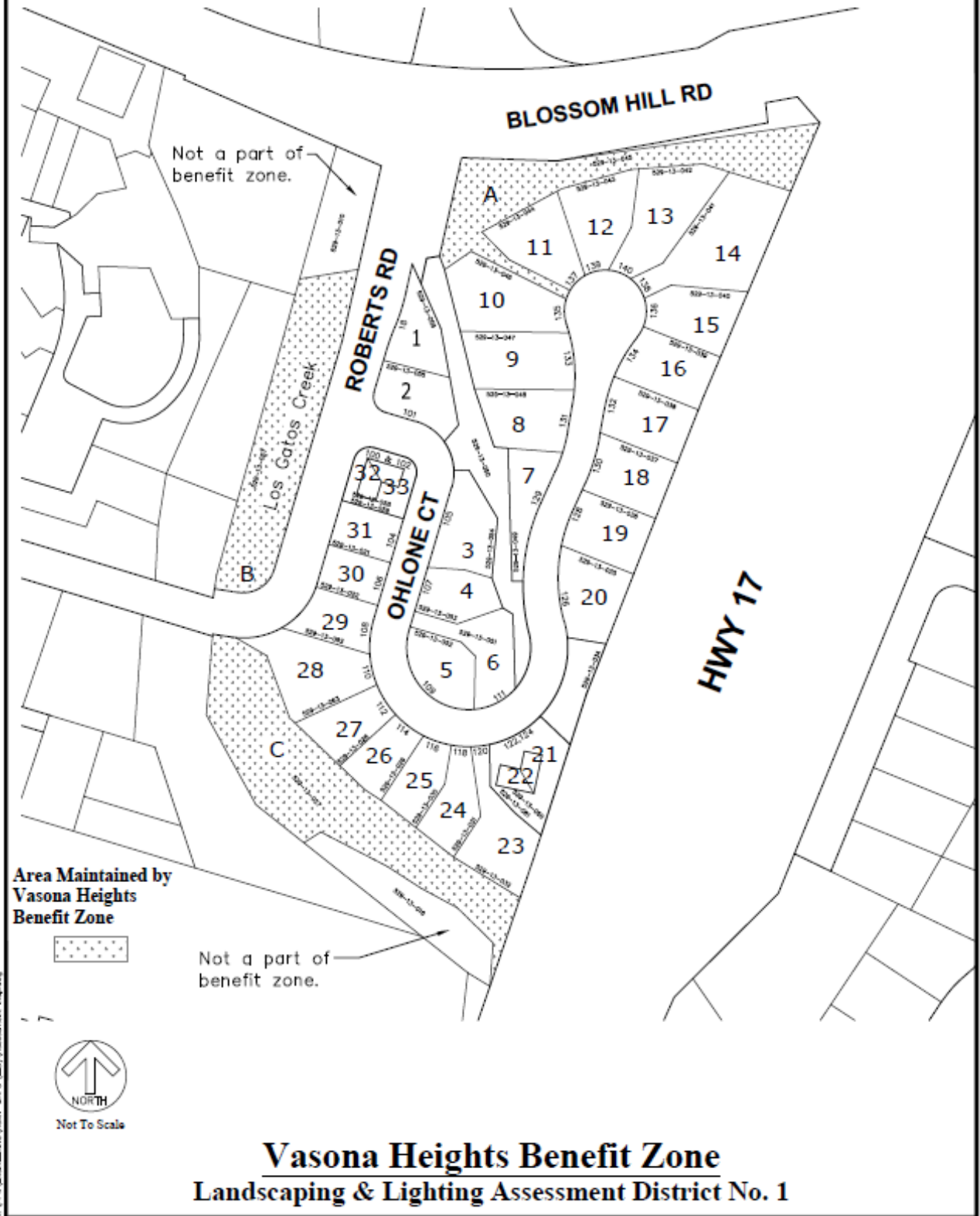
The total amount of the assessment was apportioned equally to all the lots within Vasona Heights Benefit Zone of Landscaping and Lighting Assessment District No. 1.

VASONA HEIGHTS BENEFIT ZONE

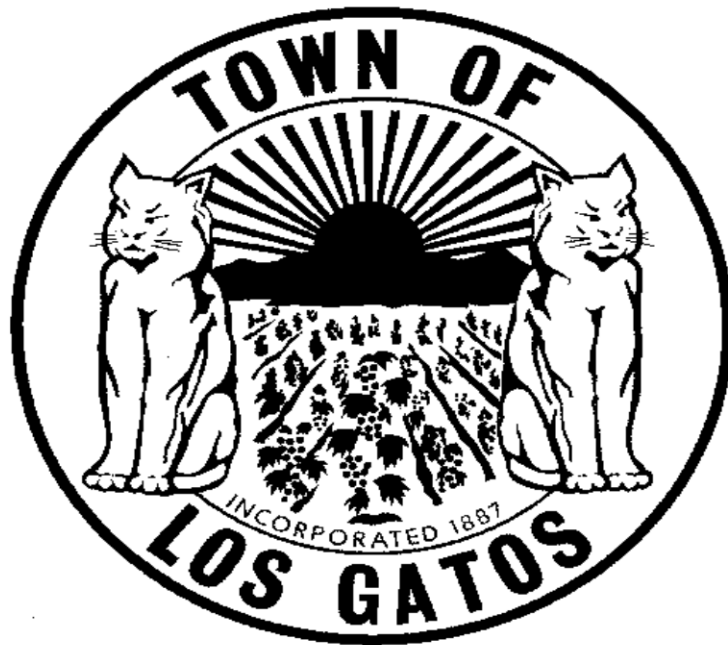
PROPERTY OWNERS LIST

APN	Owner
52913021	Figueroa Roberto E & Regina G
52913022	LEVENSON LINDA
52913028	GIANNAKOPOULOU K FAMILY TRUST
52913029	DION THOMAS M & CARRIE A
52913030	Fan James & Cynthia R
52913031	KLINE DANIEL
52913032	FISK ROY W & LYNN M TRUSTEE
52913035	CHENG JULIE W TRUST
52913036	LEVY MATTHEW & MONITA
52913037	MCCLOSKEY 2014 FAMILY TRUST
52913038	GAVIN JAMES A & KIM J TRUSTEE
52913039	SCHROEDER JACOB AND HOLLY TRUSTEE
52913040	Boesenberg Alex & Michele Trustee
52913041	SMART JOHN A & BETH A
52913042	PETER G AND TASSIA H BABALIS TRUSTEE
52913043	SMEDT RODNEY C & KATHLEEN E
52913044	ROMUALDAS V BRIZGYS TRUSTEE & ET AL
52913046	RAMEZANE DOUGLAS
52913047	RAMI AND KATHERINE TUYET KANAMA
52913048	WOO SHIRLEY Y TRUSTEE
52913049	ERDEI NICOLAE M JR
52913051	FLECK MATHIAS S AND CAROLINE C
52913052	ABY FAMILY TRUST
52913053	PALFALVI BELA E & LORI C TRUSTEE
52913054	SCHUMACHER JAMES V & CATHY O
52913055	Davidian Alec & Brown Alana C
52913056	BODE JON A & JULEE A TRUSTEE
52913058	Montgomery Michael L Trustee
52913059	ANDERSON MARILYN J
52913060	SILVA DENISE
52913061	HALPIN TIM & SHERRI
52913062	SHELL MARY TRUSTEE
52913063	SAMARA MAJEED S TRUSTEE

PART "D"
Assessment Diagram



Vasona Heights Benefit Zone
Landscaping & Lighting Assessment District No. 1



**Landscape and Lighting
Assessment District No. 1**

**HILLBROOK
BENEFIT ZONE**

**Fiscal Year
2021/22**

ENGINEER'S REPORT

**ENGINEER'S REPORT
FISCAL YEAR 2021/22**

LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1
(Pursuant to the Landscaping and Lighting Act of 1972)

HILLBROOK BENEFIT ZONE

WooJae Kim, Town Engineer for Landscape and Lighting Assessment District No. 1--Hillbrook Benefit Zone, Town of Los Gatos, Santa Clara County, California, makes this report, as directed by the Town Council, pursuant to Section 22566, et seq. of the Streets and Highways Code (Landscaping and Lighting Act of 1972).


The improvements that are the subject of this report are briefly described as follows:

The maintenance of trees, landscaping, irrigation systems, hardscape and fences as currently exist on APN: 523-11-028, located at the southeast corner of Blossom Hill Road and Hillbrook Drive, Los Gatos, California.

This report consists of four parts, as follows:

- PART A: Diagram of Existing Improvements.
- PART B: An estimate of the cost of the improvements.
- PART C: An assessment of the estimated cost of the improvements on each benefited parcel within the assessment district, the method by which the Engineer of Work has determined the amount proposed to be assessed against each parcel, and a list of the owners of real property within this assessment district, as shown on the last equalized assessment roll for taxes, or as known to the Town Clerk.
- PART D: A diagram showing all of the parcels of real property within this assessment district. The diagram is keyed to Part C by assessment number.

Respectfully submitted,



WOOJAE KIM
Town Engineer

April 23, 2021
DATE

PART "A"

Existing Improvements to be Maintained

BLOSSOM HILL RD

HILLBROOK
SIGN

EX.
OAK

523-11-028

LAWN

EX.
OAK

EX. SHRUBS

EX. SHRUBS

HILLBROOK DR



Not To Scale

Hillbrook Benefit Zone

Landscaping & Lighting Assessment District No. 1

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PART B			
ESTIMATE OF THE COST OF IMPROVEMENTS			
FISCAL YEAR 2020/21			
HILLBROOK DRIVE BENEFIT ZONE			
Fiscal Year 2019/20 Resources			
	Fund Balance 6/30/19		\$ 18,912
	Assessment		5,863
	Delinquent Assessment		0
	Penalties/Late Fees		0
	Interest		325
	Total Resources Available for FY 2019/20		\$ 25,100
Fiscal Year 2019/20 Expenses			
	Santa Clara County Collection Fee		\$ 60
	Publication & Notification Charges		0
	Light Pole Maintenance		0
	Electric Utility		0
	San Jose Water		1,816
	Landscape Contractor		1,647
	Town Administrative Charges		250
	Total Expenses for FY 2019/20		\$ 3,773
	Ending Fund Balance for FY 2019/20		\$ 21,328
Fiscal Year 2020/21 Estimated Resources			
	Fund Balance 6/30/20		\$ 21,328
	Assessment		5,950
	Interest		90
	Total Estimated Resources Available for FY 2020/21		\$ 27,368
Fiscal Year 2020/21 Estimated Expenses			
	Santa Clara County Collection Fee		\$ 60
	Publication & Notification Charges		300
	Tree Services		0
	Weed Abatement		0
	Light Pole Maintenance		0
	Electric Utility		0
	San Jose Water		2,500
	Landscape Contractor		1,647
	District Capital Improvements		0
	Town Administrative Charges		250
	Total Estimated Expenses for FY 2020/21		\$ 4,757
	Estimated Ending Fund Balance for FY 2020/21		\$ 22,611

**PART C
ASSESSMENT ROLL
FISCAL YEAR 2021/22**

HILLBROOK BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$175.00	523-11-027
Lot 2	175.00	523-11-026
Lot 3	175.00	523-11-025
Lot 4	175.00	523-11-024
Lot 5	175.00	523-11-023
Lot 6	175.00	523-11-022
Lot 7	175.00	523-11-021
Lot 8	175.00	523-11-020
Lot 9	175.00	523-11-019
Lot 10	175.00	523-11-018
Lot 11	175.00	523-07-030
Lot 12	175.00	523-07-029
Lot 13	175.00	523-07-028
Lot 14	175.00	523-07-027
Lot 15	175.00	523-07-026
Lot 16	175.00	523-07-025
Lot 17	175.00	523-07-024
Lot 18	175.00	523-07-023
Lot 19	175.00	523-07-022
Lot 20	175.00	523-07-021
Lot 21	175.00	523-07-020
Lot 22	175.00	523-07-019
Lot 23	175.00	523-07-018
Lot 24	175.00	523-07-017
Lot 25	175.00	523-07-016
Lot 26	175.00	523-07-015
Lot 27	175.00	523-07-014
Lot 28	175.00	523-07-013
Lot 29	175.00	523-07-012
Lot 30	175.00	523-07-011
Lot 31	175.00	523-07-010
Lot 32	175.00	523-07-009
Lot 33	175.00	523-07-008
Lot 34	175.00	523-07-007
Total Assessment:	\$5,950	

**ASSESSMENT ROLL
FISCAL YEAR 2021/22**

HILLBROOK BENEFIT ZONE

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

METHOD OF APPORTIONMENT OF ASSESSMENT

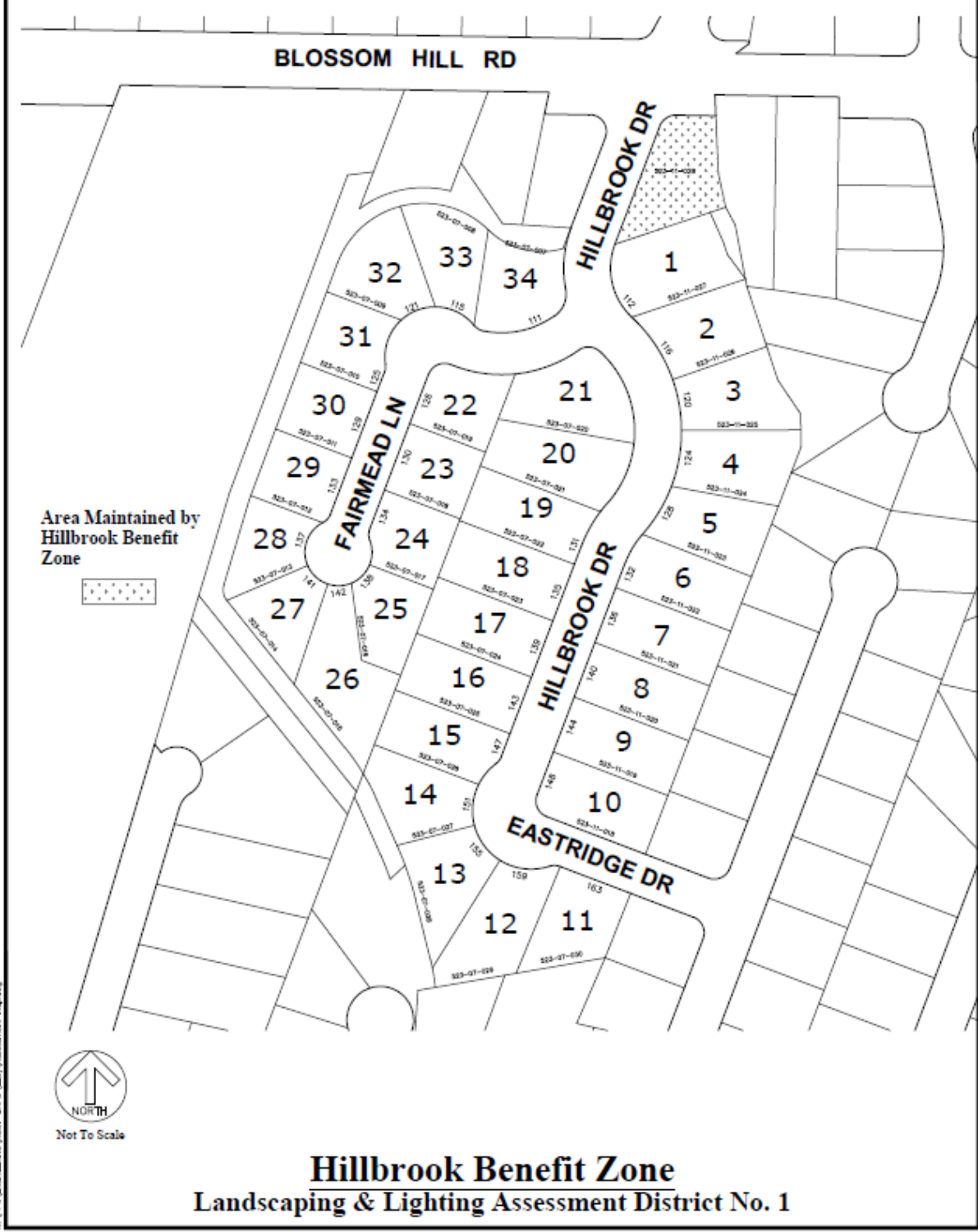
The total amount of the assessment was apportioned equally to all the lots within Landscape and Lighting Assessment District No. 1--Hillbrook Benefit Zone.

HILLBROOK BENEFIT ZONE

PROPERTY OWNERS LIST

APN	Owner
52307007	SCHNEIDER LINDA TRUSTEE
52307008	DESANTIS JUSTIN
52307009	BERGKAMP JAMES J & KIMBERLY L TRUSTEE
52307010	VOSEN STEPHAN & BOSSEN INGRID
52307011	Zhou Wen & Huang Shitao
52307012	Foster Troy
52307013	PRASHAD-GASPAR NEERJA
52307014	STEELE NANCY J TRUSTEE
52307015	KIRK JENNIFER TRUSTEE & ET AL
52307016	AGARWAL ASHU VIKAS AND SHALANI VIKAS TRUSTE
52307017	WHEELER MAXON R AND KIMBERLY A TRUSTEE
52307018	JIA TAO
52307019	ESCOBAR BENITO & REBECCA J
52307020	Biller Jason & Jenny Dai Trustee
52307021	SCHNEIDER JOHN O & CONDIT MICHAELA L
52307022	GABEL ROBERT L TRUSTEE
52307023	COLETTE Q LACKOVIC TRUSTEE
52307024	HARWOOD MICHAEL & ELIZABETH
52307025	JIN ROBERT X & LISA H
52307026	MCCOY JEROME & SHERYL D
52307027	Spiteri R J & L C Trust
52307028	RUHLE PHILIP G & NANCY A TTEES
52307029	MUNNERLYN AUDREY L
52307030	ZOLLA HOWARD G & CAROL E TRUSTEE
52311018	PEARSON LORELDA M
52311019	BAHR STACEY & IRA
52311020	WINOTO RENALDI
52311021	PANAGOPOULOS THEODOROS
52311022	PANDIPATI FAMILY TRUST
52311023	PARHAM SEAN TRUSTEE
52311024	FALCONA LLC
52311025	Fallon Donald J Trustee
52311026	CORDELL ROBERT Q II TRUSTEE
52311027	Braddi Micaela & Erin

PART "D"
Assessment Diagram



Hillbrook Benefit Zone
Landscaping & Lighting Assessment District No. 1

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**Landscape and Lighting
Assessment District No. 2**

**GEMINI COURT
BENEFIT ZONE**

**Fiscal Year
2021/22**

ENGINEER'S REPORT

**ENGINEER'S REPORT
FISCAL YEAR 2021/22**

LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 2
(Pursuant to the Landscaping and Lighting Act of 1972)

GEMINI COURT BENEFIT ZONE

WooJae Kim, Town Engineer for Landscape and Lighting Assessment District No. 2, Town of Los Gatos, Santa Clara County, California, makes this report, as directed by the Town Council, pursuant to Section 22566, et seq. of the Streets and Highways Code (Landscaping and Lighting Act of 1972).


The improvements that are the subject of this report are briefly described as follows:

The maintenance of trees, landscaping, irrigation systems, lighting, sound wall and fences as shown on the approved improvement and landscape plans for Tract No. 8439, Los Gatos, California.

This report consists of four parts, as follows:

- PART A: Plans and specifications for the improvements are filed in the Clerk Department. Although separately bound, the plans and specifications are a part of this report and are included in it by reference.
- PART B: An estimate of the cost of the improvements.
- PART C: An assessment of the estimated cost of the improvements on each benefited parcel within the assessment district, the method by which the Engineer of Work has determined the proposed assessment against each parcel, and a list of the owners of real property within this assessment district, as shown on the last equalized assessment roll for taxes, or as known to the Clerk Administrator.
- PART D: A diagram showing all of the parcels of real property within this assessment district. The diagram is keyed to Part C by assessment number.

Respectfully submitted,



WOOJAE KIM
Town Engineer

April 23, 2021
DATE

PART A

FISCAL YEAR 2021/22

PLANS, SPECIFICATIONS AND REPORTS

GEMINI COURT BENEFIT ZONE

Plans and specifications for the improvements are those prepared by Greg G. Ing, and Associates, dated September 14, 1990, their job number 9031. These plans and specifications have been filed separately in the Clerk Department of the Town of Los Gatos and are incorporated in the Report by reference.

PART B			
ESTIMATE OF THE COST OF IMPROVEMENTS			
FISCAL YEAR 2020/21			
GEMINI COURT BENEFIT ZONE			
Fiscal Year 2019/20 Resources			
	Fund Balance 6/30/19	\$	28,921
	Assessment		4,600
	Delinquent Assessment		
	Penalties/Late Fees		0
	Interest		509
	Total Resources Available for FY 2019/20	\$	34,030
Fiscal Year 2019/20 Expenses			
	Santa Clara County Collection Fee	\$	46
	Publication & Notification Charges		0
	Light Pole Maintenance		0
	Electric Utility		0
	San Jose Water		0
	Landscape Contractor		1,588
	Town Administrative Charges		610
	Total Expenses for FY 2019/20		2,244
	Ending Fund Balance for FY 2019/20	\$	31,786
Fiscal Year 2020/21 Estimated Resources			
	Fund Balance 6/30/20	\$	31,786
	Assessment		4,600
	Interest		150
	Total Estimated Resources Available for FY 2020/21	\$	36,536
Fiscal Year 2020/21 Estimated Expenses			
	Santa Clara County Collection Fee	\$	46
	Publication & Notification Charges		300
	Tree Services		0
	Weed Abatement		0
	Light Pole Maintenance		0
	Electric Utility		0
	San Jose Water		0
	Landscape Contractor		1,588
	District Capital Improvement		0
	Town Administrative Charges		610
	Total Estimated Expenses for FY 2020/21	\$	2,544
	Estimated Ending Fund Balance for FY 2020/21	\$	33,992

PART C

**ASSESSMENT ROLL
FISCAL YEAR 2021/22**

GEMINI COURT BENEFIT ZONE

Special Assessment No.	Amount of Assessment	Property Description
Lot 1	\$230.00	567-64-051
Lot 2	230.00	567-64-050
Lot 3	230.00	567-64-049
Lot 4	230.00	567-64-048
Lot 5	230.00	567-64-047
Lot 6	230.00	567-64-046
Lot 7	230.00	567-64-045
Lot 8	230.00	567-64-044
Lot 9	230.00	567-64-054
Lot 10	230.00	567-64-053
Lot 11	230.00	567-64-052
Lot 12	230.00	567-64-042
Lot 13	230.00	567-64-041
Lot 14	230.00	567-64-040
Lot 15	230.00	567-64-039
Lot 16	230.00	567-64-038
Lot 17	230.00	567-64-037
Lot 18	230.00	567-64-036
Lot 19	230.00	567-64-035
Lot 20	230.00	567-64-034
Total Assessment:	\$4,600.00	

*formerly Lot 9 – split into 3 parcels.

The lines and dimensions of each parcel are those shown on the maps of the County Assessor of the County of Santa Clara and the County assessment roll.

METHOD OF APPORTIONMENT OF ASSESSMENT

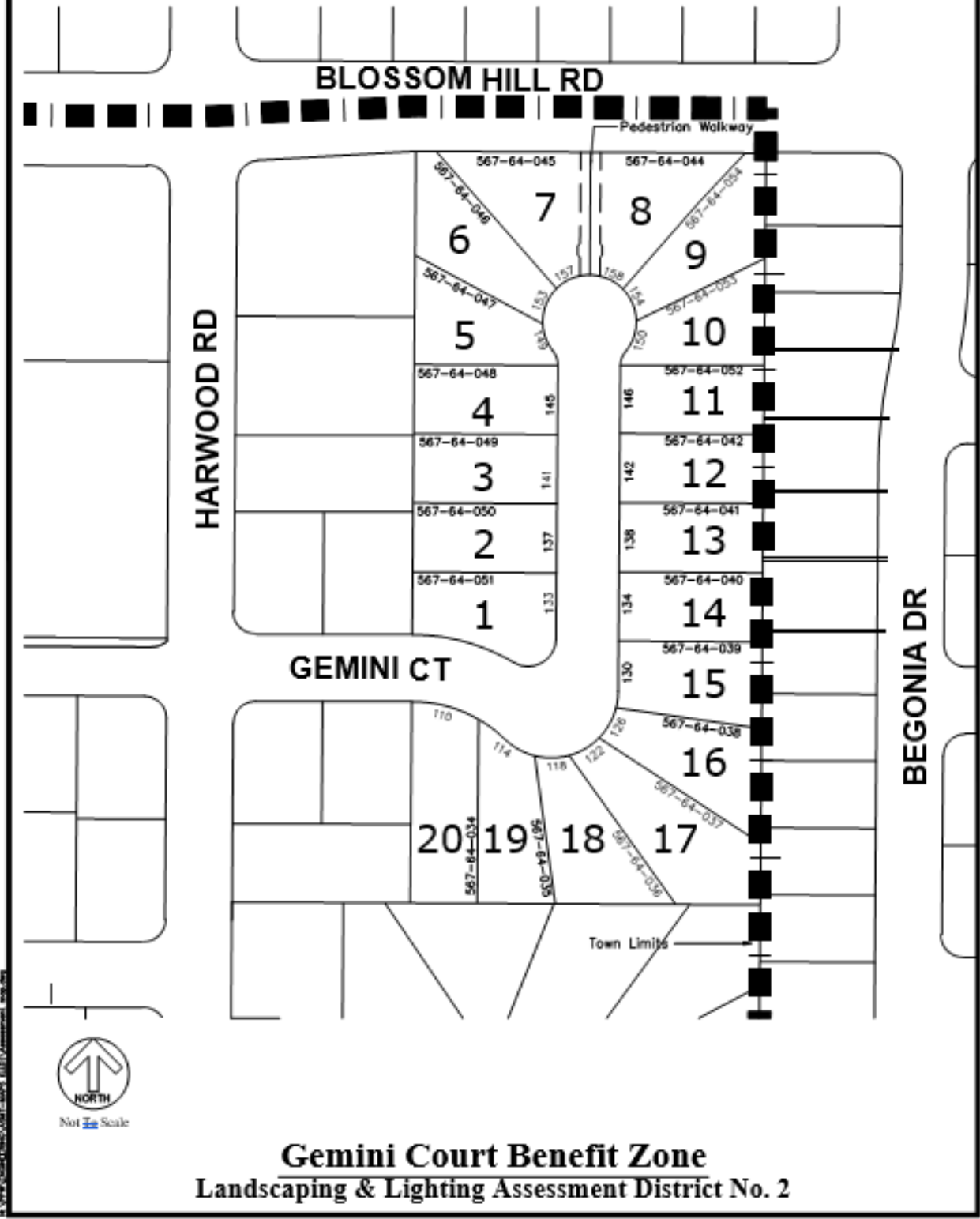
The total amount of the assessment was apportioned equally to all the lots within the Gemini Court Benefit Zone of Landscape and Lighting Assessment District No. 2.

GEMINI COURT BENEFIT ZONE

PROPERTY OWNERS LIST

APN	Owner
56764034	POWERS RICHARD J & SHELLEY A TRUSTEE
56764035	KIM SUNG D & HAE R
56764036	SALMINEN SATU & JANNE
56764037	FLISS JOHN R & SHERI B
56764038	SERRANO FRANCISCO TRUSTEE
56764039	SCOGGIN MICHAEL D
56764040	KSJ INC
56764041	Bidabadi Joe B & Homa
56764042	RAPISARDA FRED TRUSTEE
56764044	DAVIDSON SHARON LYNNE TRUSTEE
56764045	BOLOTIN IGOR & VICTORIA
56764046	NGUYEN STEVE
56764047	LAU STEVEN & HWANG JANE T
56764048	Moonesan Mohammad-Saleh
56764049	MORGAN ROBERT G JR & HIATT JEANNE K
56764050	MOGANNAM EVELYN E TRUSTEE
56764051	BAKER KENNETH TRUSTEE
56764052	RAOUL BADAOUI TRUSTEE & ET AL
56764053	Zhou Guoquan & Huang Xu
56764054	AU KEVIN J

PART "D"
Assessment Diagram



Gemini Court Benefit Zone
Landscaping & Lighting Assessment District No. 2



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 20

DATE: June 9, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Receive the Community Health and Senior Services (CHSSC) Report on Senior Service Provision and Assessment Recommendations

RECOMMENDATION:

Receive the Community Health and Senior Services (CHSSC) Report on Senior Service Provision and Assessment Recommendations.

BACKGROUND:

In 2001 the Town launched a pilot senior services program with a dedicated Senior Center within the Neighborhood Center, a Senior Coordinator staff position, and funding for case management services. The Senior Center program remained as a part of the Community Services Department until 2009. In 2009, partially in response to budgetary constraints due to the recession, the Town partnered with Los Gatos-Saratoga Community Education and Recreation (LGS Rec) for the provision of senior services (Attachment 1). The partnership became fully operational in FY 2010/11, resulting in increased revenue and decreased staffing and operating costs.

As part of lease agreement (Attachment 2) with LGS Rec, the Town required that LGS Rec maintain and expand senior services at the Neighborhood Center. The lease stipulates that LGS Rec provision services/programs to include services/programs similar in scope to the following:

- Wednesday afternoon movies (once per month)
- Wednesday games program (weekly)
- Senior center dances (once per quarter)
- Bus trips (once per quarter)
- Senior Thanksgiving dinner (one per year)

PREPARED BY: Arn Andrews
Assistant Town Manager

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

BACKGROUND (continued):

- Senior picnic (one per year)
- Senior show (one per year)
- Senior Center newsletter (bi- monthly)
- Information and referral to other agencies (ongoing)
- Recreation classes will be expanded significantly as demand warrants. Examples include: language, arts and crafts, computer, and other special interest classes.

In addition to the arrangement with LGS Rec, the Town has traditionally funded other senior service provision through the annual community grant program. Of note, the Town provides grants for senior nutrition, senior day care services, and rent assistance.

On March 2, 2021, the Town Council held a joint session with the Community Health and Senior Service Commission (CHSSC) to hear the Commission's goals for the coming year. The Council indicated its strong interest in the work of the Commission in light of the inclusion of senior services as a new Council Strategic Priority for FY 2021-2023.

Councilmembers requested that the Commission review the current senior service provision in Town and help identify any gaps that exist in senior services. Councilmembers and Commissioners identified the following areas of service provision interest/concern for Commission review.

Communication and Information:

- Better identification/communication with seniors using media that seniors use (e.g., print)
- Increased centralized coordination among service providers (local, regional)

Housing:

- Move down housing options for seniors

Community Support and Health Services:

- Increased senior isolation due to COVID
- Need for a plan to assist seniors with the vaccination process

Social Participation:

- Low senior engagement/programming relative to other Santa Clara County cities
- Development of a state-of-the-art activity/community center

Civic Participation and Employment:

- Increase/leverage senior volunteer engagement in Town
- Dedicated staffing resources to supplement volunteers

BACKGROUND (continued):

Senior Plan Development:

- Develop roadmap for implementation of senior services as a strategic priority
- Consideration of service provision business models in other communities

At the conclusion of the meeting, Mayor Sayoc appointed Vice Mayor Rennie to be a Council Liaison to the Commission and requested that the Commission report back to the Town Council on June 15, 2021.

DISCUSSION:

Since that time the Commission accelerated their meeting schedule to accommodate the Mayor’s request to report back at the June 15, 2021, Town Council meeting. The Commission’s work has focused on meeting with service providers to address the issues raised by the Town Council and Commission, understand existing service provision, review alternative business models, identify service gaps, and discuss potential recommendations to fill any gaps.

To date the Commission received presentations from the following service providers:

March 23, 2021 – Los Gatos Saratoga Recreation 55+, Live Oak Senior Nutrition

April 13, 2021 – West Valley Community Services, Saratoga Area Senior Coordinating Council

April 27, 2021 – Santa Clara County Department of Aging and Adult Services, Los Gatos Library

May 11, 2021 – City of Cupertino Senior Center

The table below summarizes the multitude of services provided by Commission presenters and other regional providers:

Service Provider	Food Assistance	Rent/Fin Assistance	Socialization And Events	Recreation and Education	Case Mgt	Other Assistance (tax, legal)
LGS Rec 55+	Yes	No	Yes	Yes	Yes	Yes
Live Oak Senior Nutrition	Yes	No	Yes	No	No	No
West Valley	Yes	Yes	No	No	Yes	Yes
Saratoga Area Senior Coordinating Council (SASCC)	Yes	Yes (directory)	Yes	Yes	Yes	Yes

Santa Clara County Dept Aging	Yes	Yes (directory)	No	No	Yes	Yes
Los Gatos Library	No	No	Yes	Yes	No	No
Cupertino Senior Center	Yes (during Covid)	Yes (directory)	Yes	Yes	Yes	Yes
Live Oak Adult Day Care	Yes	No	Yes	No	Yes	No
Sourcewise	Yes	Yes (directory)	No	No	Yes	Yes
Bay Area Older Adults	No	No	Yes	Yes	No	No

As the table illustrates, the Los Gatos senior community has access to a considerable regional ecosystem of senior and intergenerational service provision. In addition to reviewing existing services, the Commission researched the business models of other service providers as illustrated in the table below:

Business Model	LGS Rec 55+	SASCC	Campbell 50+	Los Altos 50+	Cupertino 50+
Membership	83 (5,418 since 2016)	2,000	1,100	1,500	1,500 (2,400 pre pandemic)
Membership Fee	\$25	\$25	\$25	\$30	\$23 - \$28 (Resident/Non)
Facility	Leased (Town subsidy)	City Owned/Funded	City Owned	City Owned	City Owned
Budget	\$100k	\$1.2M	\$771k FY21 \$503k FY22	\$393k	\$2.5M (includes \$350k discontinued case mgt program)
Funding	Subsidies from For Profit Arm	Grants, Fees, Subsidies, Donations	General Fund (GF) & Fees	GF & Fees	GF & Fees
Staffing	0.5 FTE (1 Consultant)	5 FTE	2.29 FTE (3 FTE reduction FY22)	1.0 FTE, 3 PT	6.0 FTE, 15 PT
Publication	Yes/Email (weekly)	Yes/Print & Email (monthly)	Yes/Print & Email (quarterly)	Yes/Print & Email (bi-monthly)	Yes/Mail & Email (bi-monthly)

Transportation	RYDE Eligible	Yes/Ryde Program	RYDE Eligible	Yes/On The Move Program	RYDE Eligible
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DISCUSSION (continued):

On May 25, 2021 and June 8, 2021, the CHSSC reviewed the information received from service providers, discussed elements of the data presented, received feedback from Council Liaison Rennie, heard public testimony, and initiated discussions of potential senior service provision recommendations for Town Council consideration. The Commission acknowledged that certain recommendations could have budgetary constraints and may require separate short and long-term proposals. Of note, the Commission and Council liaison recognized the significant difference in dedicated funding toward senior services relative to peer organizations and agencies. It should also be noted that while the Commission had general consensus regarding the identified issues, Commissioners had a spectrum of proposals to ameliorate the issues identified. The following table illustrates the areas identified by the Commission for Council consideration.

	Issue(s)	Short Term Proposal(s)	Long Term Proposal(s)
Communication/ Marketing	No dedicated budget or centralized senior communication in relevant mediums	<ul style="list-style-type: none"> • Fund/Leverage distribution of SASCC "Outlook" publication • Develop and fund a unique Los Gatos senior publication • Leverage Caring About Resident Elders (C.A.R.E.) program • Increase market awareness through a variety of marketing experimentation • Leverage Youth Commission social media skills 	<ul style="list-style-type: none"> • Develop longer range marketing plan for available senior services based on acceptance of marketing experimentation

<p>Facility</p>	<p>Existing facility currently supports limited dedicated senior activity and is not competitive with neighboring jurisdictions facilities</p>	<ul style="list-style-type: none"> • Perform cosmetic and functional updates (interior/exterior) to existing facility • Explore partnering with newer existing facilities in Town to volunteer space 	<ul style="list-style-type: none"> • Construction of new facility or complete renovation of existing facility • Establish 501c3 Senior Council (or other exploratory body) to initiate fundraising and awareness for a new senior center
<p>Service Coordination and Centralization</p>	<p>Currently no centralized oversight for coordinating existing services</p>	<ul style="list-style-type: none"> • Provide additional funding to LGS Rec toward senior service staffing • Provide funding to a new service provider • Create position(s) within the Town • Assess the strengths and weaknesses of current LGS Rec business model relative to others • Determine preferred senior service provision business model 	<ul style="list-style-type: none"> • Provide funding to whatever service provider solution is pursued
<p>Service Expansion</p>	<p>Due to Covid related budget impacts LGS Rec currently has 0.5 FTE dedicated to senior services</p>	<ul style="list-style-type: none"> • Provide additional funding to LGS Rec toward senior service staffing • Provide funding to a new service provider • Create program and position(s) within the Town 	<ul style="list-style-type: none"> • Provide funding to whatever service provider solution is pursued

Volunteer Opportunities	No centralized platform for senior volunteer opportunities	<ul style="list-style-type: none">• Leverage CHSSC to identify and promote volunteer opportunities• Leverage Community Based Organizations, schools, and Youth Commission	<ul style="list-style-type: none">• Encourage LGS Rec or other service provider to recruit volunteers from their membership
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CONCLUSION:

Council should review the CHSSC recommendations and provide any guidance to staff on areas for proposed implementation. Based on the areas identified for implementation staff will return to Council with a detailed implementation plan.

COORDINATION:

This staff report was coordinated with the Town Manager, Town Attorney, and Community Health and Senior Service Commission.

FISCAL IMPACT:

None at this time; however, Council's direction may have fiscal impacts.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. 2009 Staff Report
2. LGS Rec Lease Agreement
3. Public Comment Received by 11:00 a.m. June 10, 2021



MEETING DATE: 12/7/09

ITEM NO: 9

COUNCIL AGENDA REPORT

DATE: December 1, 2009
TO: MAYOR AND TOWN COUNCIL
FROM: GREG LARSON, TOWN MANAGER
SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE THE LEASE AGREEMENT BETWEEN TOWN OF LOS GATOS AND LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION

RECOMMENDATION:

Adopt a resolution authorizing the Town Manager to execute the "Lease Agreement Between Town of Los Gatos and Los Gatos-Saratoga Community Education and Recreation" (Exhibit A to Attachment 2).

BACKGROUND:

The Town launched its pilot senior services program approximately eight years ago, through a dedicated Senior Center and a Senior Coordinator staff position. This program has been a great success, both providing directly and supporting the provision of services to local seniors. Recently an opportunity has arisen to expand the Town's partnership with Los Gatos-Saratoga Community Education and Recreation (LGS Recreation) to enhance the delivery of senior services.

LGS Recreation is a non-profit agency that was formed in 1956 through a joint powers agreement with the local school districts in Los Gatos and Saratoga. Its mission is to help build a healthy community by providing a wide range of education, recreation, and enrichment programs to the citizens of Los Gatos, Saratoga, Monte Sereno, and neighboring mountain communities. The agency is funded through user fees and donations, and receives no tax revenue. Its governing board includes representatives of the Los Gatos-Saratoga Joint Union High School District, the Los Gatos Union School District, and the Saratoga Union School District, and members of the community. Its headquarters is located at 123 E. Main Street, across the street

PREPARED BY: Regina A. Falkner, Community Services Director

ATTACHMENT 1

Reviewed by: Assistant Town Manager, Town Attorney, Clerk Administrator, Finance, Community Development

December 1, 2009

from the Civic Center; classes are held at 19 locations throughout the community, including the Neighborhood Center.

DISCUSSION:

In August 2009, the Town Council authorized staff to enter into negotiations with LGS Recreation to explore the possibilities that an expanded partnership in the area of senior services could offer. At least three key goals for this partnership drove these negotiations, as follow:

1. **Improve services to seniors.** As noted earlier, the Town has had a successful senior services program over the last eight years. LGS Recreation also has a successful track record in providing services to seniors. Its 55+ program focuses on life-long education for older adults, helping them to continue their personal growth and enrichment. Combining the proven abilities of these two agencies is an effective way to improve services to Los Gatos seniors while eliminating duplication and redundancy. In addition, LGS Recreation will be able to dedicate more staff resources to senior services than the Town can alone. Currently, the Town has one staff position dedicated to senior services, the Senior Coordinator; the staff person in this position is scheduled to retire at the end of this calendar year. LGS Recreation has a number of staff positions dedicated to and experienced in senior-related programming.
2. **Maximize the benefit of the Neighborhood Center facility to the community.** LGS Recreation has expressed a need for more administrative and program space than it has available currently. The Neighborhood Center, while used by many community groups during the year, including LGS Recreation, is not at capacity. It is a mutually beneficial situation to provide LGS Recreation with the space it needs, across the street from its existing headquarters, and thereby maximizing the use of the facility by the community through expanded education and recreation programming. For seniors, the Neighborhood Center could serve as a one-stop shop, where they could both register and attend LGS Recreation programs, and access support services.
3. **Address future budget deficits.** The Town organization is facing a budget deficit of at least \$1.5 million for the next fiscal year. It is important that every opportunity to restructure the provision of services, and to maximize the benefits provided by existing assets, be explored. The proposed partnership between the Town and LGS Recreation, as outlined below, would include a long-term lease of the Neighborhood Center, representing new revenue to the Town. At the same time, senior services would be expanded, benefitting local seniors.

Facility Lease

Negotiations with LGS Recreation have focused on a long-term lease of the Neighborhood Center, with the accompanying responsibility to provide senior services. The proposed terms of the facility lease are as follow:

December 1, 2009

- a. LGS Recreation will pay rent to the Town at 25% of assessed fair market rent in the first year of the lease. Each subsequent year of the lease, the rent paid will increase by 5% (30% of assessed fair market rent in year 2, 35% in year 3, etc.) until it reaches 45% in year 5, and will then remain at 45% of assessed fair market rent for the remainder of the lease term.
- b. The initial fair market rent was assessed at \$2.50 per square foot. This base fair market rent will be adjusted by CPI each year, and a new appraisal of fair market rent will be made once every 5 years.
- c. The initial term of the lease is 20 years. Two 5-year extensions will be included, and will go into effect automatically unless one of the parties objects.
- d. All facility improvements must be approved in advance by the Town. The Town will pay back any remaining value to LGS Recreation only if the Town takes back the facility early. The cost of any approved improvements will be evenly distributed over the remaining term of the lease.
- e. The Town will maintain the facility structure, including the roof, HVAC, plumbing, and electrical systems, and provide for all exterior landscaping.
- f. LGS Recreation will pay all utility and custodial costs.
- g. The Town will rent back 1262 square feet of office space, paying rent at the same rate paid by LGS Recreation. The Town will also share the retention room on the second floor. The Town will vacate this space no later than December 31, 2013.
- h. LGS Recreation will continue to rent out meeting rooms in the facility, based on the current Los Gatos Neighborhood Center Policies and Procedures. The current fee schedule will also be adopted and will be evaluated after the first year.
- i. The Town will have free use of meeting rooms for Town business for no more than 700 hours per year, until December 31, 2013. Beginning on January 1, 2014, the Town may have no more than 500 hours of free use per year.
- j. AA and NA may continue to use the meeting rooms at their current use rate of approximately 1,500 hours per year, until December 31, 2013, though room availability during regular business hours may be limited. Beginning January 1, 2014, the number of hours per year may be reduced to 1,000.
- k. SJSU may no longer have a dedicated office space. It may rent meeting rooms as needed, and may share office space with LGS Recreation.
- l. The Town will remove the EOC equipment from the Large Hall by June 30, 2010. The Town may continue to use the Large Hall as an EOC in emergencies and for training.
- m. The Town logo will be included with the LGS Recreation logo on all senior service marketing items, and there will be LGS Recreation inclusion on appropriate Town collateral.
- n. The Town will retain the right to rename the building. LGS Recreation has requested that the building would be known as the "Los Gatos Senior and Adult Recreation Center."
- o. In recognition of the Town's provision of significantly discounted administrative and program space, the Town will be given a non-voting seat on the LGS Recreation Board.

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Senior Services

As part of the proposed lease agreement, the Town would require that LGS Recreation maintain and expand senior services at the Neighborhood Center, and also that it support the provision of senior services by other agencies. LGS Recreation would ensure the provision of services/programs to include services/programs similar to the following list in scope and participation using its own staff or via contract:

- a. Wednesday afternoon movies (once per month)
- b. Wednesday games program (weekly)
- c. Senior Center dances (once per quarter)
- d. Bus trips (once per quarter)
- e. Senior Thanksgiving dinner (once per year)
- f. Senior Picnic (once per year)
- g. Senior show (once per year)
- h. Senior Center newsletter (bi-monthly)
- i. Information and referral to other agencies (ongoing)
- j. Recreation classes will be expanded significantly as demand warrants. Classes may include language, arts and crafts, computer, and other special interest classes.

LGS Recreation would provide appropriate facility space and administrative support as needed for the following services, to be provided by outside agencies. It would be under no obligation to provide these services directly.

- a. Health presentations (once per month)
- b. 55-Alive driving classes
- c. Grief support group
- d. Blood pressure screenings
- e. Brown Bag grocery distribution (once per week)
- f. Live Oak Senior Nutrition Program lunchtime meal services (once per week)
- g. Happy Hoofers walking group
- h. Older Women's group
- i. HICAP insurance counseling (by appointment)
- j. Income tax preparation (by appointment)
- k. BART ticket sales (ongoing)
- l. Hosting and organizing new groups and affiliates as interests warrant, such as a computer club, genealogy club, or bridge club.

The Town will remain responsible for case management services. They have been provided in the past through the Senior Coordinator position. As the staff person in this position will be retiring at the end of this calendar year, staff is researching options for contracting out for these services. Monte Sereno staff has indicated interest in potentially partnering with the Town to

December 1, 2009

contract for case management services. In the interim, local and county social service agencies will be called on for assistance.

Reception and Administrative Support

In addition to the lease agreement, the Town and LGS Recreation would sign a separate Letter of Agreement under which LGS Recreation would reimburse the Town one-half of its actual costs for a Secretary II position, from January through June 2010. This Secretary II position is currently assigned to receptionist and related administrative duties at the Neighborhood Center. Under the proposed arrangement, the position would be assigned half-time to Neighborhood Center scheduling and basic information and referral duties, under the supervision of LGS Recreation. The other half of the position's time would be assigned to support the Community Services Department.

Because the amount of reimbursement contemplated under this agreement would be under the Town Manager's signatory authority, no resolution is required to authorize his execution of this Letter of Agreement.

Transition and Outreach Plans

Staff has met with LGS Recreation staff to begin to develop a transition plan. Staff believes that it will be key for the transition to be transparent to seniors who use the facility, in order to minimize confusion and potential dissatisfaction with the process. It is very important to ensure that seniors are and feel heard during the process of change, and that they get to know all the players on a personal, face-to-face level. The Town's goal is for seniors to know that they are receiving the same services they are receiving now, in the same place, just from different staff people. With these considerations in mind, an Outreach Plan has been developed to ease the transition from Town to LGS Recreation staff.

1. First, key stakeholders have been identified. This list includes the Town Council, the Community Services Commission, the Senior Consortium, regular patrons of the Senior Nutrition Program, regular patrons of the Brown bag program, members of the Happy Hoofers, and Senior Center volunteers.
2. Next, a one-page fact sheet has been developed that clearly explains the changes contemplated, their benefits, and information about key LGS Recreation personnel. This fact sheet includes both the Town and LGS Recreation logos, underlining the partnership between the two agencies. LGS Recreation has written an introductory letter that will be used along with the fact sheet. Both documents are attached to this report (Attachment 1).
3. Third, Town and LGS Recreation staff will meet together with the key stakeholders during the first two weeks of December. During these information presentations, the fact sheet will be distributed and the expanded senior services program will be explained.

December 1, 2009

Most important to these meetings will be a question/comment period, during which the stakeholders can ensure their views are being heard by both agencies, as well as get any of their questions answered.

Community Services Commission

The Community Services Commission considered the proposed terms of the lease agreement at its November 19 meeting. The Commission unanimously adopted a recommendation that Council approve the agreement, with the understanding that the Town would continue to monitor and address senior needs.

123 E. Main Street

With regard to the building that LGS Recreation rents from the Town at 123 E. Main Street, LGS Recreation has requested a 1 to 3 year extension with the same lease terms as the current lease agreement. The fair market rent would be increased to the assessed value of \$2.50 per square foot, resulting in approximately \$4,400 in new revenue to the Town annually. Staff supports this approach for this facility. The resolution adopted by Council to authorize the Town Manager to sign the lease agreement also authorizes signature of amendments to the lease agreement; under this authority the Town Manager will sign an amendment extending the term of the lease and adjusting the fair market rent.

CONCLUSION:

This is a unique opportunity to provide expanded senior and community services at lower cost during these difficult economic and budgetary times. Staff recommends that the Council adopt a resolution authorizing the Town Manager to execute the "Lease Agreement Between Town of Los Gatos and Los Gatos-Saratoga Community Education and Recreation." Once the agreement is executed, LGS Recreation is prepared to occupy the Neighborhood Center and to begin its services as of January 2010.

ENVIRONMENTAL ASSESSMENT:

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

FISCAL IMPACT:

The proposed partnership between the Town and LGS Recreation would result in annual savings to the Town in FY 2009/10 of approximately \$160,000, and increased revenue of approximately \$62,000, a total benefit to the Town of approximately \$222,000.

In following fiscal years, the benefit to the Town will be in the range of \$250,000 to \$300,000 and will be a factor of several issues, including the adjustment of the lease amount by CPI, and whether the reimbursement arrangement for the Secretary II position is continued. Rent revenue will increase from \$90,000 in year 1 to approximately \$162,000 in year 5.

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MAYOR AND TOWN COUNCIL

SUBJECT: LEASE AGREEMENT BETWEEN TOWN OF LOS GATOS AND LOS
GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION

December 1, 2009

The extension of the lease agreement for 123 E. Main Street would result in new revenue of approximately \$4,400 per year.

There are some rental monies that have been paid in advance to the Town for use of the Neighborhood Center, for the period January 1, 2010 to June 30, 2010, that would be transferred to LGS Recreation, as the new administrator of the facility. The total amount is approximately \$800.

Attachments:

1. Draft fact sheet and introductory letter
2. Draft Resolution of the Town Council of the Town of Los Gatos authorizing the Town Manager to execute the "Lease Agreement Between Town of Los Gatos and Los Gatos-Saratoga Community Education and Recreation" (with Exhibit A).

Distribution:

Steve Rauwolf, Los Gatos-Saratoga Community Education and Recreation

Avital Agam, Jewish Family Services

Barbara Smith, Ask Barbara

Bob Campbell, Sr. Housing Solutions

Eliana Brown, Live Oak Senior Nutrition and Services

Glenda Cresap, Heart of the Valley

Jane Doherty, The Los Gatos Meadows

Julie Groves, Therapy in Your Home

Karen Sepamansour, Santa Clara County Senior Care Commission

Linda Gallo, Town of Los Gatos

Lisa Rauch, San Jose State University- The Health Place

Lori Mathis, Second Harvest Food Bank

Mary Kelley, Live Oak Adult Day Services

Pam Bancroft, The Terraces

Tim Dupic, The Health Trust

Wanda Hale, Catholic Charities of San Jose



LGS | RECREATION

DRAFT



Date: November 23, 2010

We are pleased to announce a new collaboration between LGS Recreation and the Town of Los Gatos to expand the programming, services and operation of the Neighborhood Center beginning January 2010. As part of this joint venture we are excited to continue the support of the current senior activities, user groups and participants using the NHC and we're looking forward to the endless possibilities of new programming that we can provide the community in this facility.

LGS Recreation will continue to offer all current senior services and programs and work toward expanding all senior and adult services to meet the desires and needs of the community. The Town of Los Gatos will provide support of LGS Recreation efforts and continue to support those with extraordinary needs through an effective individual case management program. All current hourly rental and user groups utilizing the facility will continue to be supported and we will work toward strengthening those relationships to collaborate and provide a comprehensive level of service to the community.

The LGS Recreation and Town staffs are working closely together to insure a positive and smooth transition from not only the programming level of service but also the personal service that you receive. LGS Recreation and the Town staff are excited and enthusiastic about this new partnership and the opportunities for expanding services into the future as the adult and senior population continues to grow. We are looking forward to meeting with you and the individuals in your group in the near future!

We value your support and input on the programs and activities you are involved with. If you have and concerns or comments please feel free to contact us or stop by our offices in the NHC beginning January 4th, 2010. If you need to contact us before that time please call the LGS Recreation office at 408-354-8700 or Cindy McCarthy at 408-691-0309. For additional information please see the attached fact sheet.

Thank you for your Support

Cindy McCarthy
 Director of Recreation Services
 LGS Recreation

Regina Falkner
 Community Services Director
 Town of Los Gatos

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The Town of Los Gatos
and
Los Gatos-Saratoga Community Education and Recreation
are pleased to present



The Los Gatos Senior and Adult Recreation Center
208 E. Main Street, Los Gatos

What?

The Neighborhood Center is about to get a new name – and a whole new lease on life! Thanks to a partnership between the Town of Los Gatos and Los Gatos-Saratoga Community Education and Recreation (LGS Recreation), the new Los Gatos Senior and Adult Recreation Center will be open to the Los Gatos community beginning January 1, 2010. It will house the Los Gatos Senior Center and related support services for seniors, as well as expanded educational and recreational programs for seniors. The Town will still own the building, but LGS Recreation will be responsible for managing all of the services.

Why?

Why make a change to a successful senior services program in Los Gatos? Here are some reasons we think are important:

Improve services to seniors. The Town has had a successful senior services program over the last eight years. LGS Recreation also has a successful track record in providing services to seniors. Combining the proven ability of these two agencies is an effective way to improve services to Los Gatos seniors.

Maximize the benefit of the Neighborhood Center facility to the community. LGS Recreation needs more space; the Neighborhood Center, while well-used, is not at capacity. It's a win-win situation to provide LGS Recreation with the space it needs, and at the same time maximize the use of the facility for expanded education and recreation programming. For seniors, the Neighborhood Center will serve as a one-stop shop, where they can register for and attend LGS Recreation programs, and access supportive services.

Address future budget deficits. The Town organization is facing a budget deficit of approximately \$1.5 million in the next fiscal year. It is important that we explore every opportunity to provide services in new and more efficient ways. The partnership between the Town and LGS Recreation will result in significant cost savings to the Town. At the same time, senior services will be expanded, benefitting local seniors.

Who?

Who is LGS Recreation? It is a non-profit agency that was formed in 1956 through a joint powers agreement with the local school districts in Los Gatos and Saratoga. Its mission is to help build a healthy community by providing a wide range of education, recreation, and enrichment programs to the citizens of Los Gatos, Saratoga, Monte Sereno, and neighboring mountain communities.

How?

How do you get more information? Contact LGS Recreation at (408) 354-8700. Or, just stop by the Adult Recreation Center, 208 E. Main Street. We'll be happy to take you on a tour of the facility, and answer any questions you may have.

RESOLUTION 2009-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AUTHORIZING THE TOWN MANAGER TO EXECUTE THE
LEASE AGREEMENT BETWEEN TOWN OF LOS GATOS
AND LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION**

WHEREAS, the Town of Los Gatos owns and operates the property located at 208 E. Main Street, Los Gatos; and

WHEREAS, the Town desires to enter into a long-term lease for this property with Los Gatos-Saratoga Community Education and Recreation, a local non-profit agency, for the purposes of operating a community center for adults and seniors; and

WHEREAS, Los Gatos-Saratoga Community Education and Recreation also desires to enter into a long-term lease for the property, and accepts the accompanying responsibility for providing services to adults and seniors.

RESOLVED, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town of Los Gatos Town Manager is authorized to execute:

1. A Lease Agreement Between Town of Los Gatos and Los Gatos-Saratoga Community Education and Recreation substantially in the term of Exhibit A; and
2. Future amendments to the Agreement so long as they conform to the adopted Town budget.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 7th day of December, 2009 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:
MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

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

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CLERK DEPARTMENT
 AGR 09.274
 IHH 09.316 7/10
 ORD _____
 REC _____
 RESO _____

**LEASE AGREEMENT
 BETWEEN
 TOWN OF LOS GATOS
 AND
 LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION**

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**LEASE AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION**

This lease agreement (herein "Lease") is made and entered into this ____ day of _____, 20__, by and between the Town of Los Gatos, a California municipal corporation (herein "Town") and Los Gatos-Saratoga Community Recreation and Education, a California joint powers agency (herein "Lessee"). Town and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Lease." The Town Manager serves as Contract Administrator for this Lease on behalf of the Town Council.

In consideration of these recitals and the following covenants, terms, and conditions, Lessee and Town mutually agree as follows:

LEASE PROVISIONS

1. PREMISES.

Town hereby leases to Lessee, certain real property located in the Town of Los Gatos, County of Santa Clara, State of California, commonly known as 208 East Main Street (herein the "Premises") and more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Premises consists of approximately twelve thousand (12,000) square feet of meeting rooms and office space, except for the Inventory of Fixtures set forth in Exhibit B attached hereto and incorporated herein by reference. Unless specifically provided, Lessee accepts the Premises "as-is" on the date of execution of this Lease. Town represents that the Premises, but without regard to the use to which Lessee will put them, will be in compliance with all applicable governmental laws, rules and regulations on the Delivery Date (as defined below). If it is determined that the foregoing representation is not true, then Town, at its expense, shall take such actions as are necessary to cause the Premises to be in compliance with such governmental laws, rules and regulations.

2. TERM.

2.1 Original Term. Unless extended or sooner terminated, the term of this Lease shall be for twenty (20) years, commencing on January 1, 2010 ("Delivery Date") and ending on December 31, 2029. Lessee shall, at the expiration of the term of this Lease, or upon its earlier termination, surrender the Premises in as good condition as it is now at the date of this lease, reasonable wear and tear and damage by age and the elements excepted.

2.2 Option to Extend. Provided Lessee is not in default hereunder, either at the time of exercise or at the time the extended term commences, Lessee shall have the option to extend the initial term of this Lease for two (2) additional periods of five (5) years ("Option Period")

with the same terms, covenants and conditions provided herein, except that upon such renewal the Base Rent due hereunder shall be adjusted pursuant to Paragraph 3.2. Lessee's option shall be automatically exercised without prior notice unless one of the parties objects to either extension in writing no less than sixty (60) days prior to the expiration of the then current term, in which event this Lease shall terminate at the expiration of the then current term.

2.3 Early Termination by Town. If Town in its sole discretion determines that it requires the Premises for any public purpose, Town may terminate this Lease upon one hundred eighty (180) days written notice. In the event of an emergency, Town may terminate this Lease upon five (5) days written notice. "Emergency," for the purposes of this paragraph, is defined as when the Town Council declares a State of Emergency. Upon termination of this Lease in the event of an emergency, Town and Lessee will work cooperatively to develop a written plan for transition of services and vacation of Premises by Lessee.

2.4 Early Termination by the Parties. Either Party may choose to terminate this Lease upon one hundred eighty (180) days written notice to the other Party.

3. RENT.

3.1 Base Rent. The rent to be paid by Lessee shall be calculated via multiplication of approximate size of Premises, twelve thousand (12,000) square feet, by a percentage of the fair market rent for the Premises (the "FMR"). The initial FMR shall be two dollars and fifty cents (\$2.50) per square foot. The initial rent to be paid by Lessee shall be seven thousand five hundred dollars (\$7,500) per month without reduction or offset (except as otherwise provided in this Lease), calculated using twenty-five percent (25%) of FMR. The FMR shall be updated no less than once every five (5) years using an appraisal methodology satisfactory to the Parties. In addition, the FMR shall be adjusted annually based on the State of California Department of Industrial Relations, Division of Labor Statistics and Research's Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, California. The index for the quarter ending just prior to this lease date is established as the base index. Percentage and adjustments to the original lease payments shall be as indicated by percentage changes in said index.

3.2 Annual Increase. During the Term of this Lease, including the Option Periods if the options are exercised, the Base Rent shall be increased effective on each anniversary of the Delivery Date as follows: Commencing on the first anniversary of the Delivery Date, the Base Rent shall increase then and on each anniversary of the Delivery Date thereafter by five (5) percent of the FMR until the fourth anniversary of the Delivery Date when the Base Rent shall have increased to forty-five (45) percent of the FMR.

3.3 Payment Date/Late Charge. Rent shall be payable in accordance with the procedures set forth in Section 3.4 on the first day of each and every month commencing on the Delivery Date. Lessee acknowledges late payment of rent will cause Town to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and

impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on Town. Therefore, if Town does not receive any installment of rent due from Lessee within ten (10) days after the date such rent is due, Lessee shall pay to Town an additional sum of five percent (5%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs Town will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent Town from exercising any of the other rights and remedies available to Town.

3.4 Rent Payment Procedures. Lessee's obligation to pay rent shall commence upon the Delivery Date of this Lease. If the Delivery Date occurs on a date other than the first of any month, monthly rent for the first and last month of this Lease shall be prorated based on a 30-day month. Rent payments shall be delivered to Town Finance Department, 110 E. Main Street, P.O. Box 655, Los Gatos, CA 95030. The designated place of payment may be changed at any time by Town upon ten (10) days' written notice to Lessee. Lessee specifically agrees that acceptance of any late or incorrect rentals submitted by Lessee shall not constitute an acquiescence or waiver by Town and shall not prevent Town from enforcing Section 3.3 (Late Charge) or any other remedy provided in this Lease. Acceptance of rent shall not constitute approval of any unauthorized sublease or use, nor constitute a waiver of any non-monetary breach. Payments shall be effective upon receipt. Town may apply any payment received from Lessee at any time against any obligation due and owing by Lessee under this Lease, regardless of any statement appearing on or referred to in any remittance from Lessee or any prior application of such payments.

3.5 Partial Payment. The receipt by Town of a partial payment of any amount due to Town endorsed as payment in full will be deemed to be a partial payment only. Town may accept and deposit said check without prejudice to its right to recover the balance. Any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and/or satisfaction. Lessee's obligation (without prior notice or demands) to pay rent and all other amounts due hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment or reduction.

4. **USE OF PREMISES.**

4.1 Required Uses. Throughout the term of this Lease, Lessee shall provide the following uses, services and activities ("Required Uses"):

4.1.1 Services for senior citizens as listed in Exhibit F attached hereto.

4.1.2 Uses consistent with Lessee's business purposes.

4.1.3 Until December 31, 2013, Sublease one thousand two hundred and sixty-two (1,262) square feet of office space, including Room Nos. 203, 204, 205, 208, 211 and 212, to Town, rent to be determined as follows: The rent to be paid by Town (the "Sublease Rent") shall be calculated via multiplication of approximate size of the

subleased property, one thousand two hundred and sixty-two (1,262) square feet, by a percentage of the fair market rent for the subleased property (the "SUBFMR"). The initial SUBFMR shall be two dollars and fifty cents (\$2.50) per square foot. The initial rent to be paid by Town shall be seven hundred eighty-nine dollars (\$789) per month without reduction or offset, calculated using twenty-five percent (25%) of FMR. The SUBFMR shall be updated no less than once every five (5) years using an appraisal methodology satisfactory to the Parties. In addition, the SUBFMR shall be adjusted annually based on the State of California Department of Industrial Relations, Division of Labor Statistics and Research's Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, California. The index for the quarter ending just prior to this lease date is established as the base index. Percentage and adjustments to the original lease payments shall be as indicated by percentage changes in said index. During the Term of this Lease, including the Option Periods if the options are exercised, the Sublease Rent shall be increased effective on each anniversary of the Delivery Date as follows: Commencing on the first anniversary of the Delivery Date, the Sublease Rent shall increase then and on each anniversary of the Delivery Date thereafter by five (5) percent of the SUBFMR until the fourth anniversary of the Delivery Date when the Base Rent shall have increased to forty-five (45) percent of the SUBFMR.

4.1.4 Rent meeting rooms for public use consistent with current Los Gatos Neighborhood Center Policies and Practices, Exhibit D attached hereto and incorporated herein by reference. Lessee shall adopt Town's current fee schedule for public use of the Neighborhood Center, Exhibit E attached hereto and incorporated herein by reference, which may be evaluated and modified by Lessee after the first anniversary date of the Delivery Date.

4.1.5 Rent meeting rooms to the Alcoholics Anonymous and Narcotics Anonymous organizations for fifteen hundred (1,500) hours per year at the rate charged those organizations for the rentals of the same meeting rooms as of the Delivery Date until December 31, 2013, after which (commencing on January 1, 2014), the number of hours per year may be reduced to one thousand (1,000) hours per year. Lessee may limit the availability of rooms for this use Monday through Friday, excluding holidays, during the hours of 8 a.m. to 5 p.m. The rate charged for both organizations for rentals of meeting rooms may be adjusted by Lessee on or after January 1, 2011.

4.1.6 Until December 31, 2013, based on availability as determined in Lessee's sole judgment, allow Town free use of meeting rooms for Town business for no more than seven hundred (700) hours per year, which amount shall be no more than five hundred (500) hours per year commencing on January 1, 2014. Town shall also have free use of the large hall/meeting room on the north end of the first floor of the Premises for training purposes, based on availability as determined in Lessee's sole judgment, and as needed in the event of an emergency. In all cases and at all times Town use of the facility, except in the event of an emergency as defined in this paragraph, shall be subordinate to Lessee's use consistent with Lessee's business

purposes. "Emergency," for the purposes of this paragraph, is defined as when the Town Council declares a State of Emergency. Town shall remove all EOC equipment from the large hall/meeting room by no later than June 30, 2010.

4.1.7 An annual report to the Town Council on the status of Lessee's operations as related to this Lease.

4.2 Prohibited Uses. Lessee shall not use Premises for any purpose not expressly permitted hereunder. Lessee shall not create, cause, maintain or permit any nuisance or waste in, on, or about the Premises, or permit or allow the Premises to be used for any unlawful or immoral purpose. Lessee shall not do or permit to be done anything in any manner which unreasonably disturbs the occupants of neighboring property. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odor, noise, vibration, power emission, or other item to emanate from the Premises. No materials or articles of any nature shall be stored outside upon any portion of the Premises. Lessee will not use Premises in a manner that increases the risk of fire, cost of fire insurance or improvements thereon. No unreasonable sign or placard shall be painted, inscribed or placed in or on said Premises; and no tree or shrub thereon shall be destroyed or removed or other waste committed of said Premises. No bicycles, motorcycles, automobiles or other mechanical means of transportation shall be placed or stored anywhere on the Premises except for the garage or driveway. No repair, overhaul or modification of any motor vehicle shall take place on the Premises or the street in front of said Premises.

4.3 Condition, Use of Premises. Except as otherwise expressly stated in this Lease, Town makes no warranty or representation of any kind concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties that Lessee has personally inspected the Premises, knows its condition, finds it fit for Lessee's intended use, accepts it as is, and has ascertained that it can be used exclusively for the limited purposes specified in Section 5.1.

5. HAZARDOUS MATERIALS.

5.1 Hazardous Materials Defined. The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) CERCLA or Superfund as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and

amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) Proposition 65, Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials, and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including without limitation: (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (ii) any petroleum products or fractions thereof; (iii) asbestos, (iv) polychlorinated biphenyls; (v) flammable explosives; (vi) urea formaldehyde; and, (vii) radioactive materials and waste.

5.2. Compliance with Laws. Lessee shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Premises or Project by Lessee, its agents, employees, contractors or invitees; provided, that the foregoing shall not apply to, and Lessee shall be entitled to keep on the Premises, normal office products such as copier toner and limited quantities of office cleaning supplies and materials.

5.3 Termination of Lease. Town shall have the right to terminate the Lease in Town's sole and absolute discretion in the event that: (i) any anticipated use of the Premises by Lessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority, or Hazardous Materials Laws; (ii) Lessee has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Premises, if the contamination resulted from Lessee's action or use of the Premises; or (iii) Lessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on the Premises.

5.4 Assignment and Subletting. It shall not be unreasonable for Town to withhold its consent to an assignment or subletting to a proposed assignee or sublessee if: (i) any anticipated use of the Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for any purpose; (ii) the proposed assignee or sublessee has been required by any prior landlord, lender, or governmental authority to take remedial action in connection with

Hazardous Material contaminating a property, if the contamination resulted from such party's action or use of the property in question; or, (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material.

5.5 Hazardous Materials Indemnity. Each Party (an "Indemnifying Party) shall indemnify, defend (by counsel reasonably acceptable to the Indemnified Party), protect, and hold the other Party (an "Indemnified Party) harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including without limitation, diminution in value of the Premises, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact or marketing of the Premises and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person, or damage to any property whatsoever (including, without limitation, groundwater, sewer systems, and atmosphere), arising from, caused, or resulting, either prior to or during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under, or about the Premises by the Indemnifying Party, its agents, employees, licensees, or invitees or at the Indemnifying Party's direction, of Hazardous Material, or by the Indemnifying Party's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. For purposes of the indemnity provided herein, any acts or omissions of an Indemnifying Party or its employees, agents, customers, sublessees (other than the Town in the case where Tenant is the Indemnifying Party), assignees, contractors, or subcontractors (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to the Indemnifying Party. Each Party's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term.

5.6 Town's Right to Perform Tests. At any time prior to the expiration of the Lease Term, Town shall have the right to enter upon the Premises in order to conduct tests of water and soil. Before exercising such right, Town shall give Lessee not less than three (3) days prior notice. Town agrees to exercise such right in a manner which is reasonably calculated to cause as little disturbance as possible to Lessee and other occupants and users of the Premises.

6. UTILITIES AND OPERATING EXPENSES.

Lessee at Lessee's sole expense shall fully and promptly pay for all expenses associated with the operation of the Premises, including but not limited to the furnishing of gas, water, sewer, electricity, telephone service, garbage pickup and disposal, other public utilities and custodial service. During the term of the subletting of space to Town as provided in Section 5.1.3, Town agrees to reimburse Lessee, within ten (10) days of written demand, a portion of the cost of the foregoing expenses, such

portion to be equal to the amount of such expenses multiplied by the percentage that the square footage of the space subleased by Town bears to the total square footage of the Premises. Town, at its sole expense, shall maintain all exterior landscaping in a good and attractive condition.

7. **TAXES.**

7.1 Real Property Taxes Defined. The term “real property taxes” as used herein shall mean all taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to: (i) value, occupancy, use or possession of the Premises and/or the Improvements; (ii) any improvements, fixtures, equipment and other real or personal property of Lessee that are an integral part of the Premises; or, (iii) use of the Premises, Improvements public utilities or energy within the Premises. The term “real property taxes” shall also mean all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the premises and/or the Improvements, new or altered excise, transaction, sales, privilege, assessment, or other taxes or charges now or hereafter imposed upon Town as a result of this Lease, and all costs and fees (including attorneys’ fees) incurred by Town in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the Premises (but not to exceed an amount equal to the amount by which such contest or negotiation results in a reduction in real property taxes affecting the Premises). If any real property taxes are based upon property or rents unrelated to the Premises and/or the Improvements, then only that part of such tax that is fairly allocable to the Premises and/or the Improvements, as determined by Town, on the basis of the assessor’s worksheets or other available information, shall be included within the meaning of the term “real property taxes.”

7.2 Payment of Real Property Taxes. Lessee shall pay Lessee’s share of all real property taxes (as defined in Section 8.1 above) which become due and payable to Town on or before the later of ten (10) days prior to the delinquency thereof or ten (10) days after the date on which Lessee receives a copy of the tax bill and notice of Town’s determination hereunder. Lessee’s liability to pay real property taxes shall be prorated on the basis of a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the Lease term at the commencement or expiration of the Lease.

7.3 Revenue and Taxation Code. Lessee specifically acknowledges it is familiar with section 107.6 of the California Revenue and Taxation Code. Lessee realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code section 107.6.

7.4 Personal Property Taxes. Except for real property taxes (the payment of which is governed by Section 8.2), Lessee shall pay before delinquent, or if requested by Town, reimburse Town for, any and all taxes, fees, and assessments associated with the Premises, the personal property contained in the premises and other taxes, fees, and assessments

regarding any activities which take place at the Premises.

8. **MAINTENANCE.**

8.1 Town and Lessee Responsibilities. Lessee at Lessee's expense, shall perform all interior maintenance and repairs, including all painting, necessary to keep the Premises in first-class order, repair, and condition, and shall keep the Premises in a safe, clean, wholesome, and sanitary condition in compliance with all applicable laws, throughout the term of this Lease; provided, that in complying with such laws, Lessee shall not be required to make structural repairs or replacements or repairs or replacements to building systems (e.g., plumbing, electrical, water, sewer, etc.) unless the need for such repairs or replacements is due to the negligence or willful misconduct of Lessee. In addition, Lessee shall maintain, at Lessee's expense, all equipment, furnishings and trade fixtures upon the Premises required for the maintenance and operation of first-class public services of the type to be conducted pursuant to this Lease. Town, at its expense, shall be responsible for the maintenance and repair of all structural portions of the Premises and main support systems, including, without limitation, roof, exterior wall and foundation repair, electrical system repair, HVAC, plumbing, fire sprinklers, exterior painting and all other structural repairs. Town, at its expense, shall maintain and repair the structure and the main support systems in a timely manner to enable continued operation of the facility with a minimum if any service interruption. Any event that interrupts the use by Lessee according to this Lease for a time greater than seventy-two (72) hours will result in a credit to Lessee on future rent payments based on a pro-rata allocation of the rent for that period for square footage of the space deemed unusable for Lessee business purposes.

8.2 Waiver of Civil Code. Lessee expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of sections 1941 and 1942 of the Civil Code of California, which would otherwise afford Lessee the right to make repairs at Town's expense. Lessee further agrees that if and when any repairs shall be made by Lessee as required by Section 8.1, Lessee shall promptly pay for all labor done or materials furnished and shall keep the Premises free and clear of any lien or encumbrance of any kind whatsoever; provided, that Lessee may contest and such lien by appropriate proceedings and in a manner which stays the enforcement of such lien . If Lessee fails to make any repairs or perform any maintenance work for which Lessee is responsible within a reasonable time (as determined by the Town Manager in the Town Manager's sole discretion) after demand by the Town, Town shall have the right, but not the obligation, to make the repairs at Lessee's expense; within ten (10) days of receipt of a bill, Lessee shall reimburse Town for the cost of such repairs, including a fifteen percent (15%) administrative overhead fee. The making of such repairs or performance of maintenance by Town shall in no event be construed as a waiver of the duty of Lessee to make repairs or perform maintenance as provided in this Section.

8.3 Maintenance of Common Areas. Town, at its expense, shall maintain or cause to be maintained, including repair and replacement as necessary, the parking lot adjacent to the Premises.

9. **TENANT IMPROVEMENTS.**

9.1 Improvements Permitted. Subject to prior written approval of the Town Manager, which shall not be unreasonably withheld, Lessee be entitled to install improvements in an efficient and workmanlike manner within the Premises, at no cost to Town.

9.2 Cost of Improvements. All improvements shall be made at Lessee's sole expense, but shall be subject to reimbursement by Town should Town exercise its right of early termination. The total cost of all approved improvements made by Lessee shall be determined by agreement of the Parties, and shall be amortized on a straight line basis from the date the improvement is completed to the end of the original term of the Lease. In the event of early termination, Lessee shall be entitled to be reimbursed the remaining value of all approved tenant improvements based on the number of years remaining in the original term of the Lease.

9.3 Ownership of Improvements. All improvements constructed, erected, or installed upon the Premises must be free and clear of all liens, claims, or liability for labor or material and shall become the property of Town, at its election, upon expiration or earlier termination of this lease and upon Town's election, shall remain upon the Premises upon termination of this Lease. Title to all equipment, furniture, furnishings, and trade fixtures placed by Lessee upon the Premises shall remain in Lessee, and replacements, substitutions and modifications thereof may be made by Lessee throughout the term of this Lease. Lessee may remove such fixtures and furnishings at any time during the term of this Lease and upon termination of this Lease if Lessee is not then in default under this Lease, provided that Lessee shall repair to the satisfaction of Town any damage to the Premises and improvements caused by such removal and provided that usual and customary lighting, plumbing and heating fixtures shall remain upon the Premises upon termination of this Lease.

9.4 Indemnity for Claims Arising Out of Construction. Lessee shall defend and indemnify Town against all claims, liabilities, and losses of any type arising out of work performed on the Premises by Lessee, together with reasonable attorneys' fees and all costs and expenses reasonably incurred by Town in negotiating, settling, defending or otherwise protecting against such claims.

9.5 Certificate of Inspection. Upon completion of construction of any building, Lessee shall submit to the Town Manager a Certificate of Inspection, verifying that the construction was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction.

9.6 As Built Plans. Lessee shall provide the Town Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the Premises upon completion of any: (i) new construction; (ii) structural alterations; or, (iii) non-structural alterations costing more than \$25,000.

10. HOLD HARMLESS/INDEMNIFICATION.

10.1 Indemnification. To the extent permitted by law, each Party (an “Indemnifying Party”) agrees to protect, defend, hold harmless and indemnify the other Party, its elected and appointed officials, commissions, officers, agents, volunteers, and employees (the “Indemnified Parties”) from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom for which the Indemnified Parties shall become legally liable arising from the Indemnifying Party’s negligent, reckless, or wrongful acts, errors, or omissions with respect to or in any way connected with this Lease. A Party claiming indemnity shall give the other Party immediate notice of any claim or liability hereby indemnified against. This indemnity shall be in addition to the Hazardous Materials indemnity contained in this Lease and shall survive shall survive the expiration of or early termination of the Lease Term.

10.2 Waiver of Claims. Each Party (a “Waiving Party”) waives any claims against the other Party for injury to the Waiving Party’s business or any loss of income therefrom, for damage to the Waiving Party’s property, or for injury or death of any person in or about the Premises or the Town Property, from any cause whatsoever, except to the extent caused by the Waiving Party’s negligence or willful misconduct.

11. DAMAGE, DESTRUCTION AND TERMINATION.

11.1 Restoration of Premises by Lessee.

11.1.1 Destruction Due to Risk Covered by Insurance. If, during the term, the Premises are totally or partially destroyed from a risk covered by the insurance described in Section 18 (Insurance), rendering the Premises totally or partially inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as it was in immediately before destruction, to the extent possible based on the insurance proceeds received by Lessee, it being agreed that Lessee shall not be obligated to expend more than the amount of the insurance proceeds received in restoring the Premises. All applicable insurance proceeds must be directed toward this purpose. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

A. Minor Loss. If, during the term of this Lease, the Premises are destroyed from a risk covered by the insurance described in Section 18 (Insurance), and the total amount of loss does not exceed twenty thousand dollars (\$20,000), Lessee shall make the loss adjustment with the insurance company insuring the loss. The proceeds shall be paid directly to Lessee for the sole purpose of making the restoration of the Premises in accordance with this Lease.

B. Major Loss - Insurance Trustee. If, during the term of this Lease, the

Premises are destroyed from a risk covered by the insurance described in Section 18 (Insurance), and the total amount of loss exceeds the amount set forth in paragraph (A), Lessee shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to an institutional lender or title company as may be jointly selected by the parties (“the Insurance Trustee”).

11.1.2 Destruction Due to Risk Not Covered by Insurance. If, during the term, the Premises are totally or partially destroyed from a risk not covered by the insurance described in Section 18 (Insurance), rendering the Premises totally or partially inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as it was in immediately before destruction, to the extent possible based on the insurance proceeds received by Lessee. All applicable insurance proceeds must be directed toward this purpose whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

If the cost of restoration exceeds ten percent (10%) of the then replacement value of the Premises totally or partially destroyed, Lessee can elect to terminate this Lease by giving notice to Town within sixty (60) days after determining the restoration cost and replacement value. If Lessee elects to terminate this Lease, Town, within thirty (30) days after receiving Lessee’s notice to terminate, can elect to pay to Lessee, at the time Town notifies Lessee of its election, the difference between ten percent (10%) of the replacement value of the Premises and the actual cost of restoration, in which case Lessee shall restore the Premises. On Town's making its election to contribute, each party shall deposit immediately the amount of its contribution with such institutional lender or title company as may be jointly selected by the parties (“the Insurance Trustee”). If the Destruction does not exceed ten percent (10%) of the then replacement value of the Premises, Lessee shall immediately deposit the cost of restoration with the Insurance Trustee as provided in Exhibit (c). This Lease shall terminate if Lessee elects to terminate this Lease and Town does not elect to contribute toward the cost of restoration as provided in this section.

If the Premises are destroyed from a risk not covered by the insurance described in Section 18 (Insurance), and Lessee has the obligation to restore the Premises as provided in this section, both parties shall deposit with the Insurance Trustee their respective contributions toward the cost of restoration. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

The sums shall be paid in installments by the Insurance Trustee to the contractor retained by Lessee as construction progresses, for payment of the cost of Restoration. A 10% retention fund shall be established that will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien

periods, and proof that the Premises are free of all mechanics' liens and lienable claims.

Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Lessee showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Lessee, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the insurance trustee out of the trust fund. Both parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this section.

Any undisbursed funds after compliance with the provisions of this section shall be delivered to Town to the extent of Town's contribution to the fund, and the balance, if any, shall be paid to Lessee. All actual costs and charges of the Insurance Trustee shall be paid by Lessee.

If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, Town shall substitute a new trustee in the place of the designated Insurance Trustee. The new trustee must be an institutional lender or title company.

11.1.3 Procedure for Restoring Premises. When Lessee is obligated to restore the Premises within sixty (60) days Lessee at its cost shall prepare final plans, specifications, and working drawings complying with applicable Laws that will be necessary for restoration of the Premises. The plans, specifications, and working drawings must be approved by Town, which approval will not be unreasonably withheld. Town shall have thirty (30) days after receipt of the plans and specifications and working drawings to either approve or disapprove the plans, specifications, and working drawings and return them to Lessee. If Town disapproves the plans, specifications, and working drawings, Town shall notify Lessee of its objections and Town's proposed solution to each objection. Lessee acknowledges that the plans, specifications, and working drawings shall be subject to approval of the appropriate governmental bodies and that they will be prepared in such a manner as to obtain that approval.

The restoration shall be accomplished as follows:

A. Lessee shall complete the restoration within a reasonable time after final plans and specifications and working drawings have been approved by the appropriate governmental bodies, all required permits have been obtained (subject to a reasonable extension for delays resulting from causes beyond Lessee's reasonable control), and Lessee has received all insurance proceeds

payable as a result of the damage or destruction.

B. Lessee shall retain a licensed contractor that is bondable. The contractor shall be required to carry public liability and property damage insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction in accordance with Section 20 (Insurance). Such insurance shall contain waiver of subrogation clauses in favor of Town and Lessee in accordance with the Provisions of Exhibit B.

C. Lessee shall notify Town of the date of commencement of the restoration at least ten (10) days before commencement of the restoration to enable Town to post and record notices of nonresponsibility. The contractor retained by Lessee shall not commence construction until a completion bond and a labor and materials bond have been delivered to Town to insure completion of the construction.

D. Lessee shall accomplish the restoration in a manner that will cause the least inconvenience, annoyance, and disruption at the Premises.

E. On completion of the restoration Lessee shall immediately record a notice of completion in the county in which the Premises are located.

F. The restoration shall not be commenced until sums sufficient to cover the cost of restoration are placed with the Insurance Trustee as provided in this section.

11.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, Acts of God, inability to obtain labor, inability to obtain materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Lessee (financial inability excepted), shall excuse the performance by Lessee for a period equal to the prevention, delay, or stoppage, except the obligations imposed with regard to rent to be paid by Lessee pursuant to this Lease. In the event any work performed by Lessee or Lessee's contractors results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Lessee of the provisions of this Lease.

12. **SIGNS AND MARKETING.**

12.1 Lessee shall not place, construct, maintain, or allow any signs upon the exterior of the Premises without prior written consent of the Town Manager, which consent will not be unreasonably withheld. Lessee shall include the Town logo on all signs and items marketing programs operated, conducted, sponsored, in whole or in part, by Lessee on the Premises.

12.2 Town shall include references to Lessee on signs and marketing programs prepared by or for Town in association with Lessee's operations on the Premises.

12.3 Town shall retain the right to rename the Premises, which, as of the Delivery Date, is named the "Los Gatos Senior and Adult Recreation Center."

12.4 During the term of this Lease, including any Option Periods, Town shall have a non voting seat on Lessee's governing board.

13. ASSIGNMENT AND SUBLETTING.

13.1 Town's Consent Required. Except as permitted or required by this Lease, Lessee shall not assign this Lease, nor any interest therein, and shall not sublet or encumber the Premises or any part thereof, nor any right or privilege appurtenant thereto, nor allow or permit any other person(s) to occupy or use the Premises, or any portion thereof, without the prior written consent of Town, which consent will not be unreasonably withheld. This Lease shall be binding upon any permitted assignee or successor of Lessee. Consent by Town to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. No assignment, subletting, or encumbrance by Lessee shall release it from or in any way alter any of Lessee's obligations under this Lease. Lessee may have the Premises delivered to a subsidiary company of Lessee, but such arrangement shall in no way alter Lessee's responsibilities hereunder with respect to the Premises. Any assignment, subletting, encumbrances, occupation, or use contrary to the provisions of this Lease shall be void and shall constitute breach of this Lease. Town may assign any of its rights hereunder without notice to Lessee, but Town shall not be released from any of its duties or obligations hereunder unless and until the assignee expressly assumes such duties and obligations for the benefit of Lessee.

13.2 No Release of Lessee. No subletting or assignment as approved by Town shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations by Lessee hereunder. The acceptance of rent by Town from any other person shall not be deemed to be a waiver by Town of any provision hereof. In the event of default by any assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, Town may proceed directly against Lessee without the necessity of exhausting remedies against said assignee.

14. DEFAULTS; REMEDIES.

14.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default, or breach of this Lease, by Lessee:

14.1.1 Abandonment of the Premises by Lessee as defined by California Civil Code section 1951.3;

14.1.2 Failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as provided in this Lease, where such failure shall continue for a period of ten (10) business days after written notice thereof from Town to Lessee. In the event Town serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall be in addition to the notice required by this subparagraph;

14.1.3 Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect where such failure shall continue for a period of thirty (30) days after written notice thereof from Town to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

14.1.4 Making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

14.2 Remedies. In the event of any material default or breach by Lessee, Town may at any time thereafter, following any notice required by statute, and without limiting Town in the exercise of any right or remedy which Town may have by reason of such default or breach:

14.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises and Improvements to Town. In such event, Town shall be entitled to recover from Lessee all damages incurred by Town by reason of Lessee's default including but not limited to: the cost of recovering possession of the Premises and Improvements; expenses of reletting, including necessary renovation and alteration of the Premises and Improvements; reasonable attorneys' fees; the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease and the worth at the time of award of the amount by which the unpaid rent for the period of one hundred eighty (180) days after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

14.2.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event,

Town shall be entitled to enforce all of Town's rights and remedies under this Lease, including the right to recover rent and other payments as they become due hereunder.

14.2.3 Pursue any other remedy now or hereafter available to Town under the laws or judicial decisions of the State of California. Town shall have all remedies provided by law and equity.

14.3 No Relief from Forfeiture After Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present or future law, in the event Lessee is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by Lessee.

14.4 Disposition of Abandoned Personal Property. If the Lessee fails to remove any personal property belonging to Lessee from the Premises after forty-five (45) days of the expiration or termination of this Lease, such property shall at the option of Town be deemed to have been transferred to Town. Town shall have the right to remove and to dispose of such property without liability to Lessee or to any person claiming under Lessee, and the Town shall have no need to account for such property.

15. INTEREST ON PAST-DUE OBLIGATIONS.

Except as expressly provided herein, any amount due Town when not paid when due shall bear interest at the lesser of ten percent (10%) per year or the maximum rate then allowable by law from the date due.

16. HOLDING OVER.

If Lessee remains in possession of the Premises or any part thereof after the expiration of the term or option term hereof, such occupancy shall be a tenancy from month to month with all the obligations of this Lease applicable to Lessee and at a monthly rental obligation of the Rent in effect at the time of expiration. Nothing contained in this Lease shall give to Lessee the right to occupy the Premises after the expiration of the term, or upon an earlier termination for breach.

17. TOWN'S ACCESS.

17.1 Access for Inspection. Town and Town's agents shall have the right to enter the Premises at reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee, for the purpose of inspecting same, showing same to prospective purchasers, lenders or lessees, and making such alterations, repairs, improvements, or additions to the Premises as Town may deem necessary.

17.2 Security Measures. Town shall have the right to require a reasonable security system, device, operation, or plan be installed and implemented to protect the Premises or the Improvements. Should Town, in its sole discretion, require Lessee to install such a security system, Lessee agrees to bear the sole cost and expense of any security system, device,

operation or plan and the installation and implementation thereof. Lessee shall obtain Town's prior approval before installing, implementing or changing any Town approved security system, device, operation or plan.

17.3 New Locks. Lessee may install new locks on all exterior doors. Lessee shall advise Town of such action and shall provide Town with keys to said locks. Lessee shall also deliver to Town the old locks with keys. Upon termination, Lessee shall leave new locks that shall become the property of Town.

18. INSURANCE

Lessee's responsibility for the Premises begins immediately upon delivery and Lessee, at its sole cost and expense, and at no cost to Town, shall purchase and maintain in full force and effect during the entire term of this Lease insurance coverage in amounts and in a form acceptable to Town as set forth in Exhibit C attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Lessee's employees, if any, and all vehicles operated on the Premises. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit C. Lessee also agrees to secure renter's liability insurance or its equivalent.

Lessee shall deposit with the Town Manager, on or before the effective date of this Lease, certificates of insurance necessary to satisfy Town that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefore on deposit with Town during the entire term of this Lease. Should Lessee not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, Town may purchase such insurance, on behalf of and at the expense of Lessee to provide six months of coverage.

Town shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the Town's Risk Manager (or comparable official), the insurance provisions in this Lease do not provide adequate protection for Town and for members of the public using the Premises, the Town Manager may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the Risk Manager. Town's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk that exists at the time a change in insurance is required.

The Town Manager shall notify Lessee in writing of changes in the insurance requirements. If Lessee does not deposit copies of acceptable insurance policies with Town incorporating such changes within sixty (60) days of receipt of such notice, or in the event Lessee fails to maintain in effect any required insurance coverage, Lessee shall be in default under this lease without further notice to Lessee. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Lease at the option of Town.

The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provision and requirements of this

Lease. Notwithstanding the policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Lease or with use or occupancy of the Premises.

19. **EMINENT DOMAIN.**

19.1 If all or any part of the Premises (or the building in which the Premises are located) is condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the Premises by the condemning public entity.

19.2 If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used by Lessee for the purposes required by this Lease, Lessee shall continue to be bound by the terms, covenants, and conditions of this Lease. However, the then monthly rent shall be reduced in proportion to the diminution in value of the Premises. If the condemnation of a part of the Premises substantially impairs the capacity of the remainder to be used by Lessee for the purposes required by this Lease, Lessee may:

A. Terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or

B. Continue to occupy the remaining Premises and thereby continue to be bound by the terms, covenants and conditions of this Lease. If Lessee elects to continue in possession of the remainder of the Premises, the monthly rent shall be reduced in proportion to the diminution in value of the Premises.

C. Lessee shall provide Town with written notice advising Town of Lessee's choice within thirty (30) days of possession of the part condemned by the condemning public entity.

19.3 Town shall be entitled to and shall receive all compensation related to the condemnation, except that Lessee shall be entitled to: (a) that portion of the compensation which represents the value for the remainder of the Lease term of any Lessee-constructed improvements taken by the condemning public entity, which amount shall not exceed the actual cost of such improvements reduced in proportion to the relationship of the date improvements were completed to the end of the then current Lease term, using a straight line approach; and (b) any amount specifically designated as a moving allowance or as compensation for Lessee's personal property. Lessee shall have no claim against Landlord for the value of any unexpired term of this Lease.

20. DISPUTE RESOLUTION.

20.1 Unless otherwise mutually agreed to, any controversies between Lessee and Town regarding the construction or application of this Lease, and claims arising out of this Lease or its breach shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

20.2 The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Lease.

20.3 The costs of mediation shall be borne by the Parties equally.

20.4 Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation arising out of any dispute related to this Lease, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

21. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE TOWN.

No official or employee of Town or Lessee shall be personally liable for any default or liability under this Lease.

22. NON-DISCRIMINATION

22.1 Non-discrimination in Lease Activities. Lessee agrees that in the performance of this Lease and in connection with all of the activities Lessee conducts on the Premises, it shall not discriminate against any employee or person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Lessee acknowledges that is familiar with the provisions set forth in Section 2.30.510 of the Los Gatos Municipal Code relating to nondiscrimination in employment and Section 9.73 of the Los Gatos Municipal Code relating to Town policy against arbitrary discrimination.

22.2 Human Rights Policy. In connection with all activities that are conducted upon the Premises, Lessee agrees to accept and enforce the statements of policy set forth in Section 9.73.010 which provides: "It is the policy of the Town of Los Gatos to affirm, support and protect the human rights of every person within its jurisdiction. These rights include, but are not limited to, equal economic, political, and educational opportunity; equal accommodations in all business establishments in the Town; and equal service and protection by all public agencies of the Town."

23. INDEPENDENT CONTRACTOR.

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of Town.

24. CONFLICT OF INTEREST.

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement. Lessee warrants and covenants that no official or employee of Town nor any business entity in which any official or employee of Town is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to Town. In the event that Town determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of Town, Lessee upon request of Town shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Lease and Town may terminate this Lease as a result of such violation.

25. MEMORANDUM OF LEASE.

Following execution of this Lease, either party, at its sole expense, shall be entitled to record a Memorandum of Lease in the official records of Santa Clara County. Upon termination or expiration of this Lease, Lessee shall execute and record a quitclaim deed as to its leasehold interest.

26. ESTOPPEL CERTIFICATE.

Each Party shall, from time to time, upon at least thirty (30) days prior written notice from the other Party, execute, acknowledge and deliver to the requesting Party a statement in writing: (i) certifying this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (ii) acknowledging that there are not to the responding Party's knowledge, any defaults, or stating if any defaults are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of the Town Property or any prospective assignee or sublessee.

27. LIENS.

Lessee agrees at its sole cost and expense to keep the Premises free and clear of any and all claims, levies, liens, encumbrances or attachments; provided, that Lessee may contest and such claim, levy, lien, encumbrance or attachment by appropriate proceedings and in a manner which stays the enforcement of the same.

28. VACATING.

Upon termination of the tenancy, Lessee shall completely vacate the Premises, including the removal of any and all of its property. Before departure, Lessee shall return keys and personal property listed

on the inventory to Town in good, clean and sanitary condition, reasonable wear and tear excepted. Lessee shall allow Town to inspect the Premises to verify the condition of the Premises and its contents.

29. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to Town addressed as follows:

Town of Los Gatos
Attention: Town Manager
110 E. Main Street
Los Gatos, CA 95030

And to Lessee addressed as follows:

Los Gatos-Saratoga Community Education and Recreation
Attention: Executive Director
123 E. Main Street
Los Gatos, CA 95030

Notices may be served upon either Party in person, by first class mail, or by certified mail whether or not said mailing is accepted. If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday. These addresses shall be used for service of process.

30. TIME.

Time shall be of the essence in this Lease.

31. AMENDMENTS.

It is mutually agreed that no oral Leases have been entered into and that no alteration or variation of the terms of this Lease shall be valid unless made in writing and signed by the Parties to this Lease.

32. SIGNING AUTHORITY.

If this Lease is not signed by all Lessees named herein, the person actually signing warrants that he/she has the authority to sign for the others.

33. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Lease are for convenience

only and shall not be considered or referred to in resolving questions of interpretation.

34. SURRENDER OF LEASE NOT MERGER.

The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Town, terminate all or any existing subleases or subtenancies, or may, at the option of Town, operate as an assignment of any and all such subleases or subtenancies.

35. INTEGRATED DOCUMENT.

This Lease, including any exhibits attached hereto, embodies the entire agreement between Town and Lessee. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of Town prior to execution of this Lease shall affect or modify any of the terms or obligations contained in any documents comprising this Lease. Any such verbal agreement shall be considered as unofficial information and in no way binding upon Town. All agreements with Town are subject to approval of the Town Council before Town shall be bound thereby.

36. WAIVER.

Waiver by Town of one or more conditions of performance or any breach of a condition under this Lease shall not be construed as a waiver of any other condition of performance or subsequent breaches. The subsequent acceptance by a Party of the performance of any obligation or duty by another Party shall not be deemed to be a waiver of any term or condition of this Lease. The exercise of any remedy, right, option or privilege hereunder by Town shall not preclude Town from exercising the same or any and all other remedies, rights, options and privileges hereunder and Town's failure to exercise any remedy, right, option or privilege at law or equity, or otherwise which Town may have, shall not be construed as a waiver.

37. INTERPRETATIONS.

In construing or interpreting this Lease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Lease shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.

38. SEVERABILITY CLAUSE.

If any provision of this Lease is held to be illegal, invalid or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Lease shall not be affected thereby.

39. GOVERNING LAW.

This Lease shall be governed and construed in accordance with the statutes and laws of the State of California.

40. VENUE.

In the event that suit shall be brought by any Party to this Lease, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara.

41. COMPLIANCE WITH LAWS.

The Parties hereto shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments in the performance of their rights, duties and obligations under this Lease.

42. BROKERS.

Each party represents that is has not had dealings with any real estate broker, finder, or other person, with respect to this lease in any manner. Each Party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.

43. ATTACHMENTS TO LEASE.

The following exhibits are attached to and made a part of this Agreement:

- “A” – Description of Subject Premises
- “B” – Inventory of Fixtures
- “C” – Standard Insurance Requirements
- “D” – Los Gatos Neighborhood Center Policies and Procedures
- “E” – Los Gatos Neighborhood Center Public Use Rental Fee Schedule
- “F” – Senior Services Scope of Work

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

TOWN:


Town of Los Gatos



Greg Larson, Town Manager


LESSEE:

Los Gatos-Saratoga Community Education
And Recreation



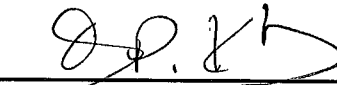
Steve Rauwolf, Executive Director

ATTEST:



Jackie Rose, Town Clerk Administrator

APPROVED AS TO FORM:



Orry P. Korb, Town Attorney

**LEASE AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION**

EXHIBIT A

DESCRIPTION OF SUBJECT PREMISES

A two-story office and public use building of approximately twelve thousand (12,000) square feet in total with rooms including the following: On the first floor, two (2) large meeting rooms; five (5) smaller meeting rooms/offices; one multi-user men's restroom and one multi-user women's restroom; a kitchen facility with a commercial refrigerator, range/oven, microwave oven, and steam tray; a reception office; and a reception area. On the second floor, eight (8) meeting rooms/offices, two (2) single user unisex rest rooms, and a large storage area.

**LEASE AGREEMENT
BY AND BETWEEN
TOWN OF LOS GATOS, CALIFORNIA
AND
LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION**

EXHIBIT B

INVENTORY OF FIXTURES

Following is a list of fixtures currently contained in the Facility, and their locations. Town and LGS Recreation agree that Town and LGS Recreation will agree cooperatively as to which of these fixtures may be used by LGS Recreation in its operation of the Facility, and which may be retained by Town for its use as sublessee. Town makes no warranty as to the condition of fixtures, and Town and LGS Recreation agree that Town will not replace any fixtures as they end their useful lives.

Quantity	Description	Quantity	Description
Lobby			
1	Wooden Bench	2	Wooden Arm Chair
1	Wooden Corner Table		
Senior Center/Room 1			
1	Typing table	1	Coffee maker
5	Arm chair	1	Keyboard tray
1	Corner table		
Room 2			
24	Stacking chair – blue	1	Folding card table
1	White board	4	6' table
Room 3			
19	Stacking chair	1	White board
4	6' table		
Lounge/Rooms 4 and 5			
1	Sofa – 3 person	1	Coffee table

Quantity	Description	Quantity	Description
3	Arm chair	57	Stacking chair
1	Corner table	2	Folding chess table
5	Folding card table	1	Big screen television
1	Small television	1	Sofa – 2 person
1	Partition door		
Room 6			
1	White board	8	Stacking chair – blue
2	Folding card table		
Large Hall/Rooms 11 and 12			
25	4' round table	12	8' rectangle table
13	4' rectangle table	95	Stacking chair
1	Podium	1	Large overhead screen
1	Piano	10	Faux trees
2	Piano bench	1	Partition door
Kitchen			
1	Garbage disposal	1	Oven/range
1	Dishwasher	1	Refrigerator
1	Freezer	1	Microwave
3	Steam tray	3	Steam tray lid
Room 206			
32	Stacking chair	7	Folding card table
Room 214			
26	Conference chair	2	¼ crescent table
1	Projector screen	12	Conference tables

Quantity	Description	Quantity	Description
1	Chalkboard		
Miscellaneous			
2	Microphone	1	Television/vcr on cart

**LEASE AGREEMENT
BY AND BETWEEN
TOWN OF LOS GATOS, CALIFORNIA
AND
LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION**

EXHIBIT C

STANDARD INSURANCE REQUIREMENTS

Insurance Requirements for Lessee:

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Lease at its sole cost and expense. Such policies shall be maintained for the full term of this Lease and the related warranty period (if applicable). For purposes of the insurance policies required under this Lease, the term "Town" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the Town of Los Gatos, California, individually or collectively.

Coverages (RL 28.1A) S

Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
- 4) Property insurance against all risks of loss to any tenant improvements or betterments

The policy or policies of insurance maintained by Lessee shall provide the following limits and coverages:

<u>POLICY</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Commercial General Liability	\$1,000,000 per each occurrence for bodily injury, personal injury and property damage
(2) Automobile Liability Including Owned, Hired and Non-Owned Automobiles	\$ 1,000,000 Combined Single Limit

(3) Workers' Compensation
Employers Liability

Statutory
\$1,000,000 per accident for bodily injury or
disease

(4) Lessee's Property Insurance

Lessee shall procure and maintain property insurance coverage for:

- (a) all office furniture, trade fixture, office equipment, merchandise, and all other items of Lessee's property in, on, at, or about the premises and the building, include property installed by, for, or at the expense of Lessee;
- (b) all other improvements, betterments, alterations, and additions to the premises.

Lessee's property insurance must fulfill the following requirements:

- (a) it must be written on the broadest available "all risk" policy form or an equivalent form acceptable to the Town of Los Gatos.
- (b) for no less than ninety percent (90%) of the full replacement cost (new without deduction for depreciation) of the covered items and property; and
- (c) the amounts of coverage must meet any coinsurance requirements of the policy or policies.

(RL 28.2)

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Town. At the option of the Town either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, officials, employees and volunteers; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease.

Each insurance policy required by this Lease shall:

1. Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, 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.
2. Include a waiver of all rights of subrogation against the Town and the members of the Town Council and elective or appointive officers or employees, and each party shall indemnify the other against any loss or expense including reasonable attorney fees, resulting from the failure to obtain such waiver. The Town waives this requirement so long as the Lessee continues to participate in a self insurance pool of public entities that reserves the right of subrogation. A waiver of all rights of subrogation shall be required immediately upon the Lessee obtaining insurance through a self

insurance pool that does not reserve the right of subrogation or the Lessee obtaining insurance in the private insurance market.

3. Name the Town of Los Gatos as a loss payee on the property policy.
4. Provide that the Town, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; premises owned, occupied or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage limits defined in a memorandum of understanding of a self insurance pool of public entities through which Lessee obtains insurance coverage shall be acceptable in lieu of these requirements of this paragraph 4 which shall apply to coverage obtained in the private insurance market.
5. Provide that for any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, agents or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
6. Provide that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Town, its officers, officials, employees, agents or volunteers.
7. Provide that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
8. Lessee agrees to promptly pay to Town as Additional Rent, upon demand, the amount of any increase in the rate of insurance on the Premises or on any other part of Building that results by reason of Lessee's act(s) or Lessee's permitting certain activities to take place.

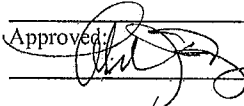
Acceptability of Insurers

All insurance policies shall be issued by California-admitted carriers having current A.M. Best's ratings of no lower than A-:VII.

**LEASE AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION
EXHIBIT D
LOS GATOS NEIGHBORHOOD CENTER POLICIES AND PROCEDURES**

ADMINISTRATIVE MANUAL
TOWN OF LOS GATOS

Subject: Los Gatos Neighborhood Center Policies and Procedures Page: 1 of 4 Section Number:

Approved:  Effective Date: 4/27/05 Revised Date: 04/15/05

PURPOSE

The purpose of this policy is to set forth guidelines for renting the Los Gatos Neighborhood Center.

SCOPE

This policy pertains to any person or group applying to rent the Neighborhood Center.

POLICY

The Neighborhood Center serves Los Gatos' senior citizens, youth, civic and service groups, and residents. As part of a comprehensive community strategy to meet the needs of Los Gatos citizens, the Neighborhood Center houses a variety of services and activities in such areas as education, creative arts, counseling, recreation, leadership development, health, nutrition, social work, and other supportive services. Programs held at the Neighborhood Center respond to individual differences in lifestyle, values, experiences, needs, interests, abilities, skills, age, and health status by providing opportunities for a variety of types and levels of involvement.

Rooms in the Neighborhood Center may be rented for community activities and private parties. This document defines policies and procedures for Neighborhood Center use and reservation requirements.

NEIGHBORHOOD CENTER

Room #	Maximum Occupancy	Room Description
11-12	200 people banquet style setting; or 365 people auditorium style setting	Multi-Purpose Auditorium
4-5	49 people	Lounge - informal setting
206	25 people	Craft Room
208	25 people	Conference Room (no food or beverages allowed)
214	25 people	Conference Room (no food or beverages allowed)

PRIORITY

The Town reserves the right to reschedule or cancel any scheduled use of the Neighborhood Center as warranted by the needs of the Emergency Operations Center (EOC). Mandatory EOC and emergency police matters take priority over any and all room reservations.

ELIGIBLE APPLICANTS

The Downtown Neighborhood Center may be reserved by the categories of users listed below.

Category I	Government Agencies and Senior Organizations: a) Federal, state, county, and municipal agencies that provide Los Gatos citizens a service. b) Nonprofit organizations that provide activities specifically for Los Gatos's senior citizens, including but not limited to Los Gatos-Saratoga Community Education and Recreation.
Category II	Community Organizations: a) Nonprofit organizations that have obtained 501(c)3 ruling (must be documented by a ruling letter from the California Secretary of State). b) Service Groups which provide recreational, cultural, leisure, or other community service activities to Los Gatos residents, including the Los Gatos-Saratoga Community Education and Recreation. c) Public elementary, middle, and high schools serving Los Gatos residents.
Category III	Other Applicants: Applicants not qualifying under Categories I or II may be considered under Category III as "residents" or "non-residents." a). Resident: Applicants must reside within incorporated Town of Los Gatos limits, or be employed by the Town of Los Gatos municipal government. Applicant must show proof of residency or employment by the Town. To qualify as a "resident" group, at least 51 percent of the Board of Directors or membership attending the function must be Los Gatos residents. b). Non-Resident: Applicants who do not meet the definition of a resident, above, including City of Monte Sereno and Santa Clara County residents with a Los Gatos address.

INELIGIBLE APPLICANTS

Use of the Neighborhood Center shall not be granted for:

1. Commercial use by private groups or individuals for the purpose of sales, promoting or negotiating for sales for profit.
2. Any group or individual, political or otherwise, that acknowledges its intent to use the facility

to advocate the overthrow of the United States Government or the State of California by force or violence or other unlawful means or to violate any other County, State, or Federal rules, regulations, ordinances, or laws.

3. Uses which are deemed to be of a hazardous nature or of a nature which endangers property or which are not in the public interest.
4. Use by groups or individuals who interfere with the regular conduct of Town business.

DEFINITIONS

Building Attendant:

For the Neighborhood Center, a Building Attendant is required if alcohol is served. A Building Attendant is also required if fifty or more people are in attendance and the event is scheduled during non-business hours. The Town will schedule the Building Attendant.

Security Guard:

If alcohol is served, regardless of meeting size or time, a security guard is required. The security guard is hired directly by the applicant, subject to approval of qualification by the Town. Verification of services must be submitted to the Neighborhood Center no later than two weeks prior to the scheduled event.

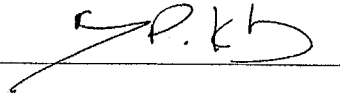
RESERVATION PROCEDURES

To reserve a room at the Neighborhood Center, applicants must first verify the room is available and that they fall within one of the three categories of eligible users. Applicants may either call the Neighborhood Center at (408) 354-6820 or stop by during normal business hours to verify availability.

1. A temporary hold may be put on a room for up to five working days without a signed application. The hold is automatically released on the fifth day, if an application is not received.
2. Reservations are processed on a "first come, first served" basis. A reservation may be made up to six months in advance by submitting an application, Release of Liability, and any deposit required. All applications must be submitted with original signatures.
3. The following documents must be submitted and approved no later than two weeks prior to the scheduled event:
 - ▶ Certificate of Insurance and Endorsement:
 - \$1,000,000 liability insurance is required for standard use and when alcohol is not served
 - \$2,000,000 liability insurance is required if alcohol is served
 - ▶ Release of Liability, Assumption of Risk and Indemnity Agreement
 - ▶ Complete payment for room and Building Attendant if required. The Town will issue an invoice for the balance due. All checks are to be made payable to "The Town of Los Gatos." The Town cannot accept credit card payments.
 - ▶ Proof of security guard services if required.

- ▶ Copies of any and all flyers, invitations, and or advertisements if the party or meeting is open to the public.
 - ▶ Copies of all required permits and Police approvals.
5. If an event is to be held when the Neighborhood Center is normally closed, after 5:00 p.m. Monday through Friday or during the weekend, a key for the building may be picked up from the receptionist on the day of the event or on the Friday before the weekend by 4:30 p.m. Persons picking up keys must sign for them and be at least 18 years of age. Keys are to be returned immediately following the event by using the drop-box located in the lobby of the Neighborhood Center.
 6. The Building Attendant will open and close the facility (see Use Regulation regarding the Building Attendant, attached).

APPROVED AS TO FORM:
Town Attorney



NEIGHBORHOOD CENTER USE REGULATIONS

Any person or persons violating the established policies or constituting a public nuisance may be required to leave the facilities. Misuse of the facilities or failure to conform with other applicable Town, state, or federal rules, regulations, ordinances, or laws will be sufficient reason for terminating the permit or event.

The Town Manager, or a duly authorized representative on duty, shall have the right to enter all facilities at all times during any and all occupancies.

Liability:

Applicant is liable for all damage to the facilities and equipment resulting from the applicant's use. Applicant will be charged for the re-keying of the building for lost keys, facility and equipment repair costs, or equipment replacement costs resulting from applicant's use.

The Town of Los Gatos is not responsible for accidents, injuries, illnesses, or loss of group or individual property. The Town requires proof of insurance coverage. Applicants must provide a Certificate of Insurance and Endorsement.

Security Deposit:

If a reservation is canceled 14 or more days before the scheduled event, 100 percent of the security deposit and room rental fees which have been paid to the Town will be returned. If notice of cancellation is given 13 or fewer days before the scheduled event, 50 percent of the room rental fees paid to the Town will be refunded; none of the security deposit may be refunded with a notice of fewer than 14 days.

Time Limits:

The facility may be reserved for up to 10 hours per event.

Age Requirements:

Applicants must be 18 years of age or older (21 or older if alcohol is to be served at the event) and must be present during the reserved use of the facility.

Groups composed of minors must be supervised by at least 1 adult for every 10 children (under the age of 18) at all times while they are using the facilities.

Food & Beverages:

Food and beverages are allowed in the Hall (Rooms 11 & 12) and Lounge (Rooms 4 & 5), only. **Absolutely no food or drink shall be taken into the upstairs conference rooms.**

Smoking:

Smoking is not permitted in or near the Neighborhood Center facilities, including parking and exit areas.

Room Set-Up:

Applicants are responsible for all set-up before their event, including setting up tables and chairs, and installing decorations. Applicants are also responsible for all clean-up after their event, including stacking of tables and chairs, and removing all decorations, special preparations, and personal items. Any desired

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decorating, or changes to the facilities, must be discussed with the Town at the time of application. Applicants must include set-up and clean-up time in the scheduled hours of use. The facility must be left secure, clean, and in good order. Any decorations and special preparations are subject to the following restrictions:

- a. All decorations must be flame proof or fire retardant.
- b. All decorations must be applied with low-tack painter's tape. Using cellophane adhesive tape, nails, staples, screws, etc., is NOT allowed. All tape must be removed from all surfaces at the conclusion of the event.
- c. Decorations may NOT be hung from light fixtures, ceiling, smoke detectors, emergency lights, or acoustical wall/ceiling tiles.
- d. Absolutely NO open flames are allowed, including candles.
- e. All plants, trees, and shrubs must be in waterproof containers and must be carefully placed so as not to damage the floor or block fire exits.
- f. No foreign substance may be applied to the floor.
- g. No rice, birdseed, confetti, or any similar substance, may be thrown in or around the Neighborhood Center (e.g., during wedding receptions).

Licensing & Permits:

The applicant shall procure at his/her own cost and expense, all permits and licenses required for the intended use or activity at the Neighborhood Center. This includes, but is not limited to:

1. Sales of alcohol requires a one-day liquor license from the Alcoholic Beverage Control Board, 100 Paseo de San Antonio, San Jose 408-277-1200.
2. Gambling or wagering at the Neighborhood Center is prohibited without a permit from the Los Gatos/Monte Sereno Police Department, 110 East Main Street, Los Gatos 408-354-5257.
3. A dance that is open to the public (attendance of 50 or more persons) must be approved by the Chief of Police. Evidence of approval must be submitted to the Neighborhood Center at least two weeks prior to the scheduled event.

Noise Level:

All Neighborhood Center users are to respect the individual rights and properties of neighbors and tenants located by, near, and on Town property. Noise level is to be kept at a minimum.

Equal Opportunity:

Users may not restrict membership on the basis 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. Furthermore, use of the Neighborhood Center 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.

Exceptions:

Any exceptions to these use regulations must be approved, in writing, by the Town Manager.

N:\CSD\8020\REPORTS\NC GUIDELNS.wpd

**LEASE AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION**

EXHIBIT E

LOS GATOS NEIGHBORHOOD CENTER PUBLIC USE RENTAL FEE SCHEDULE

COMMUNITY SERVICE FEES

A. Los Gatos Downtown Neighborhood Center Fee Schedule

Rental fees may be paid at the time of the application or any time no less than two weeks before the scheduled date.

- a. If rental fees are not paid at least two weeks prior to the event, then the application may be terminated.
- b. If a reservation is cancelled at least two weeks before the scheduled event, 100 percent of the security deposit and room rental fees which may have been paid to the Town will be returned.
- c. If notice is given to cancel an event less than two weeks before the scheduled event, half of the room rental fees and none of the security deposit paid to the Town will be returned.
- d. Any required security deposit must be paid at the time the reservation form is submitted to secure the reservation.

	<u>Hall</u>	<u>Kitchen</u>	<u>Lounge</u>	<u>Conference Room</u>
<u>Category I:</u> Government Agencies, Community Service Organizations Serving Los Gatos' Senior Citizens, And Neighborhood Center Tenants	No Charge	No Charge	No Charge	No Charge

Category II: Community Service Groups

1. Activities (non-profits)
There is a 2-hour minimum for all rental usage.

a. Resident	\$30.00/hr	No Charge	\$15.00/hr	\$10.00/hr
b. Non-Resident	\$100.00/hr	No Charge	\$40.00/hr	\$30.00/hr
c. Security Deposit	\$300.00	No Charge	\$100.00	\$100.00
d. Security Deposit-alcohol	\$500.00	No Charge	\$500.00	\$500.00

2. Fees Charged for Fundraising Activities

There is a 2-hour minimum for all rental usage.

a. Resident	\$100.00/hr	No Charge	\$40.00/hr	\$30.00/hr
b. Non-resident	\$200.00/hr	No Charge	\$80.00/hr	\$60.00/hr
c. Security Deposit	\$300.00	No Charge	\$100.00	\$100.00
d. Security Deposit -alcohol	\$500.00	No Charge	\$500.00	\$500.00

	<u>Hall</u>	<u>Kitchen</u>	<u>Lounge</u>	<u>Conference Room</u>
--	-------------	----------------	---------------	------------------------

Category III: Private Parties
There is a 2-hour minimum for all rental usage.

a. Resident (Including Town Employees)	\$100.00/hr	No Charge	\$40.00/hr	\$30.00/hr
b. Non-Resident	\$200.00/hr	No Charge	\$80.00/hr	\$60.00/hr
c. Security Deposit	\$300.00	No Charge	\$100.00	\$100.00
d. Security Deposit- alcohol	\$500.00	No Charge	\$500.00	\$500.00

Building Attendant:

A Building Attendant is required under any of the following circumstances:

- alcohol is served
- more than 50 people are in attendance
- a meal is provided

Building Attendants are employed by the Town on behalf of the applicant. The cost paid by the applicant for the Building Attendant's time is the prevailing wage set by the Town's Salary Schedule. Time over 8 hours per day is charged at the prevailing overtime wage set by the Town's Salary Schedule.

Security Guard:

Security Guards are hired directly by the applicant. Verification that services have been contracted for must be submitted to the Neighborhood Center office at least two weeks prior to the scheduled event. A Security Guard is required is required to be present at the facility under any of the following circumstances:

- alcohol is served, and;
- more than 75 people are in attendance

Applicants:

The Downtown Neighborhood Center may be scheduled by the categories of users listed below:

1. Category I: Government Agencies; Senior Organizations, and Neighborhood Center Tenants. Groups qualifying as government agencies and senior organizations include the following:

- Federal, state, county, and municipal agencies that provide a community service for the citizens of Los Gatos.
- Organizations, including the Los Gatos-Saratoga Department of Community Education and Recreation which provide activities specifically for Los Gatos' senior citizens.
- Neighborhood Center Tenants which provide a community service that does not involve fundraising.

Category II: Community Service Groups

Groups qualifying as community service groups include the following:

- Nonprofit organizations, which have obtained 501(c) 3 ruling from the State (must be documented by ruling letter from State).
- Los Gatos Service and Community organizations - groups that provide recreational, cultural, leisure or other community service activities to Los Gatos residents, including the Los Gatos-Saratoga Department of Community Education and Recreation.
- Los Gatos Elementary School District and the Los Gatos Joint Union High School District.

Category III: Private parties

- Resident
For private parties or wedding receptions to qualify for the resident fee, (\$60/hr) the Neighborhood Center may be reserved either by a Los Gatos resident or by a non-resident's immediate family member who is a Los Gatos resident. An immediate family member is defined as: mother, father, sibling, and children of applicant, grandparents, stepchildren and parents.
- Non-Resident
Applicants who do not meet above criteria.

Priority:

Category I applicants have priority over Category II and III applicants for use of the Center.

General Regulations:

1. Use is limited to ten hours.
2. If use exceeds hours on application form, then fee is charged at 1.5 times the rate.
3. All checks made payable to the Town of Los Gatos
4. Refundable deposits are returned within forty-five days by the Town of Los Gatos.

Definitions:

1. **Resident**
 - a. To qualify as a "resident" group, at least 51 percent of the Board of Directors or membership attending the function must be Los Gatos residents
 - b. Documentation required for a. above: Drivers license or other personal picture identification, including the applicant's address and telephone number.

2. **Non-Resident**

"Non-resident" groups are those that meet all of the criteria of a community service group, but do not meet the definition of a "resident".

3. **Fundraising Activities**
 - a. Community service groups applying for use of the facility to hold a fundraising activity or activity for which admission or a fee is charged must meet all of the criteria under a. above. Resident or non-resident rates are charged depending on the residence of members or activity attendees.

 - b. Tenants of the Town of Los Gatos applying for use of the facility to hold a fundraising activity will be required to pay the necessary fees under Category II.

B. Program Space for Non-Profit Agencies \$1.75/sq. ft./month

Neighborhood Center tenants may schedule rooms in the facility for business purposes. Fees are not collected unless the value of the space scheduled exceeds \$50 x sq. ft. leased on annual cumulative basis

**LEASE AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION**

EXHIBIT F

SENIOR SERVICES SCOPE OF WORK

DIRECT SERVICES

Los Gatos Community Education and Recreation shall ensure the provision of services/programs to include services/programs similar to the following list in scope and participation using its own staff or via contract:

1. Wednesday afternoon movies (once per month)
2. Wednesday games program (weekly)
3. Senior center dances (once per quarter)
4. Bus trips (once per quarter)
5. Senior Thanksgiving dinner (one per year)
6. Senior picnic (one per year)
7. Senior show (one per year)
8. Senior Center newsletter (bi-monthly)
9. Information and referral to other agencies (ongoing)
10. Recreation classes will be expanded significantly as demand warrants. Examples include: language, arts and crafts, computer, and other special interest classes.

INDIRECT SERVICES

Los Gatos Community Education and Recreation shall provide appropriate facility space and administrative support as needed for the following services, to be provided by outside agencies. LGS Recreation is under no obligation to provide the services directly.

1. Health presentations (once per month)
2. 55-Alive driving class
3. Grief support group
4. Blood pressure screenings
5. Brown bag grocery distribution (once per week)
6. Live Oak Senior Nutrition Program lunchtime meal service (once per week)
7. Happy Hoofers walking group
8. Older Women's group
9. HICAP insurance counseling (by appointment)
10. Income tax preparation (by appointment)
11. BART ticket sales (ongoing)
12. Hosting and organizing new groups and affiliates as interests warrant. Examples include: computer club, genealogy club, bridge club, etc.

INTEROFFICE MEMORANDUM AGREEMENT PROCESS

DATE

12/11/09

SIGNATURE

[Handwritten Signature]

Department Head

Town Attorney

Town Manager

PLEASE RETURN ORIGINALS TO CLERK DEPARTMENT

09.274

VENDOR NAME:

~~Project Sentinel~~

Los Gatos recreation

VENDOR NUMBER:

Business License Required _____

For Clerk/Finance Only:

IHH# 09-316 Expiration Date: 2/10

P.O. Required

No P.O. Required _____
Finance

SUBJECT

Lease Agreement between Town of Los Gatos and Los Gatos-Saratoga Community Education and Recreation.

BACKGROUND

The Town launched its pilot senior services program approximately eight years ago, through a dedicated Senior Center and a Senior Coordinator staff position. This program has been a great success, both providing directly and supporting the provision of services to local seniors. Recently an opportunity has arisen to expand the Town's partnership with Los Gatos-Saratoga Community Education and Recreation (LGS Recreation) to enhance the delivery of senior services.

DISCUSSION

In August 2009, the Town Council authorized staff to enter into negotiations with LGS Recreation to explore the possibilities that an expanded partnership in the area of senior services could offer.

FISCAL

The proposed partnership between the Town and LGS Recreation would result in annual savings to the Town in FY 2009/10 of approximately \$160,000, and increased revenue of approximately \$62,000, a total benefit to the Town of approximately \$222,000



On behalf of LGS Recreation, we appreciate the opportunity to share our agency efforts and intentions for the future. Our goal continues to be rooted in the service of our aging community and provision of programs to enrich and improve quality of life. Our current business model was never meant to be profitable, nor can it be sustained under the current situation. We rely solely on the revenue of our adult programs to fund our 55 Plus services. We do not have the luxury of Town or City's general fund to support our programs and operations. One of the first and immediate relief is releasing and permanently waiving our fees for both the adult and youth recreation centers.

Attached is a revised high-level slide deck presentation of the LGS Recreation 55 Plus program that has been previously shared. Please note the refined price model on slides 3-6 as this model both short-term and long-term goals with the provision of operational, facility, or other support. If there are additional areas of need, we are more than willing to explore those as well.

Since the March 23 presentation, a lot has changed, and we've noticed a few errors and discrepancies on the CHSSC meeting notes for May 25, 2021 that we would like to be revised and amended. On page 33, one of the bullet points states that we have low senior engagement/programming relative to other Santa Clara cities. From March 15, 2020 – May 2021, we had over 93 online and in-person classes with 425 participants with an average age of 61. The business model shown on page 34 states that we do not have fee-based programs. This is not true. All 93 of our adult classes are fee-based classes. Also, to clarify that email and Robly is our only form of communication due to the pandemic. Prior to that, we've sent out a monthly printed newsletter, and our agency publishes 3 brochures a year reaching over 110K community members. On page 36, George Rossman incorrectly stated that Los Gatos 55+ is practically invisible to its potential service base under marketing. LGS Recreation has a very strong and active social media present. If you go to our Facebook page, you can see there's a post every day about all our programs and offerings. Within the last 30 days (Mid-April and Mid-May), we've reached over 24K people and had over 2K post engagements. During that same time frame, we've posted over 115 videos primarily physical fitness and health activities directed at our 55 Plus community.

I remain a consistent advocate for community and financial support of the 55 Plus Program and was a grant recipient from the Town of Los Gatos and El Camino Hospital before the pandemic hit. Grant support and subsidization is essential for the quality, quantity, and success of senior service programs. As an Agency, we have continued to provide quality programs and services to thousands of community members with limited resources, funding, and facility constrictions. With the Town support for space utilization, we may be able to increase the reach of our mental and behavioral support as well as wellness checks. We are deeply committed to what we do and will continue to work to serve our community in the most impactful ways possible.

All of us now realize more than ever the importance of living a healthy lifestyle that includes social and emotional balance. It all starts with leveraging your resources and opportunities to build communities. One cannot do this alone and financial resources and many helping hands are a necessity. As the expression goes "many hands make light work". We now have an opportunity to share in a collaborative vision and collectively move services and our community forward.

Sincerely,
Trinh D. Nguyen, M.A. NASM-CPT
Adult and 55 Plus LGS Recreation Coordinator

LGS Recreation: 55 Plus Program

Serving the community since 1956



LGS | RECREATION



55 Plus Program: Our Reach

Senior services are inclusive with something for everyone. Not all senior services require a 55 Plus membership.

- Agency publishes 3 brochures a year – over 110K distributed
- Senior Center newsletter/membership – expanded to a weekly email letter to over 300 members and partners since the pandemic
- Adult programs – We have over 100 independent instructors teaching over 1200 classes annually and more than 3500 participants over the age of 50, not including expansive Aquatics, Vasona Boating, Special Events and 55 Plus programs. Program are offered both virtually and in-person.
- Agency financial model is fee-based programs; no subsidy received. Profitable programs offset free programs and services provided.



Initial Vision:

With additional support and resources, LGS Recreation will expand upon current offerings and services, diversify programs with current facilitators, strengthen foundations of collaboration, and provide specialized care.

\$100K Town Support –

- Restore Coordinator FTE to ensure support/resources for 55 Plus services.
- Funding for Lynnette Vega (or equivalent) facilitated programs to increase level of engagement.

\$200K Town Support -

- Increase FTE of supporting administrative staff, min. 1.0 for a single staff or .5 for two staff. Two or more full time are ideal.
- Expand support services to multiple meetings per week and diversify offerings
- Offer Wednesday Game Day multiple days a week and expand into Bingo
- Return Social Luncheon program – a social and support group that ceased in 2019 due to funding restrictions.
- Return services to mountain community, ceased in 2019 due to funding restrictions.

\$300K Town Support-

- Reestablish recruitment and management of volunteers.
- Town of Los Gatos employee(s) - Assign part-time Recreation Coordinator equivalent to support senior services efforts and serve as a liaison.



Initial Vision

\$400K Town Support –

- Deepen our relationship with local colleges to offer more services/classes
- Dedicated medical professional (pharmacist or a nurse to administered wellness checks and the seasonal flu shots).

\$500K Town Support –

- Collaborate with travel agencies and local vendors to offer travel shows both national and international.
- A dedicated liaison for various social services and case management.
- Expand upon food service and delivery with Live Oak Nutrition.
 - With additional LGS staff support and/or facility access, the program and partnership could expand to serve more meals and more seniors each week.
- Expand frequency and quality of special events and workshops such as social dances and concerts.
- Expand upon specialized programs by working more extensively with local hospitals to bring clinic-to-community rehabilitation based-programs/services.
 - Strengthen MS aquatic program currently in development.
 - Develop programs for those with Alzheimers/Dementia. Special certifications required.



Long Term Vision

Our intention is to become a state-of-the-art Senior Center where older adults are compelled to attend daily activities, special events, presentations, receive health and wellness services and advice, connect individuals to healthcare and community services, and more. With additional operational and facility support and resources, we aim to launch:

\$600K Town Support –

- Subsidize 55 Plus program and Senior Services staff to more fully support and expand existing operations.
- Develop intergenerational programs.

\$700K Town Support-

- Addition of 2 Recreation Leader Equivalent staff to fully support specific program areas as assigned.
- Duties may include Adult Trips, Marketing and Outreach, Event Planning, volunteer recruitment and management.

\$800K Town Support -

- A majority of Senior Centers employ a team of staff of 5 employees or more. Operational support will ensure free and low-cost program expansion.

\$900K Town Support –

- A dedicated computer lab with technology classes.

\$1M+ Town Support –

- A dedicated fitness center with fitness professionals.
 - Can prescribe evidence-based exercise routines for preventative and rehabilitative care.
 - A cornerstone of a robust Senior Center in most cities.



New Building/Renovation

Our intention is to become a state-of-the-art Senior Center where older adults are compelled to attend daily activities, special events, presentations, receive health and wellness services and advice, connect individuals to healthcare and community services, and more. With additional operational and facility support and resources, we aim to launch:

NEW Building

- A Tri-level building with underground parking. Extend the building out to the current parking area to double the size of the current building.
 - First floor – a dedicated fitness center with showers/locker rooms. A few large rooms dedicated for meeting spaces and fitness classes.
 - Second floor – A few dedicated rooms for adult enrichment classes, activities and events.
 - Third floor – Dedicated admin staff offices and meeting spaces.
- A dedicated computer lab with technology classes.

Renovation

- New sprung hardwood flooring for the entire building.
- New lights for the the entire building.
- Upgrade IT connection for the entire building.
- A room divider for configurable space.



Looking forward:

- Program goals directly align with the Commission goals. Staff have been involved in development and suggestion of programs to include:
 - Outreach to local hospitals and health care providers to become more aware of public health issues.
 - Advance goals of the Los Gatos Age Friendly Initiative, by focusing on social bridging for isolated seniors, expanding efforts to provide digital inclusivity, and expanding intergenerational opportunities.
 - Continue to join and develop coalitions of mutual benefit. Continue to work with professional organizations and community partners including other senior centers and as part of the Older Adults Recreation Services (OARS).
 - Continue to participate in annual community grant process/assessments and strive to align with Commission and grant awardee goals.
- If given the authority and opportunity, LGS Recreation will coordinate efforts of ALL community partners serving the aging community.
 - Recommendation to create a strategy and inventory of local services, identify gaps, and move forward collectively to meet expanding needs within the community.
 - Engage with community partners to collectively market and spread the news of the incredible work we are all doing.

Questions / Comments





**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 20

DESK ITEM

DATE: June 15, 2021
 TO: Mayor and Town Council
 FROM: Laurel Prevetti, Town Manager
 SUBJECT: Receive the Community Health and Senior Services (CHSSC) Report on Senior Service Provision and Assessment Recommendations

REMARKS:

A Council Member inquired about the dollar amounts of the grant funded programs referenced in the staff report.

“In addition to the arrangement with LGS Rec, the Town has traditionally funded other senior service provision through the annual community grant program. Of note, the Town provides grants for senior nutrition, senior day care services, and rent assistance.”

The table below provides funding data for the past five years for grant recipients with senior oriented services.

Grant Recipient	2016/17	2017/18	2018/19	2019/20	2020/21
West Valley Community Services	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
Live Oak Senior Nutrition	\$28,500	\$29,000	\$29,000	\$25,000	\$22,000
Live Oak Adult Day Services	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000
LGS Rec 55+ Program	NA	\$10,000	\$15,000	\$15,000	NA
Saratoga Area Senior Coordinating Council	NA	NA	NA	\$5,000	NA

PREPARED BY: Arn Andrews
Assistant Town Manager

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

REMARKS (continued):

In response to the Covid-19 pandemic, Town Council provided additional funding to the following organizations in addition to the annual grant program allocations.

Recipients	Covid Allocation 04/07/2020	Covid Allocation 04/06/2021
West Valley Community Services	\$10,000	\$15,000
Live Oak Senior Nutrition	\$10,000	\$15,000

Attachments Previously Received with the Staff report:

1. 2009 Staff Report
2. LGS Rec Lease Agreement
3. Public Comment Received by 11:00 a.m. June 10, 2021



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 6/15/2021

ITEM NO: 21

DATE: June 1, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Accept the Report and Authorize the Temporary Installation of Traffic Calming Devices for Shannon Road Between Los Gatos Boulevard and Short Road (CIP No. 812-9910 Traffic Calming Projects)

RECOMMENDATION:

Staff recommends that the Town Council accept the report and authorize the temporary installation of traffic calming devices for Shannon Road between Los Gatos Boulevard and Short Road (CIP No. 812-9910 Traffic Calming Projects).

BACKGROUND:

The adopted Fiscal Year (FY) 2020/21-2024/25 Capital Improvement Program (CIP) Budget designates funding for the on-going Traffic Calming Projects (CIP No. 812-9910).

In accordance to the Town's Traffic Calming Policy, residents of Shannon Road between Los Gatos Boulevard and Short Road submitted a petition in January 2019 to be considered for a traffic calming project. Shannon Road is a neighborhood collector street within the project limits. Staff reviewed the petition, then proceeded with the collection of speed and traffic volume data to determine if Shannon Road qualifies for the traffic calming project. To qualify per the Town's Traffic Calming Policy, 85th percentile speeds of vehicles traveling through the neighborhood must exceed the posted speed limit by 5 miles per hour (MPH), or the average daily traffic volume must exceed 3,000 vehicles per day for collector streets. Based on the data collected, Shannon Road qualified for the traffic calming program under both traffic speeds and volume. The Shannon Road traffic calming project request was placed on the program waiting list while other traffic calming projects were being processed or completed.

PREPARED BY: Mike Vroman
Senior Traffic Engineer

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

PAGE 2 OF 4

SUBJECT: Accept the Report and Authorize the Temporary Installation of Traffic Calming Devices for Shannon Road Between Los Gatos Boulevard and Short Road (CIP No. 812-9910 Traffic Calming Projects)

DATE: June 1, 2021

DISCUSSION:

On November 18, 2020 and April 22, 2021, staff from Parks and Public Works (PPW), the Los Gatos/Monte Sereno Police Department (LGMSPD), and the Santa Clara County Fire Department (SCCFD) held online community meetings with the Shannon Road neighbors to discuss traffic calming options for the project site and to build consensus on a traffic calming plan. In addition to social media and website posts, over five hundred postcard notifications for each meeting were mailed to residents on or near Shannon Road. Residents from Shannon Road, Englewood Avenue, Hilow Road, Topping Way, Marchmont Drive, Loma Street, and other nearby streets attended the meetings.

At the first meeting, PPW staff explained the Traffic Calming Policy process and presented the data on traffic speeds and volume. LGMSPD and SCCFD provided feedback on the manageable impact of the traffic calming devices on emergency services and answered residents' questions and concerns. The attending residents also expressed their concerns related to speeding and stop sign violations, as well as pedestrian and bicycle safety in the neighborhood especially for the many school children using Shannon Road. Residents discussed potential traffic calming options to mitigate these issues, and there was a consensus at the meeting to consider speed humps.

At the second online community meeting on April 22, 2021, staff presented a proposed traffic calming plan to install five speed humps with signs and pavement markings on Shannon Road (see Attachment 1 for the proposed plan). Three speed humps are proposed between Cherry Blossom Lane and Short Road and could be installed by fall 2021. Two proposed speed humps between Los Gatos Boulevard and Cherry Blossom Lane are planned to be installed with the Shannon Road Pedestrian and Bikeways Improvements Project in FY 2022/23, if approved. There was consensus at this meeting among the residents on Shannon Road to install the proposed speed humps as presented.

A few residents that attended the second community meeting, who may not live on Shannon Road, expressed that speed humps may slow down emergency responses, depreciate home values in the neighborhood, and slow down commuters. Residents who do not reside on Shannon Road also inquired why they were not allowed to vote on the traffic calming program on Shannon Road. Staff explained that only those residents whose properties abut the street and are most affected by the speeding are eligible to vote on the traffic calming plan per the Town's practice. Staff informed the residents that the Town has installed speed humps and other traffic calming devices on thirteen other streets, including four neighborhood collectors and two hillside collector streets. Speed humps have proven to slow down vehicular traffic on streets where installed.

PAGE 3 OF 4

SUBJECT: Accept the Report and Authorize the Temporary Installation of Traffic Calming Devices for Shannon Road Between Los Gatos Boulevard and Short Road (CIP No. 812-9910 Traffic Calming Projects)

DATE: June 1, 2021

DISCUSSION (continued):

As per the Traffic Calming Policy procedure, staff mailed out ballots on May 3 to all 73 residents on Shannon Road between Los Gatos Boulevard and Short Road. Of the votes submitted, a two-thirds (66.7%) majority in support of the project is needed to move forward with the speed humps per the Policy. The postmarked ballots were due on May 20, 2021. Staff received 54 timely responses with 48 in favor of speed humps (89% in support) and six not in support. The support for speed humps on Shannon Road exceeded the required two-thirds majority.

If Council approves this item, PPW staff will work with existing Town contractors or obtain bids in the open market for the three speed humps on Shannon Road between Cherry Blossom Lane and Short Road to be installed by this fall. Two speed humps between Los Gatos Boulevard and Cherry Blossom Lane would be installed later as part of the Shannon Road Pedestrian and Bikeway Improvements Project in FY 2022/23.

Four to six months after the installation of the first three speed humps, staff will conduct additional traffic studies to determine the project effectiveness in slowing down traffic. Additionally, staff will conduct before and after traffic counts on Kennedy Road to assess the traffic volume impact, if any, from the installation of speed humps on Shannon Road. A few residents were concerned of traffic shifting over to Kennedy Road to avoid speed humps on Shannon Road. Staff will then contact the Shannon Road residents to inform them of the new data collected, conduct a final vote, and based on the final vote, return to Council for consideration to make the speed humps on Shannon Road permanent.

CONCLUSION:

Staff recommends that the Town Council accept the report and authorize the temporary installation of five speed humps as the traffic calming plan on Shannon Road between Los Gatos Boulevard and Short Road.

COORDINATION:

This project has been coordinated with the Finance Department, the LGMSPD, and the SCCFD.

FISCAL IMPACT:

Funding for this traffic calming project has been allocated through the adopted FY 2020/21-2024/25 Capital Improvement Program Budget. Each year, \$10,000 in GFAR funds are approved for the Traffic Calming Projects.

PAGE 4 OF 4

SUBJECT: Accept the Report and Authorize the Temporary Installation of Traffic Calming Devices for Shannon Road Between Los Gatos Boulevard and Short Road (CIP No. 812-9910 Traffic Calming Projects)

DATE: June 1, 2021

FISCAL IMPACT (continued):

Traffic calming projects require significant staff time investments due to the number of community meetings and correspondence as well as design and engineering. The annual allocated funds are not sufficient to deliver the requested number of projects. To facilitate delivery, staff seeks to combine the installation of traffic calming solutions with other projects, typically the annual Street Resurfacing project. In addition, part time unbudgeted staff deliver are used for project delivery to ensure full time staff can support more complex efforts.

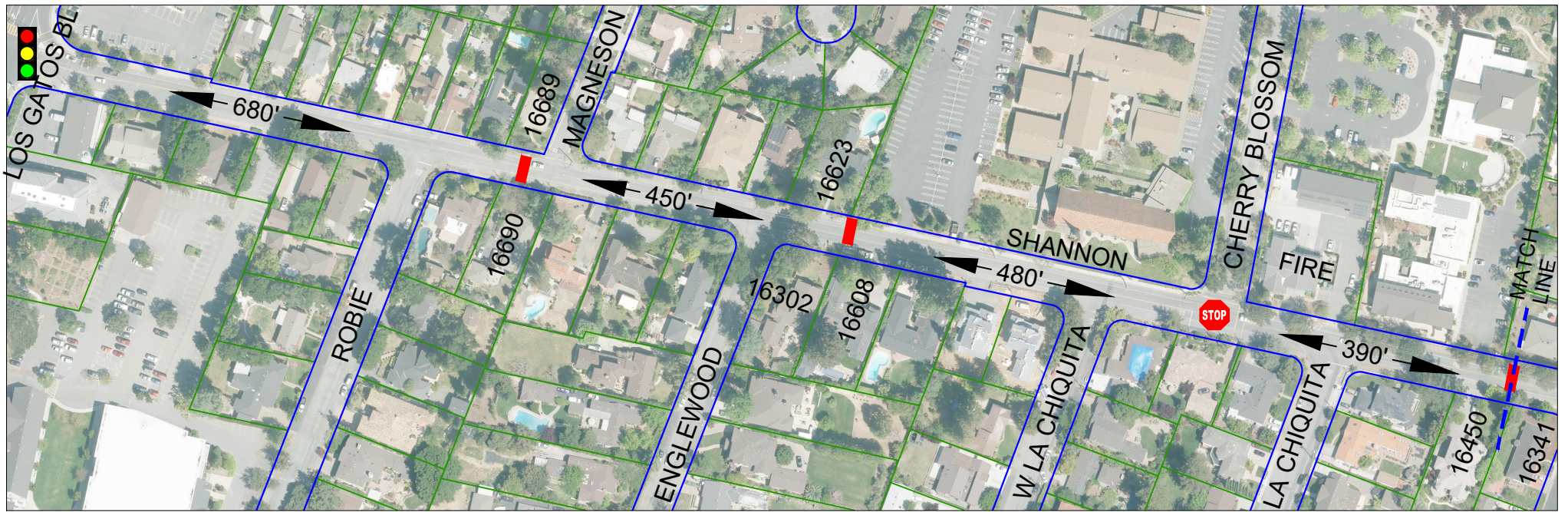
The fund balance in the Traffic Calming Project is \$19,135. Construction and staff costs for this project total an estimated \$116,000. Without relying on funds from the Street Resurfacing Project, few traffic calming projects would be completed. Staff will include this topic in a Capital Improvement Program discussion tentatively targeted for an August Council meeting.

ENVIRONMENTAL ASSESSMENT:




This is a project defined under CEQA as being Categorically Exempt (Section 15301c – existing streets, sidewalks, trails, and similar facilities). A Notice of Exemption will be filed.

Attachments:

1. Temporary Traffic Calming Proposal - Shannon Road between Los Gatos Boulevard and Short Road
2. Public Communication Received Prior to 11:00 am on June 10, 2021

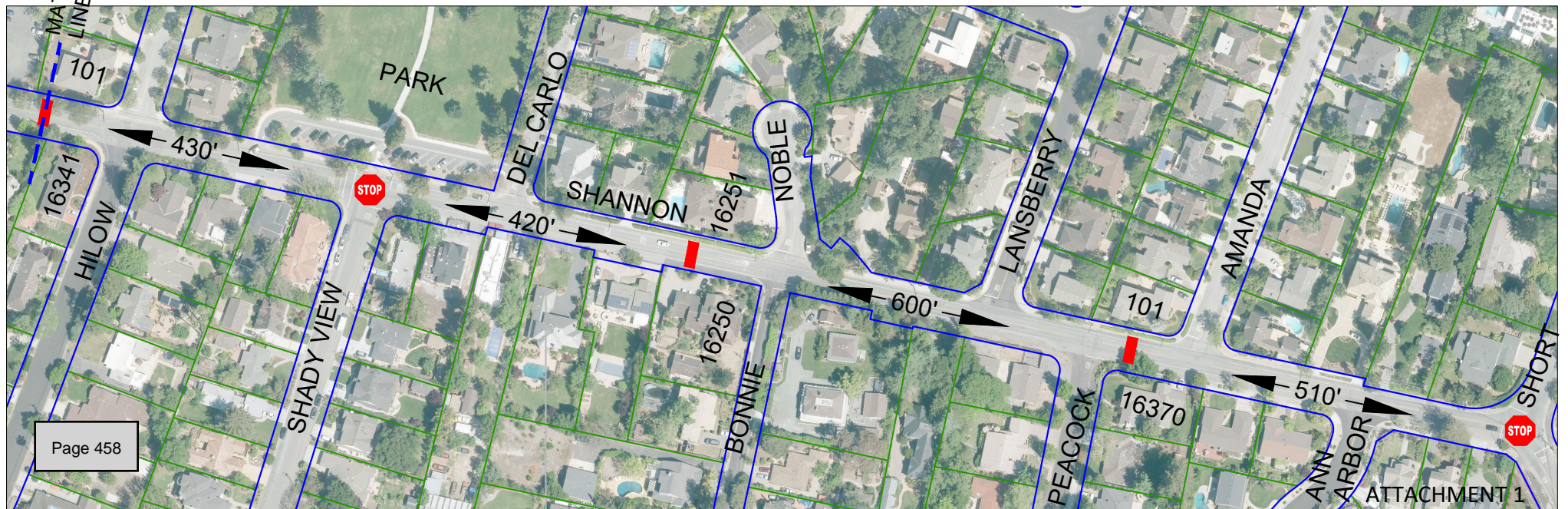
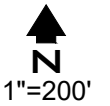


LEGEND:

-  PROPOSED SPEED HUMPS
-  EXISTING TRAFFIC LIGHT
-  EXISTING STOP SIGNS

SHANNON ROAD TRAFFIC CALMING PLAN

SPEED HUMP SIGNAGE



From: Frank Lawrence
Sent: Sunday, June 6, 2021 8:06 PM
To: Council ; Town Manager
Cc: Mary Babbitt Hammers; Ned Finkle
Subject: Shannon Road Traffic Calming plan - Comment

To the Town of Los Gatos. Reference Council Meeting, June 15, 2021

We, the undersigned, are a group of concerned residents, residing on or adjacent to Shannon Road between Los Gatos Boulevard and Short Road.

We daily experience speeding traffic on our street, presenting a hazard to all road users, including seniors and children walking or riding to and from school.

This comment is submitted in support of the proposal for an initial trial installation of Speed Humps on Shannon Road, between Los Gatos Boulevard and Short Road.

To have the persistent speeding problem addressed & resolved, the residents have consistently and emphatically supported action to moderate traffic speeds on Shannon Road, through the Town's Traffic Calming process.

By engaging with the Department of Parks & Public Works (P&PW), under the Towns Traffic Calming process on four separate occasions over the last two years, a majority and super-majority of the Shannon Road property owners/residents have supported action:

1. by signing a petition to the Town requesting a formal traffic study
2. on two (2) separate occasions, voting for traffic calming measures at the two online Neighborhood Consultations, organized by the P&PW.
3. by a super-majority (>67%) in a recent postal ballot, also organized by the P&PW Department.

All pre-requisites of the Town's Traffic Calming policy having been satisfied, it is our hope and expectation that the Council will approve the Consent motion before you and permit the trial implementation of Speed Humps to proceed, as proposed by the Department of Parks and Public Works.

Ned Finkle
Mary Babbitt Hammers
Frank Lawrence

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Frank



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 22

DATE: June 7, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Provide Direction on the Proposal from Forbes Mill LLC, Requesting a Restaurant Pop-Up at Forbes Mill located at 75 Church Street on Saturdays from June 19 through October 30, 2021.

RECOMMENDATION:

Provide direction on the proposal from Forbes Mill LLC, requesting a restaurant pop-up at Forbes Mill located at 75 Church Street, on Saturdays from June 19 through October 30, 2021.

BACKGROUND:

In January 2017, the Town received its initial Master Lease Joint Venture Proposal from Imwalle Properties for the Tait and Forbes Mill properties. In 2018, Imwalle Asset Management Company (“Imwalle”) reapproached the Town and requested that negotiations take place regarding the potential renovation, management, and master leasing of these properties. In March 2019, the Town Council authorized an Exclusive Negotiating Agreement with Imwalle to help guide the negotiations of a Lease Agreement. The decision was predicated on the fact that the proposal would allow the properties to remain in Town control, maintain their historic value, require no monetary resources from the Town, and ultimately provide an annual revenue stream to the Town.

The Lease Agreements were negotiated and presented for consideration by Council on August 4, 2020. At that meeting, the Town Council authorized the Town Manager to execute long term lease agreements with Tait Firehouse LLC and Forbes Mill LLC for the property located at 4 Tait Avenue and 75 Church Avenue. Section 1.12 of the Lease Agreement “Permitted Uses” states

PREPARED BY: Monica Renn
Economic Vitality Manager

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

BACKGROUND (continued):

that “The operation of businesses providing residential, office, retail, restaurant, and other services approved by Master Tenant and Town, and any other lawful use, except as otherwise prohibited under this Lease pursuant to Section 5.2”. The full Lease Agreement is provided in Attachment 1.

DISCUSSION:

Forbes Mill LLC has submitted a proposal (Attachment 2) to offer a pop-up restaurant on Saturdays throughout the summer and fall, from 9:00 a.m. to 9:00 p.m. located outdoors on the patio at the rear of the property, with indoor access to restrooms. The proposed restaurant operator, Oak & Rye, currently operates a brick-and-mortar restaurant in Los Gatos at 303 N. Santa Cruz Avenue. Additionally, Oak & Rye has approval by both the Santa Clara County Department of Environment Health (DEH) and the California Alcohol Beverage Control (ABC) to provide off-site food and beverage services through their restaurant’s catering licenses. These are the appropriate approvals for pop-up restaurant services.

Because activated spaces tend to yield stronger lease proposals, it is not uncommon for property managers and landlords of vacant spaces to allow pop-up businesses to utilize the space that is for lease as a way to show it active and functioning. Allowing a pop-up restaurant to activate Forbes Mill for a set duration could provide both the Town and Forbes Mill LLC. with information and real-life examples of how a food use may function in this space and within the surrounding community. It may also help identify challenges for this or other use types as lease proposals come forward.

Given that the proposal includes using an existing Los Gatos restaurant, staff believes this pop-up effort may also support the intent of the Economic Recovery Resolution which allows for the expansion, bifurcation, and relocation of existing Los Gatos businesses to increase Community Vitality, provides options for business recovery, and provides expanded outdoor service areas for customer comfort as the community experiences a range of comfort levels in dining experiences following the pandemic. To date, the owners of Oak & Rye have operated their restaurant on N. Santa Cruz Avenue responsibly and without community complaints, thus staff has no concern with them operating a satellite pop-up restaurant model with the same standards.

CONCLUSION:

Given that “restaurant” is noted as an appropriate use in Section 1.12 of the Lease Agreement with Forbes mill LLC., staff believes this pop-up option could be an appropriate use and offers the opportunity to observe how such a use may be compatible in this location. Thus, the Town Council is being asked to provide direction on the proposal from Forbes Mill LLC, requesting a

PAGE 3 OF 3

SUBJECT: Forbes Mill Summer Proposal

DATE: June 7, 2021

CONCLUSION (continued):

restaurant pop-up at Forbes Mill located at 75 Church Street, on Saturdays from June 19 through October 30, 2021. Following the Town Council's July recess, if it so chooses, staff can return at a Town Council meeting in August with an update and report on this item.

Public comment is contained in Attachment 3.

COORDINATION:

The staff report has been coordinated with the Town Manager, Town Attorney, and Assistant Town Manager.

FISCAL IMPACT:

None.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Forbes Mill LLC. Lease Agreement
2. Proposal for summer restaurant pop-up from Forbes Mill LLC
3. Public Comment received before 11:00 a.m. on June 10, 2021

LEASE AGREEMENT

MASTER LEASE

by and between

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

and

Forbes Mill, LLC, a California limited liability company
("Master Tenant")

Los Gatos, California

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<u>Exhibit B</u>	Form of Notice of Lease Term Dates
<u>Exhibit C</u>	Insurance Requirements for Master Tenant and Subtenants
<u>Exhibit D</u>	Memorandum of Lease Agreement

MASTER LEASE

This Master Lease ("Lease") is made and effective as of this _____ day of _____, 2020 ("Effective Date"), by and between THE TOWN OF LOS GATOS, a California municipal corporation (hereinafter "Landlord" or the "Town"), and Forbes Mill, LLC, a California limited liability company ("Master Tenant").

RECITALS

A. The Town owns certain improved real property, commonly referred to as the Forbes Mill Property, located at 75 Church Street, APN: 529-54-050, and as shown and described on Exhibit A attached hereto and made a part hereof, suitable for residential, office, restaurant, retail and other commercial operations (the "Property"). The building situated on such real property shall be referred to as the "Forbes Mill Building."

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

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

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

SECTION 1. BASIC LEASE PROVISIONS AND DEFINITIONS.

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

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

75 Church Street,
Los Gatos, CA 95030

1.3 Rentable Area of Forbes Mill Building. As depicted in Exhibit A, the Rentable Area of the Forbes Mill Building is approximately 2450 square feet.

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

1.5 Lease Contingency. This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master Tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the

other party Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

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

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

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

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

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

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

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

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

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

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

SECTION 2. LEASED AREA.

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

SECTION 3. TERM.

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

SECTION 4. RENT.

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

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

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

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

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

4.3 Percentage Rent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.3.6 Books and Records. Master Tenant shall keep and maintain at its headquarters full, complete and appropriate books, records and accounts relating to the Premises,

including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Master Tenant's calculation of the Percentage Rent. Books, records and accounts relating to Master Tenant's compliance with the terms, provisions, covenants and conditions of this Lease shall be kept and maintained on a cash basis (except as otherwise expressly provided herein), in accordance with generally accepted accounting principles consistently applied, and shall be consistent with the requirements of this Lease which provide for the calculation of Percentage Rent. All such books, records and accounts shall be open to and available for inspection by the Town, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Master Tenant may be required to furnish any governmental agency which would evidence or substantiate Master Tenant's calculation of the Percentage Rent shall at all reasonable times be open for inspection by the Town at the place that the books, records and accounts of Master Tenant are kept. Master Tenant shall preserve records on which any statement of Percentage Rent is based for a period of not less than four years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to Subsection 4.3.6 hereof then pending.

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

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

Notwithstanding any right or remedy of the Town on account of any nonpayment by Master Tenant, the obligation to pay the outstanding amounts due shall survive termination of this Lease.

SECTION 5. USE OF PREMISES.

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

5.2 Prohibited Uses. Master Tenant shall not:

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

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

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

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

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

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

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

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

a result of a breach by a Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant.

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

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

SECTION 6. LEASEHOLD IMPROVEMENTS.

6.1 Condition of the Premises. Landlord shall deliver the Premises to Master Tenant on the Effective Date clean and free of debris.

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

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

6.3 Master Tenant Work Improvement Loans.

6.3.1 As provided in Section 4.3.4 above, Master Tenant may utilize Sublease Income to repay itself for funds it advances or borrows from a third party lender for Master Tenant's Work,

and any subsequent Improvements within the Premises that are neither Subtenant's Work nor funded by the Town's Capital Reserve Fund ("Master Tenant Work Improvement Loans"), on the following basis:

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

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

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

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

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

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

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

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

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

SECTION 7. MASTER TENANT OBLIGATIONS – OPERATION OF PREMISES.

7.1 Responsibility of Master Tenant. Master Tenant shall serve as the master developer and sublandlord for the Subtenants and shall be obligated to ensure that the Premises are properly and fully operated, in good condition, for the approved commercial uses. Master Tenant shall be the primary point

of contact for the Town with regard to all operational, administrative, and compliance issues under this Lease.

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

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

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

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

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

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

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

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

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

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

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

SECTION 8. MAINTENANCE, REPAIRS, AND ALTERATIONS.

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

8.2 Landlord's Obligations.

8.2.1 Except for repairs and maintenance to the Premises that Master Tenant must make under Section 8.1 above, Landlord shall be responsible, at its sole cost and expense, for the remediation of any Hazardous Materials discovered in, on, or about the Premises during the work performed under Section 6 above or discovered thereafter, provided, said discovery and presence of Hazardous Materials are not directly arising out of or attributable to Master Tenant or any subtenants use and/or occupancy of the Premises, Further, Landlord shall be responsible for, at its sole cost and expenses, the roof structure, roof membrane and supports, HVAC (excluding Master Tenant's

maintenance contract), sprinkler system, foundation, exterior walls, and all structural components of the Forbes Mill Building. In the event of an emergency, Master Tenant may give Landlord such notice as is practicable under the circumstances (if any), and if Landlord fails to make such repairs immediately, Master Tenant may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to Landlord for reimbursement. Notwithstanding any provision to the contrary, Landlord's obligations under this Section 8.2.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Master Tenant, Subtenants, or their agents, employees or servants; or (b) any repair or improvement caused by Master Tenant's failure to perform its obligations (including obligations which a Sublease obligates a Sublessee) hereunder or under any other agreement between Landlord and Master Tenant.

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

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

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

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

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

8.6.2 Use of Capital Reserve Fund. Landlord may use monies in the Capital Reserve Fund to fund capital improvements to maintain the quality of the Premises or other purposes reasonably related to this Lease, subject to the reasonable consent of Master Tenant. The use of monies in the Capital Reserve Fund shall be controlled and directed by Landlord in its sole discretion, with input

by Master Tenant, but will be used primarily for capital improvements to the Premises. Unused amounts in the Capital Reserve Fund on the Termination Date will be retained by the Town.

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

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

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

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

SECTION 9. INSURANCE.

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

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

SECTION 10. INDEMNIFICATION BY MASTER TENANT.

10.1 General. Master Tenant shall defend, indemnify, and hold Landlord and Landlord's agent, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) in connection with any and all third party claims to the extent arising out of Master Tenant's use of the Premises ("Claims"), including, but not limited to: (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Master Tenant or Master Tenant's officers, agents, employees, subtenants, or contractors; (c) any breach or default in the performance of any obligation on Master Tenant's part to be performed under this Lease; (d) any violation by Master Tenant or any of its officers, agents, employees, subtenants or contractors of any law,

ordinance or regulation governing the use of the Premises, (e) any injuries (including death of any person), claims, or causes of action relating to or involving the sale of alcoholic beverages on the Premises; or (f) the failure of any representation or warranty made by Master Tenant herein to be true when made. This indemnity does not include any Claims caused by or arising out of the intentional or negligent acts or omissions of Landlord or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of the Lease.

SECTION 11. ENVIRONMENTAL LIABILITY.

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

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

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

11.4 Master Tenant's Use of Hazardous Materials. Notwithstanding the above and provided that Master Tenant complies with all Applicable Laws and Environmental Laws, Master Tenant shall have the right to use Hazardous Materials on the Premises to the extent such Hazardous Materials (i) are contained in restaurant and/or household products, office supply products or janitorial products customarily used in the maintenance, rehabilitation, operation or management of facilities similar to the Premises; or (ii)

are commonly used by a significant portion of the population living within the region of the Premises, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as Master Tenant provides the appropriate warning, if required to do so under any Applicable Law or Environmental Law.

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

SECTION 12. TAXES AND ASSESSMENTS/ POSSESSORY INTEREST TAX.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 14. ASSIGNMENT AND SUBLETTING.

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

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

conditions satisfactory to Master tenant, so long as Master tenant has made reasonable efforts to attract the highest quality potential Subtenants available on terms and conditions satisfactory to Master tenant.

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

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

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

SECTION 15. MORTGAGE OF LEASEHOLD.

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

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

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

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

15.2 Permissible Encumbrances.

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

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

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

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

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

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

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

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

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

endowment fund or foundation authorized to make loans in the State of California; or any other responsible financial institution.

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

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

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

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

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

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

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

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

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

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

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

15.13.2 In case Master Tenant shall have failed to cure any default hereunder within the period provided for Master Tenant to cure such default, Landlord shall so notify any Permitted Mortgagee of such failure and any Permitted Mortgagee shall, within thirty (30) days of receipt of such notice have the right, but not the obligation, to remedy such default or cause the same to be remedied, and Landlord shall accept such performance by or at the instance of the Permitted Mortgagee as if the same had been made by Master Tenant; provided, however, that if the breach or default is with respect to the Master Tenant's Work, nothing contained in this Section or any other Section or provision of this

Lease shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the improvements beyond the extent necessary to conserve or protect the improvements or construction already made without first having expressly assumed the obligation to Landlord to complete, in the manner provided in this Lease, the improvements on the Premises or the part thereof to which the lien or title of such Permitted Mortgagee relates.

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

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

15.13.5 In the event of the termination of this Lease prior to the natural expiration of the then current Term due to default of Master Tenant or operation of law (except by eminent domain) as provided in Section 18, including, without limitation, due to any rejection of this Lease in any bankruptcy, insolvency or other debtor relief proceeding, Landlord shall immediately serve upon the holder of the senior Permitted Mortgage written notice that the Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The senior Permitted Mortgagee or its nominee, purchaser or assignee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

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

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

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

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

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

this Lease, unless and until such Permitted Mortgagee or that holder or owner acquires the interest of Master Tenant.

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

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

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

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

SECTION 16. DAMAGE TO PREMISES.

16.1 Landlord's Obligation to Repair. If subsequent to completion of Master Tenant's Work, a material part of the Premises provided by Landlord in Exhibit A, shall, by reason of fire, earthquake, the elements, acts of God or other unavoidable casualty, be destroyed or so damaged as to become unusable in whole or in part and the damage can, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, Landlord shall promptly and diligently repair the damage (subject to the limitations set forth in Section 20.2) and this Lease shall remain in full force and effect. If a material part of the Premises provided by Landlord in Exhibit A, are damaged, and the

damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, this Lease may be terminated by Landlord by written notice given to Master Tenant within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.

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

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

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

SECTION 17. CONDEMNATION.

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

17.2 Partial Condemnation. If, during the term of this Lease, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for which Master Tenant was using the Premises prior to the taking in the sole discretion of Master Tenant, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations under this Lease with respect to such portion of the Premises taken.

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

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

SECTION 18. DEFAULT, REMEDIES, AND TERMINATION.

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

receiver appointed at the instance or request of the Landlord) and Master Tenant fails to obtain dissolution of the receiver within 90 days after appointment of the receiver; or (vi) Master Tenant shall make a general or any assignment for the benefit of its creditors; or (vii) Master Tenant shall abandon (other than a temporary cessation of operations in connection with renovations of the Premises to which Master Tenant has obtained Landlord's approval, if applicable, as required by the terms hereof) the Premises; or (viii) Master Tenant has made any written or oral representation to the Landlord in connection with this Lease that Master Tenant knows was false in any material respect as of the date made or submitted, Master Tenant knew or should have known that the Landlord would rely on such false representation, and the Landlord relies on such false representation to its detriment in any material respect, then in any of such events Landlord shall have the following options, subject to the provisions of Section 15:

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

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

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

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

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

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

As used in Sections 18.1.3(a) and 18.1.3(a) above, the term "worth at the time of

award” is computed by allowing interest from the date such amount becomes due and payable at one percent (1%) per annum above the rate which the Bank of America announces publicly at its San Francisco or Los Angeles executive offices as its “Reference Rate” for unsecured commercial loans.

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

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

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

SECTION 19. TOWN REQUIREMENTS.

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

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

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

SECTION 20. COMPLIANCE WITH LAW.

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

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

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

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

SECTION 21. GENERAL PROVISIONS.

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

Town: Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attention: Town Manager

Email: manager@losgatosca.gov

With copy to:

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

To Tenant:

Forbes Mill, LLC

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

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

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

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

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

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

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

21.4 Enforced Delay; Extension of Time of Performance. The specific provisions of this Agreement to the contrary notwithstanding, except for payment of any monetary payments required under this Agreement, neither party shall be in default under this Agreement if an obligation to perform is delayed due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; inability to obtain or delay in obtaining materials due to lack of supply; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or enjoining to the performance of the terms of this Agreement. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten days of the

commencement of the cause. The foregoing notwithstanding, the total time period excused under this Section shall not exceed two years.

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

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

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

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

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

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

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

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

21.13 Quiet Enjoyment. Upon payment of the rent as aforesaid and upon the observance and performance by Master Tenant of all of the terms and provisions to be observed by Master Tenant under this Lease, Master Tenant shall peaceably hold and enjoy the Premises for the term hereof without hindrance or interruption by Landlord or any other person, except as herein expressly provided.

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

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

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

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

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

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

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

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction related accessibility standards under

state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs to correct violations of the construction related accessibility standards within the premises.”

In accordance with the foregoing, Master Tenant, upon at least thirty (30) days' prior written notice to Landlord, shall have the right to require a CASp inspection of the Premises. If Master Tenant requires a CASp inspection of the Premises, then: (i) Landlord and Tenant shall mutually agree on the arrangements for the time and manner of the CASp inspection during such thirty (30) day period; (ii) Master Tenant shall be solely responsible to pay the cost of the CASp inspection as and when required by the CASp. It is understood by the parties that Landlord shall not be required to perform, or cause to be performed, any and all repairs needed to correct violations of the construction related accessibility standards within or relating to the Premises and Master Tenant can terminate this lease if it is determined, by Master Tenant that any repairs to correct violations would be too costly. .

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

21.22 Force Majeure. This Lease and the obligations of the parties hereunder shall not be affected or impaired because a party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, epidemics, or any other cause beyond the reasonable control of such party. If Tenant is required to stop construction or is compelled to close its business or cease its business activities pursuant to a government order, recommendation or epidemic (or due to unavailability of labor or materials related to such epidemic), then Tenant shall not be required to pay Base Rent for the period of such closure; provided, however, that the Term of the Lease shall be extended by the number of days or months that Tenant's business is ordered closed and during such extended period Tenant's obligation to pay Base Rent shall continue (such Base Rent being suspended, such that Tenant receives the benefit of any rental abatement). If Tenant's occupancy is reduced by a government order then, for such period that Tenant's occupancy is reduced, the Base Rent shall be reduced pro rata. By way of example, if Tenant is required to limit occupancy to twenty-five percent (25%) pursuant to a government order then, for the period of time that such occupancy is limited to 25%, the Base Rent shall be reduced to 25%. As a condition precedent to availing itself of either a full or partial rental abatement as provided in this Section 21.22, Tenant must provide reasonable evidence to Landlord that Tenant has tendered a claim under all applicable insurance policies that Tenant is required to carry pursuant to Section 9 of this Lease and has pursued any and all state and federal financial assistance offered in response or relation to a government-imposed order to close or reduce occupancy, when and if such assistance is available. If Tenant receives any insurance proceeds or other financial assistance specified to cover any portion of its Base Rent or other monetary obligations under this Lease owed to Landlord (the "Rental Compensation"), then such Rental Compensation shall reduce any full or partial rental abatement that would otherwise be available to Tenant pursuant to this Section 21.22 in the amount of the Rental Compensation (provided that if the Rental Compensation

covers rent and other costs, Tenant may first apply the monies to other costs, and the balance to Base Rent, and the abated rent shall be reduced by the portion of the Rental Compensation attributable to Base Rent).

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

LANDLORD:

THE TOWN OF LOS GATOS

DocuSigned by:
By: Laurel Prevetti
852CFEA2EB39470
Laurel Prevetti
Town Manager

Approved as to form:

DocuSigned by:
Robert W. Schultz
2FE0838558744C
Town Attorney
Robert W. Schultz

Attest:

DocuSigned by:
Shelley Neis
B9868F65B1F94F6
Town Clerk
Shelley Neis

MASTER TENANT:

Forbes Mill, LLC,
a California Limited Liability Company

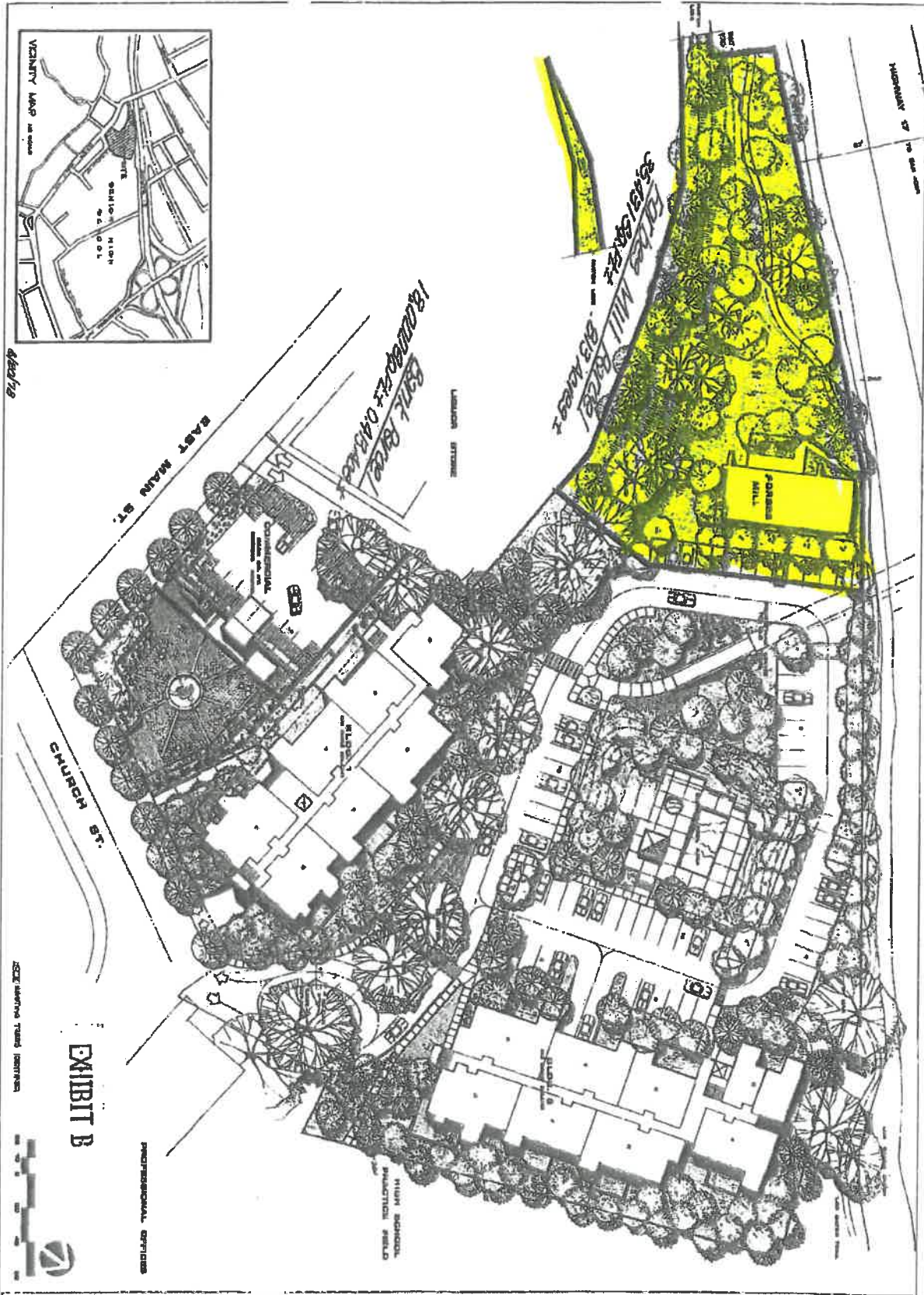
By: Imwalle Asset Management, LLC
a California Limited Liability Company

DocuSigned by:
By: Donald Imwalle
DC847B86EE573415
Don Imwalle, Jr., Managing Member

Exhibit A

Description and Site Plan Showing Location of Premises

(NEXT PAGE)

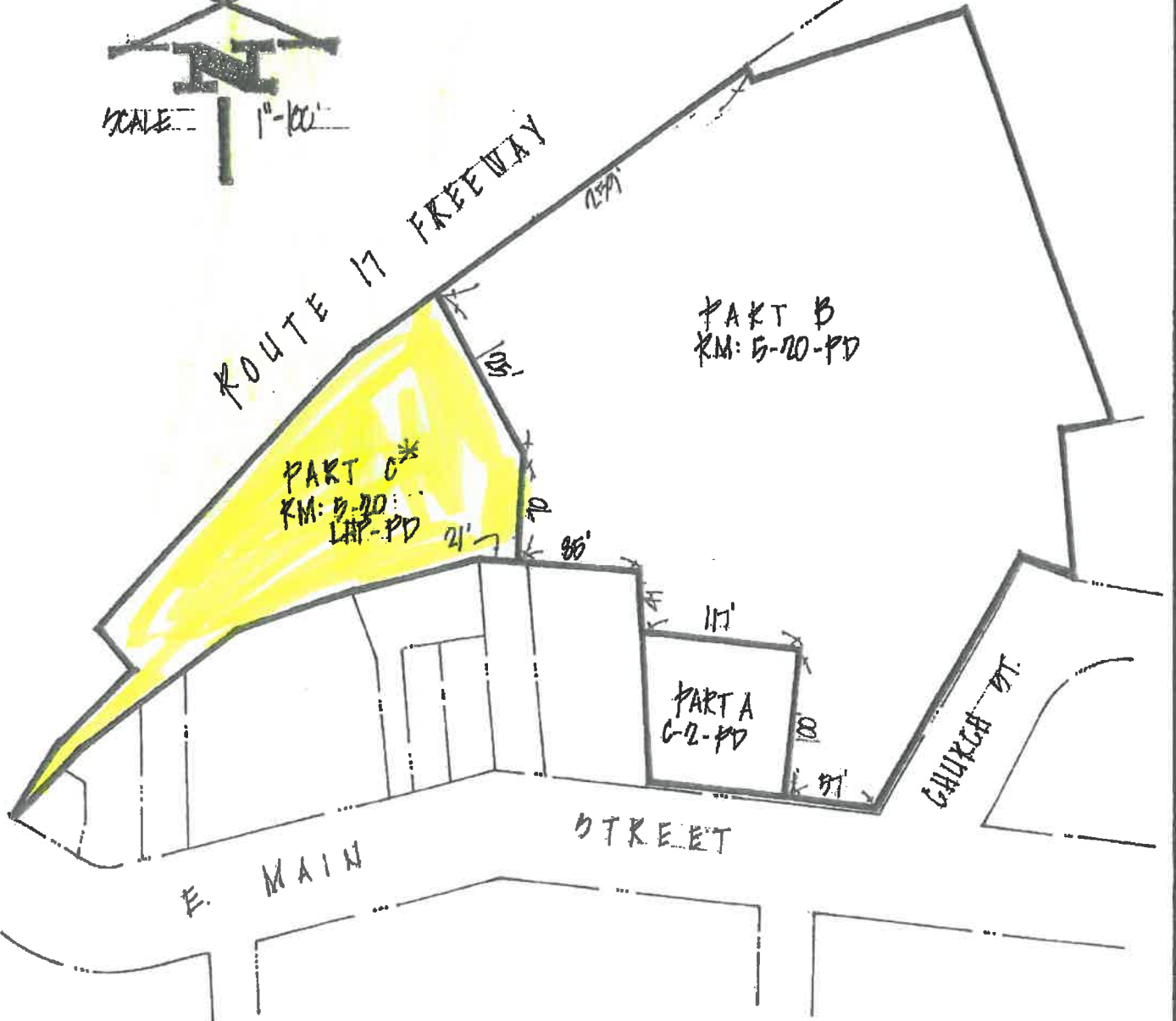


FORBES MILL CONDOMINIUMS **LOS GATOS**

NO. 100	DATE 04-27-78	BY [Signature]	PROJECT SITE PLAN	ARCHITECT: ROBINSON D. STEINBERG ASSOCIATES 1227 N. FIRST ST., SUITE 212, SAN JOSE, CALIFORNIA 95131
---------	---------------	----------------	-------------------	--

A

NOTE* THE DISTANCE BET IN THE NORTHEASTERLY WALL OF FORBES MILL AND THE PROPERTY LINE BETWEEN PART B AND C SHALL BE NOT LESS THAN 36 FEET.



TOWN OF LOS GATOS

Application No. Z-78-6 Change of zoning map
 Amending **Town Zoning Ordinance**
 Zone Change from C-2 & KM: 5-20 & KM: 5-20-LHP to C-2-PD & KM: 5-20-PD
 Prezoning to & KM: 5-20-LHP-PD

Approved by Planning Commission date _____
 Approved by Town Council date March 19, 1979 Ord. 1421
 Town Clerk Karl E. Alday Mayor John B. Lickner

EXHIBIT A

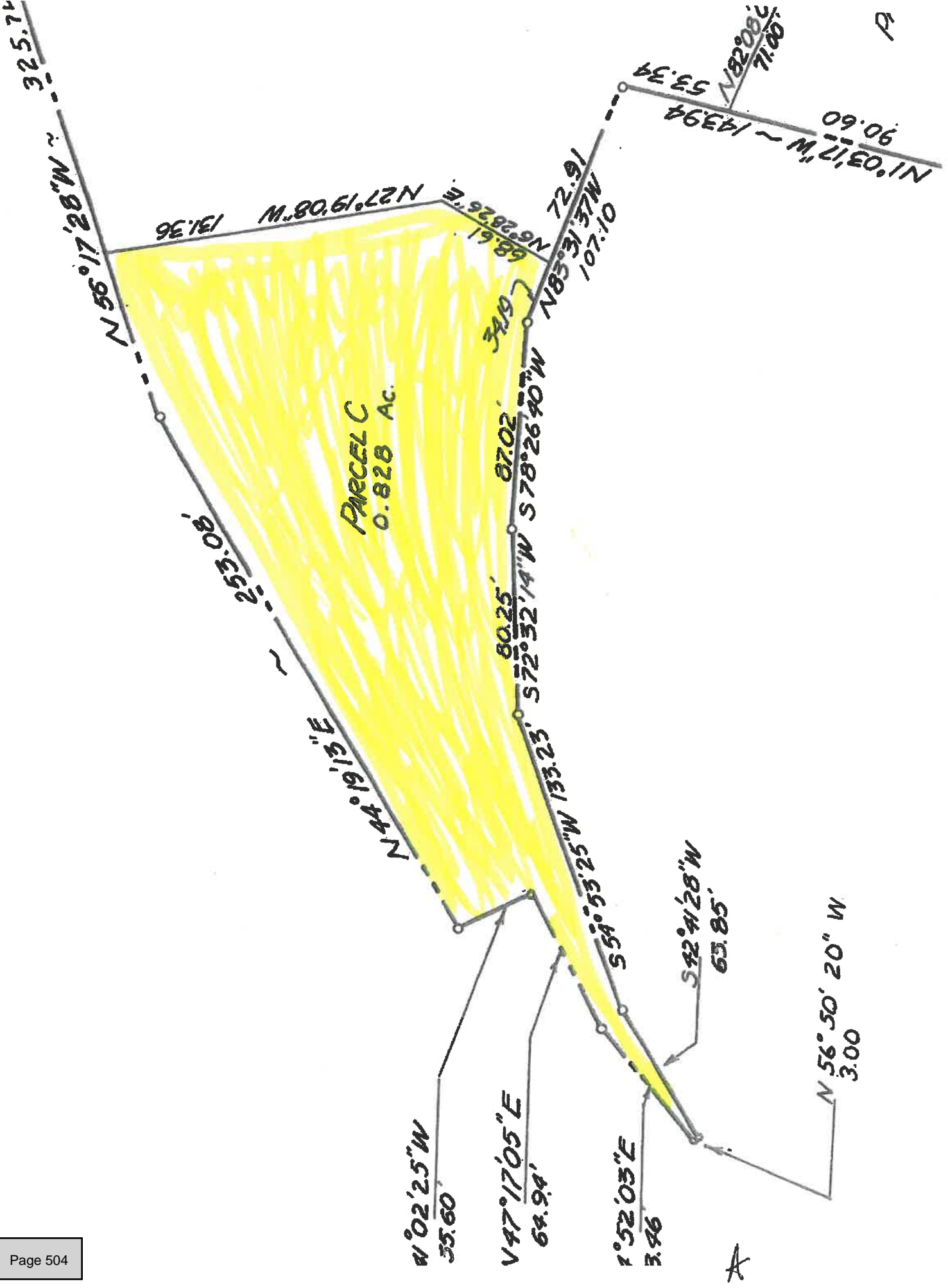


Exhibit B

Form of Notice of Lease Term Dates

[On Town Letterhead]

[Date]

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

Dear Mr. Imwalle:

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

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

Sincerely yours,

_____, Town Manager

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

on behalf of

Forbes Mill, LLC,
a California Limited Liability Company

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

By: _____
Don Imwalle, Jr., Managing Member

Exhibit C

Insurance Requirements for Master Tenant and Subtenants

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

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

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

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

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

- (1) ALL Policies:

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

- (2) General Liability:

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

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

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

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

Certificate Holder address:

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

Exhibit D

Memorandum of Lease Agreement

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

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

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE AGREEMENT

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

Recitals

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

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

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

Agreement

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

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

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

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

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

Executed as of the date first above written.

LANDLORD:

Town of Los Gatos,
a California municipal corporation

By: _____
Print Name: _____
Title: _____

MASTER TENANT:

Forbes Mill, LLC,
a California Limited Liability Company

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

By: _____
Don Imwalle, Jr., Managing Member

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

STATE OF CALIFORNIA

COUNTY OF _____ ss.

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

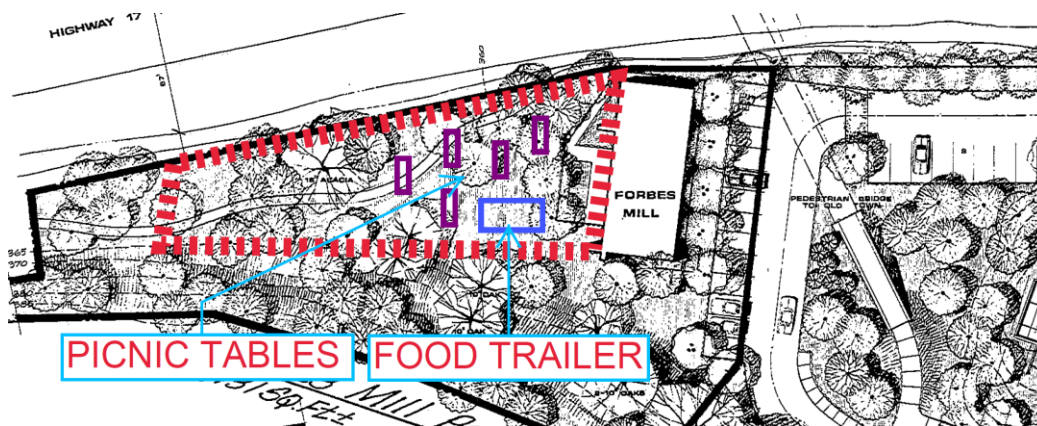
(Signature) (Seal)

Town of Los Gatos
Attn: Monica Renn
Economic Vitality
110 E Main St
Los Gatos, CA
95030

Dear Monica,

We are interested in locating a pop-up restaurant in the garden area of the Forbes Mill property located at 75 Church St. As you are aware, we have a lease agreement in place with the Town for the management and subleasing of the property. While we are continuing the formal marketing efforts for the building, in the interim, we have been approached by Ross Hanson (proprietor of Oak & Rye on N Santa Cruz Ave) to locate his food trailer in the rear garden area of the property on Saturdays during the summer and early fall. This would be a unique and exciting addition to Los Gatos and an amenity for the public that uses the Los Gatos Creek Trail. It also gives us a chance to see if food uses work well at the property, and if so we could market to those kinds of uses accordingly. It would be operated as follows:

1. Hours – Saturdays from 6/19/2021-10/30/2021 from 9am-9pm.
2. Food trailer serving a variety of foods, primarily BBQ cuisine, as well as beer & wine.
3. Trailer would be towed in each morning and towed away each evening.
4. The Forbes Mill building would be unlocked at the rear door for restroom access for customers only.
5. Trailer will be powered from Forbes Mill building electrical service.
6. The cyclone fence will be removed, and the brush cleared to create an area for picnic tables.
7. The staff will be responsible for cleanup and hauling off of trash each night.



Thank you,

Jim Foley

Forbes Mill, LLC
(408) 813-7490

June 9, 2021

Council Members
Town of Los Gatos
110 E Main Street
Los Gatos CA 95030

Re: Request of Forbes Mill LLC for Pop Up Restaurant at the Forbes Mill Annex,
75 Main Street

Dear Council Members:

I am the President of the Forbes Mill Homeowners Association which represents the 48 families that comprise the Forbes Mill Condominiums located at 55 and 95 Church Street.

As you know, our two condominium buildings share an ingress and egress road and sidewalks with the Forbes Mill Annex building. The Annex is located at the bottom of the footbridge that connects our properties and Old Towne. The road down through our complex also serves as an entry point to the Los Gatos Trail. A small parking lot with 13 spaces in front of the Annex Building serves that building, as well as the trail and footbridge users. There are also 4 parking spaces adjacent to the small parking lot that belong to Forbes Mill Condominiums.

The Lessee of the Annex, Forbes Mill, LLC, through their leasing agent, Pennant Properties, informed us this week that they have requested Town approval of their application to locate a "pop up" restaurant outside the Annex building. This 'restaurant' would be a food trailer serving food and beer and wine outdoors on Saturdays from 9 a.m. until 9 p.m. from June through October. The Lessee would add outdoor tables and open the restrooms inside the Annex building for patrons.

The Forbes Mill Homeowners strongly object to this application and strongly urge the Council to deny it. First and foremost, our 48 families have been reassured over and over again that the use of the Annex Building would be compatible with our homes and with the current flow of traffic in and out of our

property. Previously, the Annex building housed the Los Gatos Museum and we understood that a tenant was being sought for office use. Instead, a 'pop up' restaurant is now being proposed with the stated purpose by the Lessee to give them a 'chance to see if food uses work' at the property.

For over 40 years, our 48 families have honored our agreement to keep the road, sidewalks, and Annex parking lot clean; the landscaping well-tended. Forbes Mill Homeowners pay cleaning and landscaping support staff to pick up candy and food wrappers, plastic bottles, other trash and often dog droppings left behind by 'visitors' who walk and drive through our property on their way to and from the Annex Building, the Los Gatos Trail, and/or the footbridge.

At our cost, we have maintained flowering bushes and over 40 large redwood, eucalyptus, and sycamore trees that make up the beautiful vista that surrounds our property, the Annex, and the footbridge. We have done so willingly as good neighbors and good citizens of Los Gatos. We always believed and were reassured that the Annex Building would have a tenant compatible with our arrangement.

It was never contemplated that there would be this kind of intensive use of the roadway and sidewalks and that it could become a 'high traffic/high use' area. Forbes Mill Condominiums did not sign up for 'any and all uses'. We agreed to share this mutual road and sidewalks on a low density use basis. Now, we see the prospect that the easement will be overburdened by its change to an intensive use.

If this project were to be approved, our 48 families would be asked to endure a food trailer lugged down our roadway early every Saturday morning and lugged up our roadway late every Saturday night. We would be asked to endure the sights, sounds, and smells of food being prepared in time for service starting at 9 a.m. We would be forced to endure very early start times for set up and then endure very late end times for take down after the restaurant closes at 9 p.m.

We would be asked to endure increased auto and foot traffic up and down and through our property. One can reasonably ask with only 13 parking spaces in front of the Annex Building (one of which is handicap), where will food workers park, where will non-event auto traffic park when the small parking lot fills up. These autos will avail themselves to the Forbes Mill Condominium parking lots and what is our recourse as a private property? Only one: hire security, hire a towing company and incur the expense of parking enforcement not to mention incur the wrath of visitors whose cars are towed.

In addition, the proposal includes the request to serve wine and beer from open at 9 a.m. to close at 9 p.m. every Saturday. This may attract an element to our property that will be challenging for other reasons. No mention is made of music but music is only one of the foreseeable next steps for 'eating ambience'. The Lessee has directly stated that if this 'food trailer concept' is successful, their next step would be a more permanent 'food use' at the Annex Building.

This project is far different than office workers going to and from their office at the Annex. This proposal is far different than occasional bike riders using the road to access the Trail; far different than occasional autos driving down to park in front of the Annex to access the trail; far different than people walking down our sidewalks on the way to the Trail or the footbridge to Old Towne. To our families, this project means additional auto and foot traffic, additional trash to clean up, additional noise, additional people wandering through our property, increased security for parking and towing from overflow into our parking areas. It is not the use we have been assured the Annex property would have.

Added to this scenario is the Lessee's stated intention to see if this project can lead to the Annex building becoming a permanent destination for food and alcoholic beverage service. This is not the low density use we contemplated many years ago when we entered into the easement agreement, an agreement we have faithfully kept.

Town Council
June 9, 2021
Page 4 of 4

We respectfully request that Council deny this use. The Annex Building is and was designated for office use. Forbes Mill Condominiums has been a good neighbor and a cooperative partner in a unique physical location shared with the Town. Turning the Annex grounds into a commercial restaurant venue would be an egregious interference with the right of our 48 families to continue to enjoy our property in a peaceful way, and would be a financial and social burden far beyond that contemplated between Forbes Mill Condominiums and the Town.

Respectfully submitted,



GREGORY HACKER, PRESIDENT

Forbes Mill Homeowners Association



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/15/2021

ITEM NO: 22

DESK ITEM

DATE: June 15, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Provide Direction on the Proposal from Forbes Mill LLC, Requesting a Restaurant Pop-Up at Forbes Mill located at 75 Church Street on Saturdays from June 19 through October 30, 2021.

REMARKS:

Attachment 4 contains public comment received after 11:01 a.m. on June 14, 2021 and before 11:00 a.m. on June 15, 2021.

Attachments Previously Received with the Staff Report:

1. Forbes Mill LLC. Lease Agreement
2. Proposal for summer restaurant pop-up from Forbes Mill LLC
3. Public Comment received before 11:00 a.m. on June 10, 2021

Attachments Included with this Desk Item:

4. Public Comment received between 11:01 a.m. on June 14, 2021 and 11:00 a.m. on June 15, 2021.

PREPARED BY: Monica Renn
Economic Vitality Manager

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

From: Terry Negendank <[REDACTED]>

Sent: Tuesday, June 15, 2021 7:33 AM

To: PublicComment <PublicComment@losgatosca.gov>

Cc: Paula <[REDACTED]>; Heidi Negendank <[REDACTED]>; [REDACTED]
[REDACTED]

Subject: Item 22 on agenda June 15 Town Council meeting

I am writing with a strong request to deny this proposed use as a pop up restaurant. This use would lead to overuse of our property by non residents entering, traveling through it and trying to use our parking. This would create the need for us to incur the financial burden to hire parking security and to endure loud noises from music, walkers late at night on our sidewalks and thru our parking lot passing resident's units to get to their cars. Serving alcohol only increases the volumes of patrons voices and tendencies to not respect our private property that they would pass by and through.

The longer view of a permanent restaurant being approved after a "test" pop up restaurant in this very unique and inaccessible location is very disturbing. I am asking for this request to be summarily denied.

Terry Negendank

Owner 95 Church Street #2204

From: Cheryl Huddleston <[REDACTED]>
Sent: Tuesday, June 15, 2021 9:43 AM
To: PublicComment <PublicComment@losgatosca.gov>
Subject: Forbes Mill Pop up restaurant

I am a resident at 55 Church Street. I totally oppose having anything at Forbes Mill that produces traffic and noise. This is a residential area. The ingress and egress to the lower area from Church Street is not good. The Church Street driveway is narrow and curvy. It crosses the path of cars on Church Street as well as cars exiting the 55 Church Street garage. There are walkers, joggers, bicyclists, skateboarders, going to the footbridge, trails and the High School. A potentially dangerous situation. Please vote no on this project or anything similar. A nice quiet office space with minimal traffic would be okay.

Thank you,
Cheryl Huddleston
55 Church Street
Los Gatos, CA