



**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
MAY 04, 2021
110 EAST MAIN STREET
LOS GATOS, CA**

*Marico Sayoc, Mayor
Rob Rennie, Vice Mayor
Mary Badame, Council Member
Matthew Hudes, Council Member
Maria 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 follow the participation instructions on page 2 of this agenda. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period, by following the participation instructions on page 2 of this agenda. The time allocated to speakers may change to better facilitate the Town Council meeting.

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

Deadlines for Public Comment and Presentations are as follows:

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

***Town Council Meetings Broadcast Live on KCAT, Channel 15 (on Comcast) on the 1st and 3rd Tuesdays at 7:00 p.m.
Rebroadcast of Town Council Meetings on the 2nd and 4th Mondays at 7:00 p.m.
Live & Archived Council Meetings can be viewed by going to:
www.LosGatosCA.gov/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
MAY 04, 2021
7:00 PM**

IMPORTANT NOTICE REGARDING THE MAY 4, 2021 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/81981846332?pwd=SEIUS2QzOWVuRi9KdVREK2xlQUk3dz09>. Password: 426753. You can also type in 81981846332 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 Chair announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press *9 on your telephone keypad to raise your hand. If you are participating by calling in, press #2 on your telephone keypad to raise your hand.
- When called to speak, please limit your comments to three (3) minutes, or such other time as the Chair may decide, consistent with the time limit for speakers at a Council meeting.

If you are unable to participate in real-time, you may email to PublicComment@losgatosca.gov 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.

**TOWN OF LOS GATOS
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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.

MEETING CALL TO ORDER

ROLL CALL

PRESENTATIONS

- i. Public Works Week Proclamation
- ii. Building Safety Month Proclamation
- iii. Municipal Clerks Week Proclamation

COUNCIL / MANAGER MATTERS

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

- 1. Approve Minutes of the April 20, 2021 Closed Session Town Council Meeting.
- 2. Approve Minutes of the April 20, 2021 Regular Town Council Meeting.
- 3. Authorize Actions for the Purchase and Maintenance of Police Vehicle Mobile Audio and Video with Integrated Automated License Plate Reader Technology:
 - a. Authorize the Town Manager to Execute a Six-Year Agreement with Axon Enterprises Incorporated for the Purchase and Maintenance of Police Vehicle Mobile Audio and Video with Integrated Automated License Plate Reader Technology in an Amount of \$214,851.49.
 - b. Authorize an Expenditure Budget Transfer of \$35,222.28 from the Equipment Replacement Fund to the Police Department Operating Budget.
- 4. Adopt an Ordinance of the Town of Los Gatos Amending Chapter 25, by Renaming it to “Revenue and Taxation” and Adding Article VII, Sections 25.70.010- 25.70.140 of the Los Gatos Town Code Entitled Public Art Funding.
- 5. Adopt a Resolution Declaring Hazardous Vegetation (Brush) a Public Nuisance, Ordering Abatement, and Setting June 1, 2021 as a Public Hearing to Consider Objections to the Proposed Removal of Brush.

6. Authorize the Following Actions:
 - a. Accept a California Department of Resources Recycling and Recovery (CalRecycle) Grant in the Amount of \$230,000; and
 - b. Authorize Revenue and Expenditure Budget Adjustment in the Amount of \$230,000 in the Fiscal Year 2020/21 Capital Improvement Program (CIP) Budget for the Street Repair and Resurfacing Project (CIP No. 811-9901).
7. Landscape and Lighting Assessment Districts 1 & 2
 - a. Adopt a Resolution (Attachment 1) Approving the Engineer's Report (Attachment 8) for FY 2021/22.
 - b. Adopt a Resolution (Attachment 2) of Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 1-Blackwell Drive Benefit Zone.
 - c. Adopt a Resolution (Attachment 3) of Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 1-Kennedy Meadows Benefit Zone.
 - d. Adopt a Resolution (Attachment 4) of Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 1-Santa Rosa Heights Benefit Zone.
 - e. Adopt a Resolution (Attachment 5) of Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 1-Vasona Heights Benefit Zone.
 - f. Move \$16,089 from the Kennedy Meadows Fund Balance to the Kennedy Meadows District Weed Abatement Budget.
 - g. Adopt a Resolution (Attachment 6) of Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 1-Hillbrook Drive Benefit Zone.
 - h. Adopt a Resolution (Attachment 7) of intention to Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 2-Gemini Court Benefit Zone.
 - i. Set June 15, 2021 as the Date for the Public Hearing to Consider Protests for the Levy and Collection of Assessments.
8. Approve a Funding Agreement with the Santa Clara Valley Transportation Authority for the State Route 17 Corridor Congestion Relief Project (CIP NO. 813-0237).
9. Adopt an Ordinance for a Zone Change from O:LHP (Office with a Landmark and Historic Preservation Overlay) to R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay) for Property Located at **246 Almendra Avenue**. APN: 510-14-019. Zone Change Application Z-20-001. Property Owner: Gary Filizetti. Applicant: Brett Brenkwitz.
10. Adopt an Ordinance for a Zone Change from R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay) to C-2:LHP (Central Business District with a Landmark and Historic Preservation Overlay), for Property Located at **4 Tait Avenue**. APN: 510-44-054. Zone Change Application Z-20-002. Property Owner: Town of Los Gatos. Applicant: Jim Foley.
11. Authorize the Town Manager to Execute Agreements with the County of Santa Clara for:
 - a. Countywide Household Hazardous Waste Collection Program; and
 - b. AB939 Implementation Fee Collection and Distribution.
12. Authorize the Town Manager to Execute a Five-Year Agreement for Consultant Services with TruePoint Solutions DigEplan (LCT Software) for Electronic Plan Review Services in

an Amount Not to Exceed \$89,474, Including a 3 Percent Increase Each Year with the First Year Not to Exceed \$16,859.

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.)*

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

- [13.](#) Receive the Report and Presentation from West Valley Solid Waste Management Authority Regarding Senate Bill 1383 Updates and Implementation.
- [14.](#) Consider Requests for Additional Funding for Special Events and Destination Marketing and Other Town Needs, and Direct Staff on Next Steps.

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 review on the official Town of Los Gatos website. Copies of desk items distributed to members of the Council at the meeting are available for review 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.



**DRAFT
Minutes of the Town Council Special Meeting - Closed Session
April 20, 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, April 20, 2021, to hold a Closed Session at 5:45 p.m.

MEETING CALLED TO ORDER AT 5:46 P.M.

ROLL CALL

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

Absent: None

VERBAL COMMUNICATIONS

No one spoke.

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

1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8)

- a. Property: 224 W Main Street (APN: 810-44-089)
Negotiating Parties: Town of Los Gatos
Negotiator: Arn Andrews, Assistant Town Manager and Potential Buyer or Lessee
Negotiations: Price and terms of sale or lease

- b. Property: Calfill Court/Pine Avenue (APN: 529-21-034)
Negotiating Parties: Town of Los Gatos
Negotiator: Arn Andrews, Assistant Town Manager and Potential Buyer Lessee
Negotiations: Price and terms of sale or lease

- c. Property: 4 Tait Avenue (Museum) (APN: 510-44-054)
Negotiating Parties: Town of Los Gatos
Negotiator: Arn Andrews, Assistant Town Manager and Imwalle Asset Management, Potential Lessee
Negotiations: Price and terms of lease

Item # 1 – continued

- d. Property: 75 Church St. (Forbes Mill) (APN: 529-54-050)

Negotiating Parties: Town of Los Gatos

Negotiator: Arn Andrews, Assistant Town Manager and Imwalle Asset Management,
Potential Lessee

Negotiations: Price and terms of lease

- e. Property: 4 New York Avenue (Venue) (APN: 529-27-024)

Negotiating Parties: Town of Los Gatos

Negotiator: Arn Andrews, Assistant Town Manager and Los Gatos-Saratoga Union High
School District, Potential Buyer and/or Lessee

Negotiations: Price and terms of potential sale or lease

Council discussed the items.

ADJOURNMENT

Closed Session adjourned at 6:43 p.m.

Attest:

Submitted by:

Jenna De Long, Deputy Clerk

Laurel Prevetti, Town Manager



**DRAFT
Minutes of the Town Council Meeting
April 20, 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, April 20, 2021, at 7:00 p.m.

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

ROLL CALL

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

Absent: None

PRESENTATIONS

Mayor Sayoc presented a Los Gatos Beautiful proclamation in honor of Arbor Month.

CLOSED SESSION REPORT

Robert Schultz, Town Attorney, stated Council met in Closed Session as duly noted on the agenda and no action was taken that requires reporting under the Brown Act.

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Vice Mayor Rennie stated he attended the Bay Area Air Quality Management District (BAAQMD) Board meeting and a meeting with BAAQMD staff; Valley Transportation Authority (VTA) Policy Advisory Committee meeting; California Cities Association Peninsula Division, Housing Action Coalition webinar; Silicon Valley Clean Energy Authority (SVCEA) Risk Oversight Committee, Board meeting, and Special Board meeting; Housing and Community Development Advisory Committee meeting; Community Health and Senior Services Commission (CHSSC) meeting; City of Morgan Hill Ending Homelessness in South County webinar; and a Town Finance Commission meeting.
- Council Member Badame stated she attended the General Plan Advisory Committee meeting (GPAC) with Council Member Ristow, and met with community members regarding general concerns and process questions.
- Council Member Hudes stated he attended the Cities Association and CHSSC meetings as an observer, and the Town Finance Commission meeting.

Council Matters – continued

- Council Member Ristow stated she attended the Town Finance Commission and Complete Streets and Transportation Commission (CSTC) meetings as an observer; Chamber of Commerce and community members regarding justice, equity, diversity and inclusion (JEDI) launch event meeting; met with community members; Santa Clara County Water District (Valley Water) Commission meeting; West Valley Sanitation Board meeting, and Lessons From Mount Diablo meeting in addition to the meetings already stated.
- Mayor Sayoc stated, in addition the meeting previously mentioned, she attended the Cities Association Board meeting.

Manager Matters

- Announced Youth Commission recruitment is open with applications due by 4:00 p.m. on April 30, 2021.
- Announced a Traffic Calming Workshop for Shannon Road will be held on April 22, 2021 and more information can be found on the Parks and Public Works webpage.

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

1. Approve Draft Minutes of April 6, 2021 Closed Session Town Council Meeting.
2. Approve Draft Minutes of April 6, 2021 Joint Meeting of the Town Council and Arts and Culture Commission.
3. Approve Draft Minutes of the April 6, 2021 Regular Town Council Meeting.
4. Adopt a Resolution Describing Improvements and Directing Preparation of the Town Engineer's Report for Fiscal Year 2021/22 for Landscape and Lighting Assessment Districts No. 1 and 2. **RESOLUTION 2021-008**
5. Authorize the Town Manager to Negotiate and Execute a Consultant Services Agreement with NCE for the Shannon Road Repair (*CIP No. 811-0008*) Design Services in an Amount Not to Exceed \$450,000.
6. Authorize the Town Manager to Execute a First Amendment to the Agreement for Services with KCAT-TV to Transfer 177 Additional Archived Town Council and Planning Commission Meetings to the Town-Branded YouTube Channel for a Total Cost of \$3,540.
7. Authorize the Town Manager to: Purchase Two Patrol Motorcycles from Long Beach BMW in an Amount not to Exceed \$65,750; and Execute a Summary Vehicle Quotation to Extend the Commercial Motor Vehicle Master Lease Agreement with Mike Albert, LTD. in an Amount not to Exceed \$3,000 for a 12- Month Lease Extension for Two Electric Vehicles, for a Total Lease Amount Not to Exceed \$66,010.
8. Authorize a General Fund Appropriated Reserve Budget Transfer of \$50,000 from the Guardrail Replacement Project (CIP No. 812-0120) to the Shannon Road Class 1 Multi-Use Path Project (CIP No. 813-0218) and Approve Corresponding Revenue and Expenditure Budget Adjustments.

Consent Items – continued

9. Authorize the Town Manager to Execute a First Amendment to Agreement for Services with Pacific Display Inc. for Additional Downtown Tree Lighting Repairs in an Amount of \$9,480 for a Total Agreement Not to Exceed \$242,085 and Authorize a Budget Transfer of \$9,480 from the Tree Replacement Fund to the General Fund to Fund the Increase.
10. Authorize the Town Manager to Execute a Construction Agreement for the Waterproofing Town-Wide Project (20-821-2010) with California Roofing Company for a Roof Replacement on the Engineering Building in an Amount of \$51,020 Plus an Additional \$5,102 for Unforeseen Repairs in an Amount Not to Exceed \$56,122.

Johnathan Friedland pulled item #8

Amy Nishide pulled item #3

Jeff Suzuki pulled item #7

**MOTION: Motion by Council Member Badame to consent item 1, 2, 4, 5, 6, 9, and 10.
Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Randi Chen, Los Gatos Chamber of Commerce

- Requested the Council consider using some of the American Rescue Plan Act (ARPA) funds on events including Picnic in the Park, Thursday Promenade, and a Town-wide celebration on Labor Day weekend.

Jeff Somers

- Requested Council consider using some of the ARPA funds to form a Justice, Equity, Diversity, and Inclusion (JEDI) committee.

Donna McCurie, Los Gatos Chamber of Commerce

- Invited the community to a Diversity, Equity, and Inclusion Chamber Event to be held on April 25 at 3:00 p.m. at Town Plaza Park.

Rob Hendricks, Toll House Hotel

- Requested Council consider using some of the ARPA funds to attract more out of town visitors to Los Gatos and establish a Visitor's Bureau.

Verbal Communications – continued

Amy Nishide

- Thanked the Council for passing the Anti-Hate resolution at the April 6, 2021 Town Council meeting.

Johnathan Friedland

- Requested the Town consider utilizing ARPA funds to support outdoor dining.

Lynley Kerr Hogan

- Commented in opposition of hiring a consultant for a JEDI workplan, and requested the Council take action against Critical Race Theory (CRT).

Jeffrey Suzuki

- Thanked the Council for passing the Anti-Hate resolution at the last meeting, and expressed concerns of allocating more money toward the Police Department and that community policing may up to the discretion of the Police Officers.

Cyndi Sheehan

- Inquired why bullying in schools is not being addressed while Black Lives Matter and Asian-American hate is being addressed, and commented that Los Gatos is not a racist community.

Brian Bernasconi

- Requested the Council consider allocating ARPA funds to support the Chamber of Commerce in its efforts to support the businesses with outdoor dining and events.

Paul Soto

- Commented on his experience of being Native American and how all parts of his life have been affected by racism. (Mr. Soto lost connection due to technical difficulties.)

Alicia Cinema Stereo (Spargo)

- Commented that racism exists and common ground can be found to move forward.

OTHER BUSINESS

11. Review and Discuss the Activities of the Parks Commission.

Matt Morley, Director of Parks and Public Works, presented the staff report.

Rob Stephenson, Parks Commission Chair, stated the goals of the Parks Commission.

Director Morley introduced Commissioners Ober, Gordon, and Emami.

Other Business Item #11 – continued

Opened Public Comment.

Alice Southwell, Best Western Inn

- Commented that there has been an increase of leisure travelers and requested the Council consider using ARPA funds for destination marketing to target visitors from out of the area and support the Chamber of Commerce events.

Kevin Arroyo

- Requested the Council consider supporting development of and allocating funds for a community garden in the PG&E easement corridor.

Lisa Rutherford

- Requested the Council consider supporting development of a community garden in the PG&E easement corridor.

Ali Miano

- Requested the Council consider supporting development of a community garden in the PG&E easement corridor and use the opportunity to commemorate the indigenous peoples of Los Gatos.

Steve Hammack

- Requested the Council consider supporting development of a community garden in the PG&E easement corridor.

Sandi Hammack

- Requested the Council consider supporting development of a community garden in the PG&E easement corridor.

Dan Pinschmidt

- Requested the Council consider supporting development of a community garden in the PG&E easement corridor and shared an experience of implementing a community garden where the municipality supports the garden through donations of goods.

C. Roy

- Requested Council withdraw the April 6, 2021 decision to approve an RFP for a consultant to draft a Justice, Equity, Diversity, and Inclusion (JEDI) work plan and commented racism does not exist.

Closed Public Comment.

Other Business Item #11 – continued

Council discussed the matter.

The Council directed the Parks Commission to continue its work on the Park Stewardship program and proposed community garden.

PUBLIC HEARINGS

12. Consider a Request for Approval for a Zone Change from O:LHP (Office with a Landmark and Historic Preservation Overlay) to R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay) for Property Located at 246 Almendra Avenue. APN: 510-14-019. Zone Change Application Z-20-001. Property Owner: Gary Filizetti. Applicant: Brett Brenkwitz. **ORDINANCE 2316**

Ryan Safty, Associate Planner, presented the staff report.

Vice Mayor Rennie and Council Member Badame recused themselves from the meeting.

Opened Public Comment.

Brett Brenkwitz, applicant, gave remarks.

Closed Public Comment.

No one spoke.

Council discussed the matter.

MOTION: Motion by Council Member Hudes to

- Approve a zone change from O:LHP (office with a landmark and historic preservation overlay) to R-1D:LHP (single-family residential downtown with a landmark and historic preservation overlay) for the property located at 246 Almendra Avenue. APN: 510-14-019. Zone change application Z-20-001. Property owner: Gary Filizetti. Applicant: Brett Brenkwitz as described in the staff report;
- Make the required finding that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act, Section 15061 (b)(3) as stated in Attachment 3;
- Make the required finding that the proposed zone change is consistent with the General Plan and its Elements in that the proposed zoning is consistent with the existing General Plan Land Use designation as stated in Attachment 3; and,

Public Hearing Item #12 – continued

- Introduce an Ordinance of the Town of Los Gatos effecting a zone change from O:LHP (Office with a Landmark and Historic Preservation Overlay) to R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay) for the property located at 246 Almendra Avenue as stated in Attachment 4, by title only. **Seconded by Council Member Ristow.**

VOTE: Motion passed 3/0/2. Vice Mayor Rennie and Council Member Badame Recused.

The Town Clerk read the title of the ordinance.

Vice Mayor Rennie and Council Member Badame rejoined the meeting.

Council Member Ristow recused herself from the meeting.

The meeting recessed at 9:05 p.m. and began again at 9:10 p.m.

13. Consider a Request for Approval for a Zone Change from R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay) to C-2:LHP (Central Business District with a Landmark and Historic Preservation Overlay) and a General Plan Amendment to Change the Land Use Designation from Medium Density Residential to Central Business District, for Property Located at 4 Tait Avenue. APN: 510-44-054. Zone Change Application Z-20-002 and General Plan Amendment Application GP-20-001. Property Owner: Town of Los Gatos. Applicant: Jim Foley. **RESOLUTION 2021-009 and ORDINANCE 2317**

Jennifer Armer, Senior Planner, presented the staff report.

Jim Foley, applicant, gave first remarks.

Opened Public Comment.

Jim Pappas

- Commented on parking concerns due to the narrowing of Tait Road at the property and requested the property be used as office space.

Ali Miano

- Commented on parking concerns due to the narrowing of Tait Road at the property and requested Council consider the property be used for affordable housing.

Public Hearing Item #13 – continued

Amy Nishide

- Commented in opposition of the item and requested Council consider the property be used for housing.

Alicia Cinema Stereo (Spargo)

- Requested Council consider the property be used for affordable housing.

Kat Batt

- Requested Council consider the property be used as an office space.

Lee Quintana

- Commented in opposition of the proposal and requested the Council amend the master lease to require the historic fire bell and small public space be maintained, and limit uses such as food service, personal services, medical use, and high traffic uses.

Lynley Kerr Hogan

- Requested Council consider the property be used as low-traffic housing.

Jeffrey Suzuki

- Commented on concerns that it is not clear what this property will be used for and requested the Council consider using this property as housing.

Mike Wasserman

- Requested the Council consider this property be conditioned for compatible neighborhood uses with low traffic, such as offices.

Closed Public Comment.

Jim Foley, applicant, rebutted the comments.

Council discussed the matter.

MOTION: Motion by Council Member Badame to

- Approve a zone change from R-1D:LHP (single-family residential downtown with a landmark and historic preservation overlay) to C-2:LHP (central business district with a landmark and historic preservation overlay) and a General Plan amendment to change the Land Use Designation from Medium Density Residential to central business district, for property located at 4 Tait Avenue. APN: 510-44-054. Zone change application Z-20-002 and General Plan

Public Hearing Item #13 – continued

amendment application GP-20-001. Property owner: Town of Los Gatos.

Applicant: Jim Foley;

- Make the required finding that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act, Section 15061 (b)(3) as stated in Attachment 4;
- Make the required finding that the General Plan amendment is internally consistent with the existing goals and policies of the General Plan and its Elements as stated in Attachments 1 and 4;
- Adopt a Resolution approving General Plan Amendment Application GP-20-001 amending the General Plan Land Use designation from Medium Density Residential to Central Business District as stated in Attachment 5;
- Make the required finding that the proposed zone change is consistent with the General Plan and its Elements in that the proposed zoning is consistent with the proposed General Plan Land Use designation as stated in Attachment 4; and
- Introduce an Ordinance of the Town of Los Gatos effecting a zone change from R1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay) to C-2:LHP (Central Business District with a Landmark and Historic Preservation Overlay) for the property located at 4 Tait Avenue as stated in Attachment 6, by title only.

Seconded by Vice Mayor Rennie.

VOTE: Motion passed 4/0/1. Council Member Ristow Recused.

The Town Clerk read the title of the ordinance.

Council Member Ristow rejoined the meeting.

14. Introduction and First Reading of an Ordinance of the Town of Los Gatos Amending Chapter 25, by Renaming it to “Revenue and Taxation” and Adding Article VII, Sections 25.70.010-25.70.140 of the Los Gatos Town Code Entitled Public Art Funding. **ORDINANCE 2318**

Robert Schultz, Town Attorney, presented the staff report.

Opened Public Comment.

Ellis Wecker

- Commented in support of the item.

Closed Public Comment.

Public Hearing Item #14 – continued

Council discussed the matter.

MOTION: Motion by Council Member Badame to introduce an Ordinance of the Town of Los Gatos amending chapter 25 by renaming it to “Revenue and Taxation” and adding Article VII, Sections 25.70.010-25.70.140 of the Los Gatos Town Code entitled Public Art Funding as stated in Attachment 2, by title only. **Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

The Town Clerk read the title of the ordinance.

OTHER BUSINESS

15. Direct the Advancement of the Downtown Employee Parking Pilot and the Issuance of a Request for Proposals for Consultant Services for Wayfinding Signage.

Sgt. Greg Borromeo presented the staff report.

Opened Public Comment.

No one spoke.

Closed Public Comment.

Council discussed the matter.

MOTION: Motion by Vice Mayor Rennie to issue a Request for Proposals for wayfinding signage and advance the employee parking pilot as stated in the staff report. **Seconded by Council Member Ristow.**

VOTE: Motion passed unanimously.

16. Discuss and Provide Direction on the Following Actions to Continue the Town’s Support of Economic Recovery and Community Vitality, in Response to the Ongoing COVID-19 Pandemic, Including:

a. Temporary Krail Parklets:

1. Confirm sunset date of September 19, 2021;
2. Provide Direction on the Temporary Tents and Other Weather Protection Structures;

Other Business Item #16 – continued

b. Semi-Permanent Parklets:

1. Provide Direction on Timeline for Grant Distribution and Parklet Construction;
 2. Provide Direction on Awnings and Other Weather Structures;
 3. Provide Direction on Maximum Number of Spaces for Parklets; and,
- c. Approve the extension of Personal Services Businesses in Office Commercial Zones (Zone O) with an Economic Recovery Agreement. **RESOLUTION 2021-010**

Monica Renn, Economic Vitality Manager, presented the staff report.

Opened Public Comment.

Kevin Youkilis, Loma Brewing Company and Chamber Food and Wine Group

- Requested Council consider allocating ARPA funds for the parklet program, bringing the Adirondack chairs back to Grays Lane, and reimbursing the business owners that financed the first parklets without assistance from the Town.

Jim Foley, Chamber of Commerce and Chamber Food and Wine Group

- Requested the Council consider allocating funds from the downtown streetscape project recovery funds to advance the semi-permanent parklet program.

David McGregor-Scholes, Redemption and Chamber of Commerce

- Requested the Council consider allocating funds from the downtown streetscape recovery fund and ARPA funds to advance the semi-permanent parklet program and the Town's JEDI initiative.

Kathy Granger

- Requested the Council consider extending the existing K-rail parklet program deadline to the end of the year, reimburse parklet owners that constructed the parklets without Town assistance and have made their parklets ADA compliant, allocate recovery funds to advance the parklet program, and allow semi-permanent parklet owners the flexibility to weatherproof the parklets.

Leona Stephenson, Vivid Brows and Skin

- Shared her experience of being denied the ability to move suites within the same building and commented in support of the modified resolution.

Catherine Somers, Chamber of Commerce

- Commented that many businesses are in support of the parklet program but could not remain in the meeting due to the time, and requested Council consider allocating some downtown streetscape funds and ARPA funds to advance the parklet program.

Other Business Item #16 – continued

Ginger Rowe

- Commented that the parklet program should be funded and advanced.

Donna Novi

- Commented that the parklet program should be funded and advanced, and requested the Council consider allocating funds from the downtown streetscape project recovery funds to advance the semi-permanent parklet program.

Randi Chen, Chamber of Commerce

- Requested the Council consider increasing the grant funding amount to either a percentage or \$40,000 each allocated from the remaining \$1.5 million set aside for streetscape and economic recovery, and reimburse the parklet owners who made their parklets ADA compliant.

Andrea, Centenovo

- Requested the Council refer to the written public comments submitted by Jim Foley for direction to fund semi-permanent parklets.

Closed Public Comment.

Council discussed the matter.

MOTION: **Motion by Council Member Badame** to adopt modified resolution contained in Attachment 4 extending personal services businesses in office commercial zones (Zone O) with an economic recovery agreement as contained in Attachment 4. **Seconded by Vice Mayor Rennie.**

VOTE: **Motion passed unanimously.**

MOTION: **Motion by Vice Mayor Rennie** to reimburse the cost of future parklets up to 75% or \$40,000 per business, whichever is less, allocated from the \$1.5 million set aside for street scape and economic recovery. **Seconded by Council Member Hudes.**

VOTE: **Motion passed unanimously.**

Other Business Item #16 – continued

MOTION: Motion by **Vice Mayor Rennie** to reimburse the original parklets up to \$2,500 per parklet for ADA compliance modifications. **Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

MOTION: Motion by **Vice Mayor Rennie** to reimburse the five original parklets up to 75% or \$40,000, whichever is less, allocated from the \$1.5 million set aside for street scape and economic recovery. **Seconded by Council Member Ristow.**

VOTE: Motion passed unanimously.

MOTION: Motion by **Council Member Ristow** to allow for coverings of existing semi-permanent parklets with open sides, including a thin, low-profile, roofing material that is reviewed and approved by the Town for compatibility of look and feel. The cost of the roof must be fully covered by the applicant, and must be built in full compliance of Town codes be. **Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

MOTION: Motion by **Council Member Ristow** to remove the sides of the coverings located in the parklets by May 1, 2021 and fully remove the tent roofs/coverings located in the parklets once indoor dining capacity is allowed at 100% by State and/or County Health Orders. **Seconded by Mayor Sayoc.**

VOTE: Motion passed unanimously.

MOTION: Motion by **Council Member Ristow** to extend the meeting until 12:30 a.m. **Seconded by Council Member Hudes.**

VOTE: Motion passed 4/1. **Vice Mayor Rennie opposed.**

MOTION: Motion by **Council Member Hudes** to sunset K-rail parklets on September 19, 2021 unless the State does not fully re-open on June 15, at which point the sunset date will be 90 days after date the State and/or County has fully reopened, with the ability of the Council to reconsider the date with input from the business community. **Seconded by Council Member Ristow.**

VOTE: Motion passed unanimously.

Other Business Item #16 – continued

MOTION: **Motion by Council Member Badame** to allow requests for larger parklets on a case-by-case basis with consideration for space and street frontage of the applicant's building, and that supersized parklets will be financed solely by the business or applicant. **Seconded by Council Member Rennie.**

VOTE: **Motion passed unanimously.**

CONSENT ITEMS - Continued

3. Approve Draft Minutes of the April 6, 2021 Regular Town Council Meeting.

Shelley Neis, Town Clerk, provided the staff report.

Opened Public Comment.

Lei

- Commented on Jeffrey Suzuki's comments at the April 6, 2021 Town Council meeting and that Asian Trump supporters should stop being marginalized (Ms. Lei was asked to speak under verbal communications).

Amy Nishide

- Commented in support of adding Rabbi Aaron's comments to the minutes of April 6, 2021.

Lee Quintana

- Requested the desk item be read and that the Council approve the proposed amendments to the minutes, and commented that the minutes did not reflect the tone of the meeting.

Jeffrey Suzuki

- Commented in support of adding Rabbi Aaron's comments to the minutes of April 6, 2021.

Ali Miano

- Commented in support of adding Rabbi Aaron's comments to the Minutes of April 6, 2021 and requested the Council consider using summary minutes instead of action minutes.

Closed Public Comment.

Council discussed the matter.

Consent Item #3 – continued

MOTION: Motion by Council Member Hudes to approve the two corrections recommended by staff as contained in the desk item. **Seconded by Council Member Ristow.**

VOTE: Motion passed unanimously.

7. Authorize the Town Manager to: Purchase Two Patrol Motorcycles from Long Beach BMW in an Amount not to Exceed \$65,750; and Execute a Summary Vehicle Quotation to Extend the Commercial Motor Vehicle Master Lease Agreement with Mike Albert, LTD. in an Amount not to Exceed \$3,000 for a 12- Month Lease Extension for Two Electric Vehicles, for a Total Lease Amount Not to Exceed \$66,010.

Matt Morley, Director of Parks and Public Works, presented the staff report.

Opened Public Comment.

Jeffrey Suzuki

- Inquired if replacing the motorcycles are necessary due to functionality issues.

Amy Nishide

- Commented in opposition of the item and inquired if replacing the motorcycles are necessary due to functionality issues.

Ali Miano

- Inquired what the vehicles will be used for and if the money could be allocated to another cause such as economic recovery.

Alicia Cinema Stereo (Spargo)

- Commented in opposition of the item and requested the Council consider utilizing the funds to support local businesses.

Closed Public Comment.

Council discussed the matter.

MOTION: Motion by Council Member Hudes to extend the meeting until 12:40 a.m. **Seconded by Council Member Badame.**

VOTE: Motion passed unanimously.

Consent Item #7 – continued

- MOTION:** **Motion by Council Member Badame** to Authorize the Town Manager to:
- Purchase Two Patrol Motorcycles from Long Beach BMW in an Amount not to Exceed \$65,750; and,
 - Execute a Summary Vehicle Quotation to Extend the Commercial Motor Vehicle Master Lease Agreement with Mike Albert, LTD. in an Amount not to Exceed \$3,000 for a 12- Month Lease Extension for Two Electric Vehicles, for a Total Lease Amount Not to Exceed \$66,010. **Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

8. Authorize a General Fund Appropriated Reserve Budget Transfer of \$50,000 from the Guardrail Replacement Project (CIP No. 812-0120) to the Shannon Road Class 1 Multi-Use Path Project (CIP No. 813-0218) and Approve Corresponding Revenue and Expenditure Budget Adjustments.

WooJae Kim, Town Engineer, presented the staff report.

Opened Public Comment.

No one spoke.

Closed Public Comment.

Council discussed the matter.

- MOTION:** **Motion by Vice Mayor Rennie** to authorize a General Fund Appropriated Reserve (GFAR) budget transfer of \$50,000 from the Guardrail Replacement Project (CIP No. 812-0120) to the Shannon Road Class 1 Multi-Use Path Project (CIP No. 813-0218) and approve corresponding revenue and expenditure budget adjustments as stated in the staff report. **Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS (continued)

Tyler Thompson

- Shared his experience of being bullied for his political and religious beliefs, and requested the Council take further action.

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SUBJECT: Draft Minutes of the Town Council Meeting of April 20, 2021

DATE: April 21, 2021

Verbal Communications – continued

Lei

- Shared her experience of being harassed for her ethnicity and her political ideology.

Ali Miano

- Shared her reasons for joining the Anti-Racism Coalition.

ADJOURNMENT

The meeting adjourned at 12:39 a.m.

Submitted by:

Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 3

DATE: April 22, 2021

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize Actions for the Purchase and Maintenance of Police Vehicle Mobile Audio and Video with Integrated Automated License Plate Reader Technology:

- a. Authorize the Town Manager to Execute a Six-Year Agreement with Axon Enterprises Incorporated for the Purchase and Maintenance of Police Vehicle Mobile Audio and Video with Integrated Automated License Plate Reader Technology in an Amount of \$214,851.49; and
- b. Authorize an Expenditure Budget Transfer of \$35,222.28 from the Equipment Replacement Fund to the Police Department Operating Budget.

RECOMMENDATION:

Authorize actions for the purchase and maintenance of Police vehicle mobile audio and video with integrated automated license plate reader technology:

- a. Authorize the Town Manager to execute a six-year agreement with Axon Enterprises Incorporated for the purchase and maintenance of Police vehicle Mobile Audio and Video with integrated Automated License Plate Reader technology in the amount of \$214,851.49.
- b. Authorize an Expenditure Budget Transfer of \$35,222.28 from the Equipment Replacement Fund to the Police Department operating budget.

BACKGROUND:

The Police Department currently incorporates video and other technologies to maintain its longstanding commitment to transparency and accountability. One of the tools that is currently deployed is Mobile Audio and Video (MAV) systems in marked patrol vehicles. MAV in addition to body-worn camera (BWC) videos offer an unbiased view of interaction between

PREPARED BY: Greg Borromeo
Traffic Sergeant

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

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SUBJECT: Authorize the Town Manager to Execute a Six-Year Agreement with Axon Enterprises Incorporated for the Purchase and Maintenance of Police Vehicle Mobile Audio and Video with Integrated Automated License Plate Reader Technology.

DATE: April 22, 2021

BACKGROUND (continued):

sworn Department members and the community. Utilizing the MAV in conjunction with the BWC's is an important redundancy in order to present the most complete accounting of an incident and especially since the BWC's often have an obstructed view or are dislodged in a physical altercation.

The MAV captures a forward-facing view of the marked Police vehicle and a rear-facing view of the prisoner transport compartment. Several methods can be used to activate the MAV including the use of emergency lighting, collision detection, speed, and manual activation. Upon activation, MAV captures sixty seconds of video prior to the activation and remains recording video until the conclusion of the incident. These videos are retained in accordance with the Town's Retention Policy.

The Police Department has a long history of utilizing Automated License Plate Reader (ALPR) technology to collect and retain license plate information that can assist in identifying vehicles associated to Amber Alerts, missing people, criminal warrants, persons of interest, stolen vehicles, and stolen license plates. The existing MAV and ALPR systems are significantly past their recommended service life and are no longer supported by their respective manufacturers.

First generation ALPR equipment was added onto the exterior of marked patrol vehicles. Due to the high costs, only two marked patrol vehicles were initially outfitted with ALPR devices. Technology has allowed for the best practice of collecting and retaining digital evidence on a single operating platform. In 2020, the Town Council approved the purchase and deployment of Axon Enterprises Incorporated (Axon) BWC's. Axon's Evidence.com is used to manage and store digital evidence obtained through BWC's and other digital media. Evidence.com also allows for the collection and retention of audio and video evidence from MAV, body-worn cameras (BWCs), ALPR, and computer-automated dispatch information (CAD).

DISCUSSION:

The Police Department has identified Axon as the preferred vendor for the MAV system. Axon's Fleet 2 is the current Axon MAV solution which enables enhanced MAV video and the ability to leverage Axon's Evidence.com for storing the digital evidence in addition to other systems already being supported by Axon. Axon Fleet is compatible with the Department's current Axon BWC's. Axon Fleet turns on Axon's MAV and BWCs simultaneously when an officer initiates an enforcement stop; consequently, the police officer has one less activation to think about during this high-risk activity. Axon's current technology also embeds ALPR in the forward-facing MAV cameras and allows all patrol vehicles to be ALPR capable.

PAGE 3 OF 4

SUBJECT: Authorize the Town Manager to Execute a Six-Year Agreement with Axon Enterprises Incorporated for the Purchase and Maintenance of Police Vehicle Mobile Audio and Video with Integrated Automated License Plate Reader Technology.

DATE: April 22, 2021

DISCUSSION (continued):

Additionally, Axon Fleet and BWC videos will be stored in Evidence.com, allowing efficient administration of video evidence. When used in conjunction, the videos allow for real-time blending of different camera views in a "Multicam" feature that plays videos recorded by other cameras, synchronized by location and time, in one screen view. The six-year agreement with Axon would incorporate Fleet 2 for the first year of the contract.

Axon's Fleet 3 is the next generation Axon MAV solution which also integrates ALPR technology. The installation during the first year of Fleet 2 would enable the Department to upgrade to Fleet 3 in year two. There will be no additional installation cost for this upgrade. Axon's Fleet 3 installation in all 14 patrol vehicles increases the number of vehicles with ALPR technology in the field. Axon's Evidence.com would store and retain all video evidence and license plate data collected by the Police Department. The retention of that data is configurable to the Police Department's specifications to adhere to local and state requirements.

Axon focusses in its research and development teams to create hardware and software that resolve real-world problems faced by law enforcement agencies. Some of the essential features to note:

- A 6-year contract includes a full warranty on all cameras and equipment.
- A Department of Justice-compliant cloud-based storage system that will eliminate the need for on-site servers.
- Computer Aided Dispatch/Records Management System and (CAD/RMS) integration allow for videos and still images to be automatically assigned to CAD/RMS-generated case numbers. Officers will no longer be required to manually enter metadata, allowing staff to use their time on other essential duties.
- Videos captured in the Evidence.com platform can be redacted and prepared for dissemination.
- MAV videos will no longer need to be separately burned onto DVDs. Instead, the video files are prepared in conjunction with BWC videos and sent via an e-mail link to a specified Axon user. The Santa Clara County District Attorney's Office is already using the Evidence.com platform and will have access to prepared video files.
- Axon operates through a service model which includes a warranty of all applicable systems and replacement at the end of the contract.

In accordance with the Town's Purchasing Policy, Section 7c (Cooperative Purchasing), this purchase is based on a formal bid process completed by the State of California Department of General Services, which allows for other municipalities to purchase equipment using their formal bid proposal documents.

SUBJECT: Authorize the Town Manager to Execute a Six-Year Agreement with Axon Enterprises Incorporated for the Purchase and Maintenance of Police Vehicle Mobile Audio and Video with Integrated Automated License Plate Reader Technology.

DATE: April 22, 2021

CONCLUSION:

Authorize the Town Manager to execute a six-year agreement with Axon Enterprises Inc. for the purchase and maintenance of Mobile Audio and Video cameras with integrated Automatic License Plate Reader technology and approve necessary budget adjustments including a transfer of funds from the Equipment Replacement Fund to the Police Department operating budget.

ALTERNATIVES:

Alternatively, the Town Council could direct staff to delay the replacement of the equipment. Staff does not recommend this alternative as the current Mobile Audio and Video system has significantly exceeded the recommended service life. Also, not deploying a MAV system will impact daily operations and has the potential to increase liability by limiting the level of transparency expected by the community when it comes to incidents involving police personnel.

FISCAL IMPACT:

There are sufficient funds available in the Equipment Replacement Fund for the payment of the first year for MAV equipment. A \$35,222.28 revenue and expenditure budget adjustment, including a transfer of funds from the Equipment Replacement Fund to the general fund, will be required. Ongoing annual payments summarized in the table below will be requested through the annual budget process.

Summary of Annual Payments		
	Fiscal Year	Amount
Year 1	20/21	\$ 35,222.28
Year 2	21/22	\$ 36,153.17
Year 3	22/23	\$ 35,869.01
Year 4	23/24	\$ 35,869.01
Year 5	24/25	\$ 35,869.01
Year 6	25/26	\$ 35,869.01
		\$ 214,851.49

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Axon Agreement



Master Services and Purchasing Agreement between Axon and Agency

This Master Services and Purchasing Agreement (“**Agreement**”) is between Axon Enterprise, Inc., a Delaware corporation (“**Axon**”), and the agency on the Quote (“**Agency**”). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) signature date on the Quote (“**Effective Date**”). Axon and Agency are each a “**Party**” and collectively “**Parties**”. This Agreement governs Agency’s purchase and use of the Axon Devices and Services detailed in the Quote Appendix (“**Quote**”). It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon products and services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties therefore agree as follows:

1 **Definitions.**

“**Axon Cloud Services**” means Axon’s web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

“**Axon Device**” means all hardware provided by Axon under this Agreement.

“**Quote**” means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency’s purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

“**Services**” means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2 **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated (“**Term**”).

All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin after shipment of the applicable Axon Device. If Axon ships the Axon Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Axon Device in the second half of the month, the start date is the 15th of the following month. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. Each subscription term ends upon completion of the subscription stated in the Quote (“**Subscription Term**”).

Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years (“**Renewal Term**”). For purchase of TASER 7 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3 **Payment.** Axon invoices upon shipment. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys’ fees.

4 **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5 **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB shipping point via common carrier. Title and risk of loss pass to Agency upon Axon’s delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.

6 **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7 **Warranty.**

7.1 **Hardware Limited Warranty.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency’s receipt, except Signal

Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon ("CEW") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

- 7.2 Claims.** If Axon receives a valid warranty claim for an Axon manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Device with the same or like Device, at Axon's option. A replacement Axon Device will be new or like new. Axon will warrant the replacement Axon Device for the longer of (a) the remaining warranty of the original Axon Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering a Axon Device for service, Agency must upload Axon Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon Device sent to Axon for service.

- 7.3 Spare Axon Devices.** For qualified purchases, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.

- 7.4 Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number.

7.4.1 To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.

7.4.2 Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the 12 months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.

- 8 Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

- 9 Axon Device Warnings.** See www.axon.com/legal for the most current Axon Device warnings.

- 10 Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.

- 11 Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.

- 12 **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
- 13 **Indemnification.** Axon will indemnify Agency's officers, directors, and employees ("**Agency Indemnitees**") against all claims, demands, losses, and reasonable expenses arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon under this Agreement, except to the extent of Agency's negligence or willful misconduct, or claims under workers compensation.
- 14 **IP Rights.** Axon owns and reserves all right, title, and interest in Axon devices and services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
- 15 **IP Indemnification.** Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
- 16 **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices.
- 17 **Termination.**
- 17.1 **For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
- 17.2 **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
- 17.3 **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
- 18 **Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for 5-years thereafter. Axon pricing is Confidential Information and competition sensitive. If Agency is required by law to disclose Axon pricing, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.
- 19 **General.**
- 19.1 **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond



Master Services and Purchasing Agreement between Axon and Agency

a Party's reasonable control.

- 19.2 Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 19.3 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 19.4 Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 19.5 Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 19.6 Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 19.7 Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 19.8 Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 19.9 Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.
- 19.10 Governing Law.** The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 19.11 Notices.** All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc.
 Attn: Legal
 17800 N. 85th Street
 Scottsdale, Arizona 85255
 legal@axon.com

Agency:
 Attn:
 Street Address
 City, State, Zip
 Email

- 19.12 Entire Agreement.** This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each representative identified below declares they have been expressly authorized to execute this Agreement as of the date of signature.

Axon Enterprise, Inc.

Agency

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Axon Cloud Services Terms of Use Appendix

1 **Definitions.**

“Agency Content” is data uploaded into, ingested by, or created in Axon Cloud Services within Agency’s tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

“Evidence” is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

“Non-Content Data” is data, configuration, and usage information about Agency’s Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

“Personal Data” means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2 **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data (**“TASER Data”**). Agency may not upload non-TASER Data to Axon Evidence Lite.

3 **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon’s business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

4 **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

5 **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user’s use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user’s access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately

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if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.

To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.

- 6 **Privacy.** Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.
- 7 **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
- 8 **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.
- 9 **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
- 10 **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.

Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
- 11 **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
- 12 **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

The Axon Records Subscription Term will end upon the competition of the Axon Records

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Subscription as documented in the Quote, or if purchased as part of an OSP 7 bundle, upon competition of the OSP 7 Term (“**Axon Records Subscription**”)

An “**Update**” is a generally available release of Axon Records that Axon makes available from time to time. An “**Upgrade**” includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.

- 13** **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- 13.1** copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
 - 13.2** reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
 - 13.3** access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 13.4** use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
 - 13.5** access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
 - 13.6** remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon’s or Axon’s licensors on or within Axon Cloud Services; or
 - 13.7** use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.
- 14** **After Termination.** Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
- 15** **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon’s data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
- 16** **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a “commercial item,” “commercial computer software,” “commercial computer software documentation,” and “technical data”, as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.

- 17 **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.

Axon Customer Experience Improvement Program Appendix

1 **Axon Customer Experience Improvement Program (ACEIP)**. The ACEIP is designed to accelerate Axon’s development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Agency Content from all of its customers, to provide, develop, improve, and support current and future Axon products (collectively, “**ACEIP Purposes**”). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Agency will be a participant in ACEIP Tier 1. If Agency does not want to participate in ACEIP Tier 1, Agency can revoke its consent at any time. If Agency wants to participate in Tier 2, as detailed below, Agency can check the ACEIP Tier 2 box below. If Agency does not want to participate in ACEIP Tier 2, Agency should leave box unchecked. At any time, Agency may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.

1.1 ACEIP Tier 1.

1.1.1. When Axon uses Agency Content for the ACEIP Purposes, Axon will extract from Agency Content and may store separately copies of certain segments or elements of the Agency Content (collectively, “**ACEIP Content**”). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Agency Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual (“**Privacy Preserving Technique(s)**”). For illustrative purposes, some examples are described in footnote 1¹. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Agency from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Agency request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Agency may revoke the consent granted herein to Axon to access and use Agency Content for ACEIP Purposes. Within 30 days of receiving the Agency’s request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency. In addition, if Axon uses Agency Content for the ACEIP Purposes, upon request, Axon will make available to Agency a list of the specific type of Agency Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices

¹ For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.

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applicable to the Agency Content or ACEIP Content (“Use Case”). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Agency notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Agency with a mechanism to obtain notice of that update or another commercially reasonable method to Agency designated contact) (“**New Use Case**”).

1.1.2. Expiration of ACEIP Tier 1. Agency consent granted herein, will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Agency’s request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency.

1.2 ACEIP Tier 2. In addition to ACEIP Tier 1, if Agency wants to help further improve Axon’s services, Agency may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2, grants Axon certain additional rights to use Agency Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed or de-identified data.

Check this box if Agency wants to help further improve Axon’s services by participating in ACEIP Tier 2 in addition to Tier 1. By checking this box, Agency hereby agrees to the Axon Customer Experience Improvement Program Tier 2 Terms of Service, available at <https://www.axon.com/sales-terms-and-conditions> and incorporated herein by reference.

Axon Fleet Appendix

- 1 **Agency Responsibilities.** Agency must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet 2 or Axon Fleet 3 (collectively, "Axon Fleet") as established by Axon during the qualifier call and on-site assessment at Agency and in any technical qualifying questions. If Agency's representations are inaccurate, the Quote is subject to change.
- 2 **Cradlepoint.** If Agency purchases Cradlepoint Enterprise Cloud Manager, Agency will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Agency requires Cradlepoint support, Agency will contact Cradlepoint directly.
- 3 **Third-party Installer.** Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.
- 4 **Wireless Offload Server.**
 - 4.1 **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("**WOS**"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.
 - 4.2 **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.
 - 4.3 **Updates.** If Agency purchases WOS maintenance, Axon will make updates and error corrections to WOS ("**WOS Updates**") available electronically via the Internet or media as determined by Axon. Agency is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.
 - 4.4 **WOS Support.** Upon request by Axon, Agency will provide Axon with access to Agency's store and forward servers solely for troubleshooting and maintenance.
- 5 **Axon Vehicle Software.**
 - 5.1 **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "Axon Vehicle Software".) "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.
 - 5.2 **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h)

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remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.

- 6** **Axon Fleet Upgrade**. If Agency has no outstanding payment obligations and has purchased the "Fleet Technology Assurance Plan" (Fleet TAP), Axon will provide Agency with the same or like model of Fleet hardware ("Fleet Upgrade") as schedule on the Quote.

If Agency would like to change models for the Axon Fleet Upgrade, Agency must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Agency is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.

Within 30 days of receiving the Axon Fleet Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Agency does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Agency.

- 7** **Privacy**. Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body.

- 8** **Axon Fleet Termination**. Axon may terminate Agency's Fleet subscription for non-payment. Upon any termination:

- 8.1** Axon Fleet subscription coverage terminates, and no refunds will be given.
- 8.2** Axon will not and has no obligation to provide the Axon Fleet Upgrade.
- 8.3** Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Fleet TAP.



**TOWN OF LOS GATOS
TOWN COUNCIL REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 4

DATE: April 27, 2021

TO: Mayor and Town Council

FROM: Robert Schultz, Town Attorney

SUBJECT: Adoption of an Ordinance of the Town of Los Gatos Amending Chapter 25, by Renaming it to "Revenue and Taxation" and Adding Article VII, Sections 25.70.010- 25.70.140 of the Los Gatos Town Code Entitled Public Art Funding

RECOMMENDATION:

Adopt an Ordinance that was introduced at the Town Council meeting of April 20, 2021 amending Chapter 25, by Renaming it to "Revenue and Taxation" and adding Article VII, Sections 25.70.010- 25.70.140 of the Los Gatos Town Code Entitled Public Art Funding.

BACKGROUND:

At its April 20, 2021 meeting, the Town Council voted 5-0 to approve amending the Town Code, Chapter 25, by Renaming it to "Revenue and Taxation" and adding Article VII, Sections 25.70.010- 25.70.140 of the Los Gatos Town Code Entitled Public Art Funding.

CONCLUSION:

Staff recommends that Council adopt an Ordinance amending Chapter 25, by renaming it to "Revenue and Taxation" and adding Article VII, Sections 25.70.010-25.70.140 of the Los Gatos Town Code entitled Public Art Funding. 15 of the Los Gatos Town Code Entitled "Motor Vehicles and Traffic."

PREPARED BY: Robert Schultz
Town Attorney

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

PAGE 2 OF 2

SUBJECT: Adoption of an Ordinance of the Town of Los Gatos Amending Chapter 25 by Renaming it to “Revenue and Taxation” and Adding Article VII, sections 25.70.010-25.70.140 of the Los Gatos Town Code Entitled Public Art Funding

DATE: April 27, 2021

COORDINATION:

This report was coordinated through the Town Attorney’s Office, the Community Development Department, and the Arts and Culture Commission.

FISCAL IMPACT:

There are no significant fiscal impacts associated with the approval of this ordinance as it will be a revenue generating ordinance.

ENVIRONMENTAL IMPACT:

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

ATTACHMENTS:

1. Ordinance Amending Chapter 25, By Renaming it to “Revenue and Taxation” and Adding Article VII, Sections 25.70.010- 25.70.140 of the Los Gatos Town Code Entitled Public Art Funding.

DRAFT ORDINANCE

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS, CALIFORNIA, AMENDING CHAPTER 25 OF THE LOS GATOS TOWN CODE BY RENAMING IT TO “REVENUE AND TAXATION” AND ADDING ARTICLE VII PUBLIC ART FUNDING

WHEREAS, a robust public art program fosters economic development, creates vital public spaces, and promotes general health and welfare by contributing to a more desirable community in which to live, work and recreate; and

WHEREAS, to ensure that public art is present and sustained throughout the community, it is necessary to require that private development projects in the Town of Los Gatos provide public art on site or, alternatively, contribute to a public art fund so that public art can be established elsewhere in the community; and

WHEREAS, the purpose of this Chapter is to establish a public art requirement for private developments and to authorize the Town Manager to establish regulations and guidelines to effectuate the intent of this Chapter, and now therefore;

NOW, THEREFORE, THE PEOPLE OF THE TOWN OF LOS GATOS AND THE TOWN COUNCIL DO HEREBY ORDAIN AS FOLLOWS:

SECTION I

INCORPORATION OF RECITALS. The Town Council of the Town of Los Gatos finds that all Recitals are true and correct and incorporate them herein by this reference.

SECTION II

LOS GATOS TOWN CODE AMENDMENTS. Chapter 25 is hereby amended to be renamed to “Revenue and Taxation” and Article VII of Chapter 25 of the Los Gatos Town Code is hereby added as follows:

25.70.010. – Definitions.

For the purposes of this Chapter, the following definitions shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Affordable Housing Developments* means a project with Below Market Price (BMP) dwellings, as those terms are defined by Los Gatos Town Code section Sec. 29.10.3020.
- (2) *Art or Work of Art* means original artist-designed and produced unique works in any of a variety of styles and forms.

- (3) *Artist* means a practitioner of the creative arts, generally recognized as such by critics and peers, with a body of work including commissions, exhibitions, sales, publications, and collections. For the purposes of this Chapter, "artist" shall not include:
- (i) Persons primarily working in the professional fields of architecture, engineering, design, or landscaping;
 - (ii) An employee or relative of the development project architect, landscape architect, engineer, or project manager;
 - (iii) Any person with a business interest in a development project or with respect to individuals or entities serving as project architects, landscape architects, engineers, or project managers; or
 - (iv) A relative of or anyone with a financial interest with respect to an individual or entity serving on an art selection panel for the development project.
- (4) *Arts and Culture Commission* ("Commission" or "ACC") means the Commission established by Town of Los Gatos Resolution 2016-051.
- (5) *Developer* means a person or entity that is financially and legally responsible for the planning, development and construction of any development project covered by this Chapter. The developer may or may not also be the project owner.
- (6) *Development Project* means any commercial or residential development or combination thereof.
- (7) *Historic* means a property which has been evaluated and found to have historical importance, as described by Los Gatos Town Code section 29.80.215.
- (8) *Public Art or Publicly Accessible Art* means a work of art that is visible or accessible to the public for a minimum of 40 hours per week. Public art may include sculpture, painting, installations, photography, video, works of light or sound, or any other work or project determined by the Arts and Culture Commission to satisfy the intent of this Chapter, provided, however, that none of the following shall be considered public art for the purposes of satisfying the requirements of this Chapter:
- (i) Objects that are mass produced of standard design, such as banners, signs, playground equipment, benches, statuary, street or sidewalk barriers, or fountains;

(ii) Reproduction, by mechanical or other means, of original works of art, except as incorporated into film, video, photography, printmaking, or other derivative works as approved by the Arts and Culture Commission;

(iii) Landscape architecture or gardening, except where these elements are designed by an artist and are an integral part of a work of art.

25.70.020. - Los Gatos Public Art Fund.

There is hereby created a Los Gatos Public Art Fund, which funds shall be restricted to implementation for the Los Gatos Public Art Program. Such funds may be used for the following purposes, including: acquisition, placement, maintenance, and promotion of temporary and permanent art and art programs, including visual or performing arts, as approved by the Arts and Culture Commission, on or in Town owned, public property throughout the Town. This fund will account for in-lieu contributions made under Section 25.70.100. This fund and the interest thereon shall be maintained by the Chief Financial Officer according to standard governmental accounting requirements. Art works acquired through the Public Art Fund shall be owned by the Town of Los Gatos and generally made accessible to the public.

25.70.030. -- Application.

- (a) This Chapter shall apply to all new commercial developments (including mixed use projects), including new construction, and additions and remodels that add more than 50% square footage; and
- (b) All new residential projects of three or more units, including new construction, and additions and remodels that add more than 50% square footage.
- (c) Notwithstanding subsections (a) and (b) above, this Chapter shall not apply to:
 - (i) Affordable housing developments, or, if affordable housing is a part of the development, the affordable housing units shall be subtracted from the valuation of the project as in subsection (d) below;
 - (ii) Historic renovations;
 - (iii) Repair or reconstruction of structures damaged by flood, fire, wind, earthquake, or other disaster;
 - (iv) Seismic retrofit projects;
 - (v) Single family and two-family residential units;

- (vi) Accessory dwelling units or junior accessory dwelling units;
- (vii) Any project exempted by federal or state law;
- (viii) Municipal facilities;
- (ix) Buildings or structures primarily used for religious worship.

Those portions of projects excluded from application of this Chapter under subsection (c) shall be subtracted from the project for purposes of determination of applicability under subsection (a) and (b), above, and from construction valuation under Section 25.70.050 and 25.70.100.

25.70.040. - Public Art Requirement for Private Developments

Before a certificate of occupancy is issued for any development project subject to this Chapter, the developer shall participate in the construction or installation of on-site public art under Section 25.70.050, or, at the developer's option, shall contribute to the Public Art Fund in lieu of providing on-site art, as provided in Section 25.70.100.

25.70.050. - On-Site Public Art

- (a) A developer may satisfy the requirements of this Chapter by constructing or installing on-site public art valued at one percent (1%) of construction valuation. For purposes of budgeting and planning for on-site art, an initial estimate of the art contribution shall be calculated based on estimated construction valuation at the time of application for entitlements. The arts contribution shall be finally determined based on the construction valuation determined at the time the building permit is issued.
- (b) If the market value of the on-site public art is greater than the art contribution provided in Subsection 25.70.050 (a), the Town shall have no obligation to refund the excess amount. If expenditures do not utilize the entire amount provided in 25.70.050 (a), the remainder shall be deposited into the Public Art Fund.

25.70.060. - Eligible Expenditures for On-Site Public Art Projects

The public art contribution for on-site installation may be expended only on costs associated with the selection, acquisition, purchase, commissioning, design, fabrication, placement, and installation of the public art, and project management and administrative costs not to exceed 20% of the total budget. Eligible expenditures include:

- (a) Artist fees;

- (b) Labor of assistants, materials, and contracted services required for design, fabrication, engineering, and installation of the public art;
- (c) Any required permit or certificate fees and reasonable business and legal costs directly related to the public art;
- (d) Reasonable art consultant fees;
- (e) Communication, utilities, insurance, and other indirect costs associated with the creation but not the operation of the public art;
- (f) Transportation of the public art to the site;
- (g) Preparation of the site specifically required for the public art, such as fabrication of platforms or pedestals;
- (h) Installation of the public art;
- (i) Mountings, anchorages, containments, or other materials necessary for installation of the public art;
- (j) Public art project management and administration, in an amount not to exceed 20% of the total art contribution; and
- (k) A plaque or plaques identifying the public art.

25.70.070. - Ineligible Expenditures for On-Site Public Art Projects

Expenditures that are ineligible to be counted toward the on-site public art contribution include:

- (a) Labor of assistants, materials, and contracted services not required for design, fabrication, engineering, and installation of the public art;
- (b) Promotional materials or activities for the artist, the public art, the development project, the developer, or other parties involved in the development project;
- (c) Opening, dedication or other costs of events for the public art, artist, developer, or development;
- (d) Services, materials, utilities or other expenses association with the ongoing operation or maintenance of the public art; and

- (e) Land costs or any other costs associated with the development that are not part of and solely attributable to the public art.

25.70.080. - Process for Planning and Approval of On-Site Public Art

- (a) Application and Planning. Developer shall be informed at the time of Development Review Application about the Public Art requirement and given details of what is required for either public art installation or payment of in-lieu fee, including 1% fee calculated on construction valuation of the project.
- (b) Arts and Culture Commission Review and Approval. If the developer elects to comply with this Chapter by providing on-site art, the developer's public art plan must be presented to the Arts and Culture Commission. The plan should include:
 1. The identity of the artist or description of the process by which the artist will be selected. The developer is encouraged to give preference to artists living or working in the San Francisco Bay area and to avoid using artists whose work is already displayed as public art within the Town of Los Gatos boundaries;
 2. Preliminary sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art;
 3. An appraisal or other evidence of the value of the proposed public artwork, including acquisition and installation costs;
 4. Preliminary plans containing such detailed information as may be required to adequately evaluate the location of the artwork in relation to the proposed development and its compatibility to the proposed development, including compatibility with the character of adjacent conforming developed parcels and existing neighborhoods; and
 5. A detailed plan that demonstrates how the property owner or developer will maintain the artwork, including schedule, cost, and manner of maintenance; and
 6. A narrative statement or plan that demonstrates the public art will be displayed in a publicly accessible manner.
- (c) The ACC shall, within 60 days, render a decision whether the proposed public art plan conforms to the requirements of this Chapter. The ACC approvals required under this section must be obtained prior to the issuance of any building permit for the development project.

- (d) Before a Certificate of Occupancy is issued, the Town must inspect and confirm that public art has been installed as required by the ACC approvals and to the satisfaction of the Director of Community Development, in consultation with the ACC. If actual expenditures do not utilize the entire amount provided by the 1% valuation of the development, the excess funds are to be deposited into the Public Art Fund. If the market value of the on-site public art is greater than the 1% art contribution required, the Town shall have no obligation to refund the excess amount.
- (e) If Developer chooses to pay In-Lieu Fee:
 - (i) Within 60 days of Development Permit application or other discretionary approval, the developer shall deposit 1% of estimated construction valuation into the Public Art Fund.
 - (ii) A developer who elects to satisfy the requirements of this chapter through a contribution to the Fund must complete the payment in-lieu prior to the issuance of any building permit for the development project. If the building valuation has increased from the time of the initial deposit into the Public Art Fund, additional funds are to be deposited into the fund to meet the 1% requirement.

25.70.090. - Additional Requirements for On-Site Public Art

- (a) Plaque. The public art shall be identified by a plaque that meets the standards in use by the Town at the time of installation of the public art. The plaque should contain information such as date of installation, title, and artist and medium.
- (b) Ownership and Maintenance. All on-site public art shall remain the property of the property owner or the property owner’s successor in interest. The installation or placement of public art on private property shall not constitute a donation to the Town. The Town shall bear no obligation nor assume any responsibility or liability with respect to the installation, operation or maintenance of any art installed on private property. The property owner shall retain the obligation to provide all necessary maintenance to preserve the public art in good condition. Immediately upon installation and continuously thereafter, the developer and the property owner shall maintain the public art and shall promptly perform all necessary repairs and maintenance to the satisfaction of the Town. The obligation to maintain and preserve the public art includes the obligation to take reasonable steps to protect the public art against destruction, damage, or modification.
- (c) Location and Relocation of Public Art. Except as provided herein, the public art

must remain at the development in the location approved by the Arts and Culture Commission. A property owner may petition the Arts and Culture Commission to relocate the public art within the development project.

- (d) When and if the development project is sold, the public art must remain at the development and may not be claimed as the property of the seller or removed from the site. If the development is to be demolished, the owner must relocate the public art to another publicly accessible permanent location approved in advance by the Arts and Culture Commission.
- (e) Removal and Replacement of Public Art. If the owner desires to deaccession, sell or remove the art from the site, the owner shall give prior notice to the Town by providing written notice to the Arts and Culture Commission no less than 90 days before the intended action. The owner must receive prior approval from the Arts and Culture Commission. The developer will be required to replace the sold or de-accessioned artwork with an alternative work of equivalent or greater value, as determined by the Arts and Culture Commission, in current dollars. The replacement artwork selection should follow the initial selection process. In the alternative, the developer may elect to pay fees in lieu of replacing on-site art, at a reasonable rate equivalent to the cost of replacing the art in current dollars, as determined by the Arts and Culture Commission.
- (f) Statutory and Contractual Rights of Artists. The owner is solely responsible for complying with all statutory and contractual rights of the artist, including rights under the California Preservation of Works of Art Act, the federal Visual Artists' Rights Act, and any other applicable law.
- (g) Covenant; Recordation. The property owner shall record against the property a declaration of covenants, conditions, and restrictions, in favor of the Town, and in a form approved by the Town Attorney. The declaration shall include (i) the owner's obligation to provide all necessary maintenance of the public art, including preservation and restoration of the public art, in good condition, to the reasonable satisfaction of the Town, and to protect the public art against destruction or damage; (ii) the owner's obligation to ensure that the public art is accessible to the public as required by this Chapter; and (iii) any other terms reasonably necessary to implement this Chapter .

25.70.100. - Developer's Option to Pay Fees to Public Art Fund In-Lieu of Providing On-Site Art

In lieu of installation of on-site public art, the developer may elect to make a monetary contribution to the Los Gatos Public Arts Fund. The amount of the contribution shall be the cost of the public art required by Section 25.70.050. A developer who elects to satisfy the requirements of this Chapter through a contribution to the Fund must complete the payment

in-lieu prior to the issuance of any building permit for the development project.

25.70.110. - Inspection and Final Approval.

Before a Certificate of Occupancy is issued for the development project, the Town shall inspect and confirm that either: (i) public art has been installed as required by the Arts and Culture Commission approvals and to the satisfaction of the Director of Community Development, in consultation with the Public Art program staff; or (ii) in-lieu contributions have been paid in full. In addition, before a Certificate of Occupancy is issued, the Town shall confirm that the developer has executed and recorded a covenant as required by Section 25.70.090(f).

25.70.115. – Enforcement

The provisions of this chapter shall apply to all agents, successors and assigns of an applicant proposing or constructing a development governed by this chapter, or a property owner with art installed governed by this chapter. The Town may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to, actions to revoke, deny or suspend any permit, including a development approval, building permit or certificate of occupancy. The Town shall be entitled to costs and expenses for enforcement of the provisions of this chapter, or any agreement pursuant thereto, as awarded by the court, including reasonable attorneys' fees.

25.70.120. -Regulations

The Town Manager, or his or her designee, is authorized to adopt administrative regulations, procedures or guidelines that are consistent with and that further the terms and requirements of this Chapter.

25.70.130. – Severability

If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable .

25.70.140. - Implementation

This ordinance shall be effective on July 1, 2021 and shall immediately apply to all development projects that have not yet received final land use entitlements.

SECTION III

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the ___ day of _____ 2021, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the ___ day of _____ 2021. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 5

DATE: April 28, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution Declaring Hazardous Vegetation (Brush) a Public Nuisance, Ordering Abatement, and Setting June 1, 2021 as a Public Hearing to Consider Objections to the Proposed Removal of Brush

RECOMMENDATION:

Adopt a resolution (Attachment 1) declaring hazardous vegetation (brush) a public nuisance, ordering abatement, and setting June 1, 2021 as a public hearing to consider objections to the proposed removal of brush.

BACKGROUND:

The Santa Clara County Fire Department implements and manages a hazardous brush abatement program for the Wildland Urban Interface (WUI) areas within its jurisdictional boundaries, which includes the incorporated areas of Los Gatos, to provide defensible space for structures. Early each year, property owners are reminded that they must remove flammable vegetation from around their home and other structures on their property to create defensible space. The Town annually adopts the Hazardous Vegetation Abatement Program and works with the County who serves as the enforcement agent and conducts their own inspections.

If properties are found not to be in compliance with the California Fire Code relative to vegetation clearance, the owners are given notice of the violation. If compliance is still not achieved by approximately the end of June each year, a contractor is authorized to perform the necessary work. The costs associated with the abatement work are then placed on the property tax bill for that parcel.

PREPARED BY: Stefanie Hockemeyer
Executive Assistant

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

SUBJECT: Adopt a Resolution Declaring Hazardous Vegetation (Brush) a Public Nuisance, Ordering Abatement, and Setting June 1, 2021 as a Public Hearing to Consider Objections to the Proposed Removal of Brush

DATE: April 28, 2021

BACKGROUND (continued):

In March of 2021, the Santa Clara County Fire Prevention Division notified property owners located within the designated Wildland Urban Interface (WUI) area of the requirement to comply with the enforced safety regulations related to flammable vegetation abatement (Attachment 2). The letter also referenced the Town's recently enacted Municipal Code amendments which further enhance the safety of WUI residents.

At the time of the notice, property owners were given the option to complete the required work themselves, hire their own contractor, or elect to schedule the Town of Los Gatos' authorized contractor to perform the work.

DISCUSSION:

Below is the scheduled outline for the 2021 hazardous brush abatement program:

- | | |
|---------------|---|
| March 2021 | The 2021 Brush Abatement Program letters are mailed to property owners. |
| April 1, 2021 | Santa Clara County Fire Department (SCCFD) begins conducting the first property inspections. A door hanger describing the enforced safety regulations is placed at the property and a copy is mailed to the property owner's mailing address. |
| May 4, 2021 | Town Council adopts a Resolution declaring hazardous vegetation (brush) a public nuisance and sets June 1, 2021 as a public hearing to consider objections to the proposed removal of brush. |
| May 2021 | SCCFD begins conducting re-inspections of the properties that were out of compliance at the time of the first property inspection. Property owners who are not in compliance at the time of re-inspection will be identified and notice will be sent to the property owners providing information about the June 1 st public hearing. The Town publishes notices at least 10 days prior to the public hearing. |
| June 1, 2021 | Town Council conducts a public hearing to consider objections to the proposed removal of hazardous vegetation (brush) of declared non-compliant parcels and orders the abatement of the nuisance by the Town's authorized contractor. |

SUBJECT: Adopt a Resolution Declaring Hazardous Vegetation (Brush) a Public Nuisance, Ordering Abatement, and Setting June 1, 2021 as a Public Hearing to Consider Objections to the Proposed Removal of Brush

DATE: April 28, 2021

DISCUSSION (continued):

- June 2021 After the June 1st public hearing, an additional inspection of all identified properties listed on the report will be conducted prior to the Town's authorized contractor performing any abatement work. If the property is found to be in compliance at the time of the re-inspection or upon the arrival of the abatement contractor, no work will be performed, and no charges will be imposed.
- July 2021 The County provides the Town with an assessment list of charges for work that ultimately was performed by the contractor. If there are no proposed charges, no additional public hearing is required.
- August 3, 2021 In the event a list of assessed charges is provided to the Town in July, the Town Council will conduct a public hearing on the hazardous vegetation (brush) abatement charges and adopt a resolution confirming or modifying assessments.
- August 4, 2021 The Town submits a list of charges as a special assessment to the County Tax Collector.

CONCLUSION:

Adopt a resolution (Attachment 1) declaring hazardous vegetation (brush) a public nuisance, ordering abatement, and setting June 1, 2021 as a public hearing to consider objections to the proposed removal of brush.

COORDINATION:

This program is coordinated with the Santa Clara County Fire Department.

FISCAL IMPACT:

Funds are provided in the FY 2020/21 Budget (Program 5101) to cover the cost of publishing the legal notice for the June public hearing.

ENVIRONMENTAL ASSESSMENT:

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

PAGE 4 OF 4

SUBJECT: Adopt a Resolution Declaring Hazardous Vegetation (Brush) a Public Nuisance, Ordering Abatement, and Setting June 1, 2021 as a Public Hearing to Consider Objections to the Proposed Removal of Brush

DATE: April 28, 2021

Attachments:

1. Resolution declaring hazardous vegetation (brush) a public nuisance, ordering abatement, and setting June 1, 2021 as a public hearing to consider objections to the proposed removal of brush (includes Exhibit A).
2. Letters sent to property owners within the Wildland Urban Interface (WUI) area.

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
DECLARING HAZARDOUS VEGETATION (BRUSH) A PUBLIC NUISANCE, ORDERING
ABATEMENT, AND SETTING JUNE 1, 2021 AS A PUBLIC HEARING TO CONSIDER
OBJECTIONS TO THE PROPOSED REMOVAL OF BRUSH**

WHEREAS, Sections 39560 and following of the Government Code of the State of California authorize the Town of Los Gatos to declare that hazardous vegetation (brush) growing to such size and such type and in such locations as to constitute a fire hazard to the community may be declared a public nuisance and to compel owners, lessees, or occupants of buildings, grounds, or lots to remove or abate the hazardous vegetation (brush) to mitigate the fire hazard from such buildings, grounds, or lots to remove or abate the hazardous vegetation (brush) to mitigate the fire hazard from such buildings, grounds, property, and adjacent sidewalks and parkways, and upon the person's failure to do so, to remove or abate such hazardous vegetation (brush) at the owner's expense, making the cost of that abatement a lien upon the property; and

WHEREAS, the Town of Los Gatos has entered into an agreement with the County of Santa Clara to provide hazardous vegetation (brush) abatement services; and

WHEREAS, the maintenance of hazardous vegetation (brush) in violation of the Uniform Fire Code adopted by the Town of Los Gatos within the Wildland Urban Interface Fire areas identified and shown on the map (Exhibit A) constitutes a public nuisance and should be abated immediately; and

ATTACHMENT 1

WHEREAS, the Santa Clara County Fire Department has mailed notices to property owners within the Wildland Urban Interface areas notifying them of the need to abate hazardous vegetation (brush) violations and explaining the steps necessary to correct such violations.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Los Gatos, and the Town Council hereby finds that hazardous vegetation (brush) is a wood, perennial plant usually with multiple stems and trunks under ten feet in height and is indigenous to the hillside area. Hazardous vegetation (brush) is also known to have a high oil, high resin, or low moisture content in their leaves and branches. Examples of this type of plant material include California Sagebrush, Greasewood or Chamise, Scotch Broom and Toyon. Unabated growth of hazardous vegetation (brush) upon and adjacent to private property within the hillside hazardous fire area and adjacent parkways and sidewalks is a public nuisance and should be abated. The Director of Parks and Public Works shall act as the Superintendent for purposes of giving notice, supervising performance of the agreement with the County of Santa Clara, and evaluating the costs of abatement.

BE IT FURTHER RESOLVED that the Town Clerk is directed to mail notice of this resolution to the persons designated by the Superintendent in conformance with the Government Code and publish notice of this resolution as provided in the Government Code.

BE IT FURTHER RESOLVED that unless the hazardous vegetation (brush) violations are corrected within the time specified in a written agreement with the Superintendent or the Superintendent's representative, the Town of Los Gatos shall cause such nuisance to be abated, and the expense thereof assessed upon the lots or lands from which or on which the

abatement actions occur, such expense to constitute a lien upon such lots or lands until paid, and to be collected upon the next real property tax roll upon which general municipal taxes are collected.

BE IT FURTHER RESOLVED that on the 1st day of June 2021, at a meeting of the Town Council beginning at 7:00 p.m. via publicly noticed teleconference in Los Gatos, CA, a public hearing will be held during which all property owners within the Wildland Urban Interface areas in the Town of Los Gatos having any objections to the proposed abatement of hazardous vegetation (brush) will be heard and given due consideration.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 4th day of May 2021 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

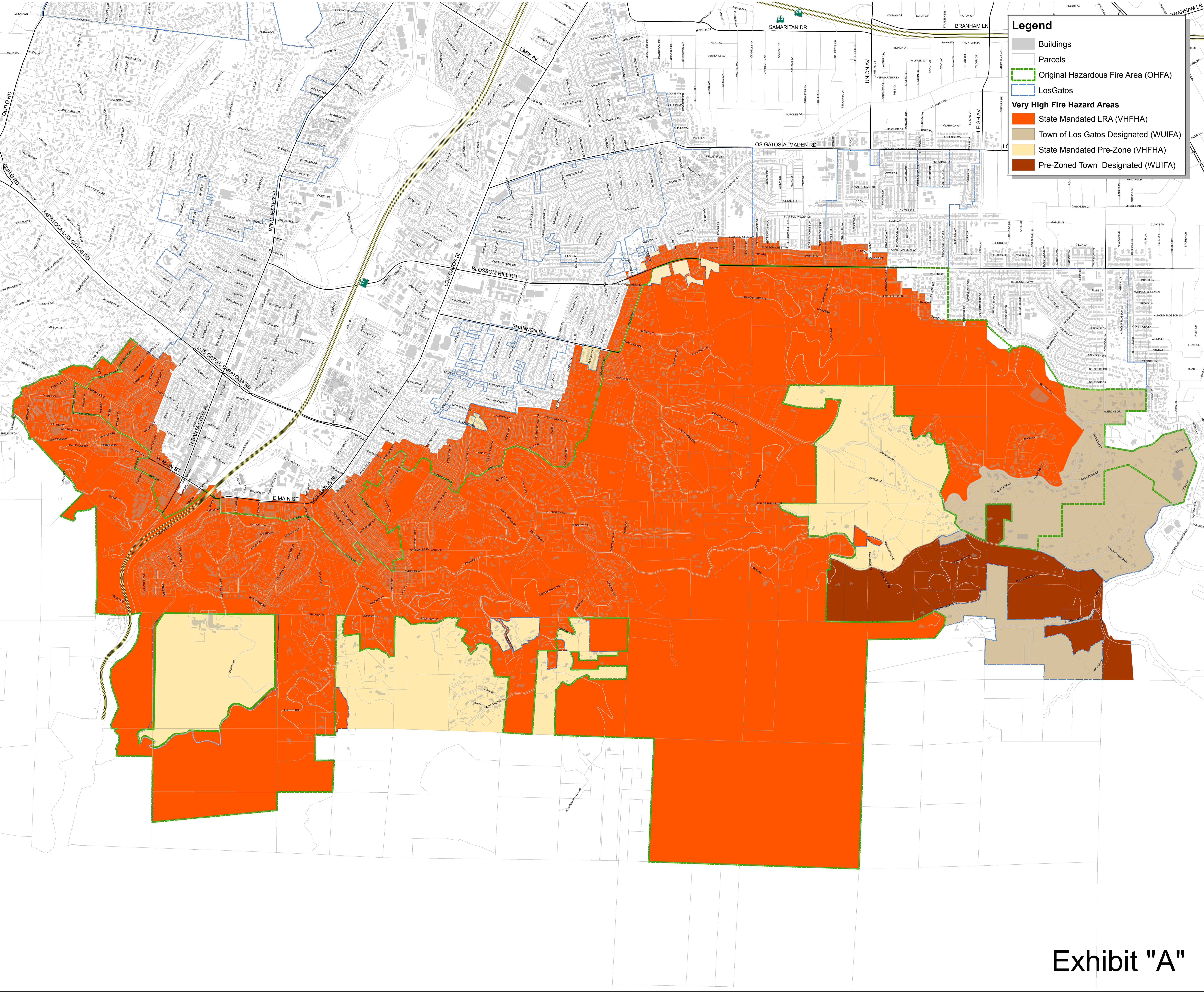
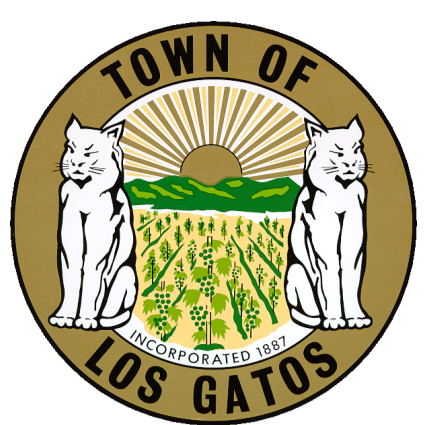
MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____



Legend

- Buildings
- Parcels
- Original Hazardous Fire Area (OHFA)
- LosGatos

Very High Fire Hazard Areas

- State Mandated LRA (VHFHA)
- Town of Los Gatos Designated (WUIFA)
- State Mandated Pre-Zone (VHFHA)
- Pre-Zoned Town Designated (WUIFA)

**Wildland - Urban Interface Fire Area
Town of Los Gatos**



0 500 1,000
Feet

Exhibit "A"

Prepared: February 2, 2009
Very High Fire Zones.mxd



March 1, 2021

WUI Enforced Safety Regulations Letter
Los Gatos 100'
Very High Fire Hazard Severity Zone

RYCE PETER C AND OPATOVSKY JULIE H
109 FOSTER RD
LOS GATOS, CA 95030-7140

SAMPLE

RE: 529-39-001
109 FOSTER RD

Dear Property Owner,

You play a vital role in keeping not only your property safe, but your neighborhood safe. Collaborative efforts are key to building fire resilient communities. This year, the Santa Clara County Fire Department is hosting virtual community wildfire preparedness programs that will include: understanding home insurance in high fire risk areas, how to prepare your home to be wildfire resistant as well as returning home after the fire and wildfire recovery. Please see the enclosed flyer for more information.

Creating and maintaining defensible space around your property increases the chances of your home and other structures surviving a wildfire. Defensible space is the buffer created around a structure when combustible vegetation is removed or reduced. This buffer space is needed to slow or stop the spread of wildfire and can also protect your home from catching fire - either from direct flame or radiant heat.

Your property is in the **Very High Fire Hazard** Severity Zone of the Wildland Urban Interface Area (WUI) and requires **100 feet** of defensible space from all structures. Your area's specific enforced safety regulations include:

Enforced Safety Regulations (Items A - F)

- A. Create **100 feet** of defensible space around the home, clear all flammable vegetation a **minimum of 30 feet** around structures, and create a reduced fuel zone for the remaining **70 feet**.
- B. Remove pine needles, leaves, and other dead vegetation from roofs, eaves and rain gutters.
- C. Trim tree limbs 10 feet from chimneys and stove pipes; remove dead limbs that hang over rooftops.
- D. Remove all non-fire-resistive vegetation a minimum of 10 feet on each side of a fire apparatus access road or driveway.
- E. Cover chimney outlets or flues with a 1/2" mesh spark arrester.
- F. Post a clearly visible house address, using at least 4" high numbers, for easy identification. For homes located more than 50 feet from the street, post address numbers at the driveway entrance.

Additional Safety Recommendations

- Create and maintain a 0 to 5 feet noncombustible zone around all structures. **(see below)*
- Clear 10 feet around and 15 feet above fuels (e.g. woodpiles, lumber, scrap, etc.) Move all woodpiles as far away as possible from structures.
- Clear vegetation and other combustible material from underneath decks. Enclose elevated decks with fire-resistive materials.
- Trees 18 feet or taller should be limbed up 6 feet from the ground. Provide additional vertical clearance when trees have vegetation beneath them.

**Last year, the Town of Los Gatos enacted new municipal codes to enhance the safety of WUI residents. All new construction now requires a noncombustible area of 5 feet from structures. The Town also enacted State legislation which recognizes the importance of neighbors maintaining defensible space across property lines in certain instances. For more wildfire safety information, visit www.LosGatosca.gov/2581/Be-Wildfire-Ready.*

Serving Santa Clara County and the communities of Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, and Saratoga.

529-39-001 3

RYCE PETER C AND OPATOVSKY JULIE H
109 FOSTER RD
LOS GATOS, CA 95030-7140

SAMPLE

PLACE
STAMP
HERE

SANTA CLARA COUNTY FIRE DEPARTMENT
ATTN: FIRE PREVENTION DIVISION
14700 WINCHESTER BOULEVARD
LOS GATOS, CA 95032-1818

Owner Responsibilities:

1. You have the option to complete the required work yourself, hire your own contractor, or you may elect to schedule the authorized contractor to perform the work. If you choose to have the authorized contractor perform the work, the charges will appear on your next property tax bill.
2. Please complete the attached information card to report the current status of your property and return *before April 1, 2021.*

Inspection Schedule:

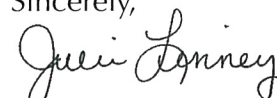
On April 1, 2021, Santa Clara County Fire Department will begin conducting property inspections. Property owners not in compliance will be notified of what work needs to be completed to comply with the Enforced Safety Regulations. Please contact us if you are unable to complete the required work due to late season rains or other special circumstance.

On June 1, 2021, we will begin conducting re-inspections of the properties that were out of compliance at the time of the first property inspection. Properties must comply with the Enforced Safety Regulations (Items A, B, C and D) otherwise the compliance work will be completed by the **Town of Los Gatos'** authorized contractor and the charges for this service will appear on your next property tax bill.

If you would like to schedule a courtesy property inspection, have questions regarding the safety compliance of your property or for more information about the upcoming virtual wildfire preparedness programs, please contact the Fire Prevention Division at 408.378.4010.

Thank you for your cooperation in helping to establish a fire resilient community.

Sincerely,


 Julie Linney, Deputy Chief
 Fire Prevention Division

Resources and Information

California Department of Insurance: www.insurance.ca.gov • 800.927.4357

Provides information about all types of insurance, including insurance coverage and limits for high fire risk areas

Pacific Gas & Electric (PG&E): www.PGE.com • 800.743.5000

Services include courtesy gas appliance inspections, energy conservation, tree management and electrical safety near power lines

Santa Clara County Fire Department: www.SCCFD.org • 408.378.4010

Offers community education and risk reduction programs, including fire safety, injury prevention, disaster and wildfire preparedness

Santa Clara County Fire Safe Council: www.SCCFireSafe.org • 408.975.9591

Protects and educates communities at risk from wildfire through fuel reduction programs, outreach and community planning efforts

Santa Clara County Office of Emergency Management: www.SCCgov.org/sites/oes • 408.808.7800

Coordinates county-wide all hazards preparedness, including AlertSCC Emergency Alert System and ReadySCC Mobile App

Please Complete and Return

I have received the annual Wildland Urban Interface (WUI) Enforced Safety Regulations letter related to flammable vegetation abatement. The current status of my property is as follows:

- I have inspected my property for flammable vegetation clearance and believe it complies with the Enforced Safety Regulations. I understand that an inspection of my property may be conducted to verify compliance.
- I will remove flammable vegetation around all structures on my property in accordance with the Enforced Safety Regulations no later than **June 1, 2021**. I understand that if the required work is not completed, the authorized contractor may complete the work and the charges will appear on my next property tax bill.
- I authorize the designated contractor to enter my property and clear all flammable vegetation to comply with the Enforced Safety Regulations. I understand the charges to complete this work will appear on my next property tax bill.
- I would like to schedule a courtesy inspection of my property with the Santa Clara County Fire Department for recommendations of the work needed to comply with the Enforced Safety Regulations.
- I am no longer the owner of this property. There are no structures on this property.

Page 63 (print clearly): _____ **Date:** _____
Phone: (_____) _____ **Email:** _____



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 5/4/2021

ITEM NO: 6

DATE: April 28, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Following Actions:
a. Accept a California Department of Resources Recycling and Recovery (CalRecycle) Grant in the Amount of \$230,000; and
b. Authorize Revenue and Expenditure Budget Adjustment in the Amount of \$230,000 in the Fiscal Year 2020/21 Capital Improvement Program (CIP) Budget for the Street Repair and Resurfacing Project (CIP No. 811-9901)

RECOMMENDATION:

Staff recommends that the Town Council authorize the following actions:

- a. Accept a California Department of Resources Recycling and Recovery (CalRecycle) Grant in the amount of \$230,000; and
- b. Authorize revenue and expenditure budget adjustment in the amount of \$230,000 in the Fiscal Year 2020/21 Capital Improvement Program (CIP) Budget for the Street Repair and Resurfacing Project (CIP No. 811-9901).

BACKGROUND:

CalRecycle offers a recycled rubber grant program to promote markets for rubberized construction products with crumb rubber derived from waste tires. In January 2021 CalRecycle opened the grant cycle for Fiscal Year (FY) 2020/21, which offered a total of \$4,387,000 State-wide with a maximum award amount of \$250,000 per agency.

In February, staff submitted a grant application seeking \$230,000 in the Rubberized Pavement Grant Program. At the March 3, 2021 meeting, the Town Council adopted a resolution to authorize grant applications to CalRecycle and authorized the Town Manager to negotiate and execute future grant agreements with CalRecycle. CalRecycle approved the Town's funding request on April 7, providing \$230,000 for eligible expenses.

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

DISCUSSION:

The Town's Street Repair and Resurfacing Project (CIP No. 811-9901) is a recurring annual project for street maintenance and rehabilitation activities throughout the Town to enhance safety for all travel modes and maintain the roadway infrastructure. Earlier this year, the Town Council approved the Street List for the FY 2020/21 Street Repair and Resurfacing Project, approved the Plans and Specifications, and authorized advertising the project for bid. The focus of this year's project will be on preventive maintenance through rubberized cape seal, slurry seal, and crack seal treatments of project locations identified in the approved list.

This year's project includes approximately 115,000 square yards of rubberized cape seal, which is eligible under the CalRecycle grant program. Staff estimates that next year's Street Repair and Resurfacing Project will have a similar quantity of rubberized cape seal.

The grant's eligibility period is from April 20, 2021 through April 1, 2023, which aligns with two years of street repair and resurfacing work. The grant funds will be used for approximately 230,000 square yards of rubberized chip seal.

CONCLUSION:

The recommended actions will increase revenue for the Street Repair and Resurfacing Project.

COORDINATION:

This report was coordinated with the Finance Department.

FISCAL IMPACT:

If Council approves this item, the Town will receive grant revenue of \$230,000 for the eligible expenses in the Street Repair and Resurfacing Project (CIP No. 811-9901).

ENVIRONMENTAL ASSESSMENT:

The requested actions are not considered a project defined under CEQA, and no further action is required.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 7

DATE: April 28, 2021

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Landscape and Lighting Assessment Districts 1 & 2

- a. Adopt a Resolution (Attachment 1) Approving the Engineer's Report (Attachment 8) for FY 2021/22.
- b. Adopt a Resolution (Attachment 2) of Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 1- Blackwell Drive Benefit Zone.
- c. Adopt a Resolution (Attachment 3) of Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 1- Kennedy Meadows Benefit Zone.
- d. Adopt a Resolution (Attachment 4) of Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 1-Santa Rosa Heights Benefit Zone.
- e. Adopt a Resolution (Attachment 5) of Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 1- Vasona Heights Benefit Zone.
- f. Move \$16,089 from the Kennedy Meadows Fund Balance to the Kennedy Meadows District Weed Abatement Budget
- g. Adopt a Resolution (Attachment 6) of Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 1- Hillbrook Drive Benefit Zone.
- h. Adopt a Resolution (Attachment 7) of intention to Intention to Order the Levy and Collection of Assessments for Landscape and Lighting District No. 2-Gemini Court Benefit Zone.
- i. Set June 15, 2021 as the Date for the Public Hearing to Consider Protests for the Levy and Collection of Assessments.

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:

Staff recommends that the Town Council:

- a. Adopt a Resolution (Attachment 1) approving the Engineer's Report (Attachment 8) for FY 2020/21.
- b. Adopt a Resolution (Attachment 2) of intention to order the levy and collection of assessments for Landscape and Lighting District No. 1-Blackwell Drive Benefit Zone.
- c. Adopt a Resolution (Attachment 3) of intention to order the levy and collection of assessments for Landscape and Lighting District No. 1-Kennedy Meadows Benefit Zone.
- d. Adopt a Resolution (Attachment 4) of intention to order the levy and collection of assessments for Landscape and Lighting District No. 1-Santa Rosa Heights Benefit Zone.
- e. Adopt a Resolution (Attachment 5) of intention to order the levy and collection of assessments for Landscape and Lighting District No. 1-Vasona Heights Benefit Zone.
- f. Move \$16,089 from the Kennedy Meadows Fund Balance to the Kennedy Meadows District Weed Abatement Budget
- g. Adopt a Resolution (Attachment 6) of intention to order the levy and collection of assessments for Landscape and Lighting District No. 1-Hillbrook Drive Benefit Zone.
- h. Adopt a Resolution (Attachment 7) of intention to order the levy and collection of assessments for Landscape and Lighting District No. 2-Gemini Court Benefit Zone.
- i. Set June 15, 2021 as the date for the public hearing to hear and consider and consider protests for the levy and collection of assessments.

BACKGROUND:

On April 20, 2021, the Town Council adopted a Resolution 2021-008 (Attachment 9) Describing Improvements and Directing the Preparation of the Engineer's Report for Fiscal Year (FY) 2021/22 for Landscape and Lighting Assessment Districts No. 1 and 2.

DISCUSSION:

In accordance with the adopted Resolution and pursuant to the requirements of the Landscaping and Lighting Act of 1972 (Streets and Highways Code Section 22500), the Engineer's Report (Attachment 8) contains the following information:

1. Plans and specifications for the maintenance of the existing improvements and for proposed new improvements, if any, to be made within the assessment districts or within any zones thereof.
2. An estimate of the costs of said proposed new improvements, if any, to be made along with the costs of maintenance or servicing, or both, thereof, and of any existing improvements, together with the incidental expenses in connection therewith.

DISCUSSION (continued):

3. A diagram showing the exterior boundaries of the assessment districts and of any zones within said districts and the lines and dimensions of each lot or parcel of land within the districts as such lot or parcel of land is shown on the County Assessor's map for the fiscal year to which the report applies, each of which lots or parcels of land shall be identified by a distinctive number or letter on said diagram.
4. A proposed assessment of the total amount of the estimated costs and expenses of the maintenance activities and proposed new improvements, if any, upon the several lots or parcels of land in said districts in proportion to the estimated particular and distinct benefits to be received by each of such lots or parcels of land, respectively, from said improvements, including the maintenance or servicing, or both, thereof, and of the expenses incidental thereto.

The recommended actions will maintain the assessments at each of the benefit zones at the historic level, with no additions or reductions as these funding levels are appropriate to address regular ongoing maintenance as well as capital maintenance as needed.

The Kennedy Meadows District required weed abatement (maintenance) this year and staff worked with residents to identify and program that work. The costs of that work total \$16,089 and is recommended as a budget adjustment in that District.

The Council may also direct that modifications be made to the Engineer's Report, if it so desires.

After Council's consideration and adoption of the Resolutions Approving the FY 2021/22 Preliminary Engineer's Report (Attachment 1), Intentions to Levy and Collect Assessments (Attachments 2-7) and setting the date and time for the public hearing for June 15, 2021, Town staff will mail a Notice of Intention to Levy Annual Assessments for FY 2021/22 to all property owners which will include the public hearing date, time, and location.

Persons wishing to protest the levy and collection of assessments may do so by mailing the protest to the Town Clerk 110 E. Main Street, Los Gatos, CA 95030; emailing to the Town Clerk - Clerk@LosGatosCA.gov, or attending the public hearing. Any written protest must be received by the Town Clerk no later than the public hearing of June 15, 2021, as described above.

Protests must identify the grounds for the protest, the person filing the protest, and the property owned by the person filing the protest.

At the conclusion of the public hearing, the Town Clerk will transmit the assessment amounts to the County Auditor which will appear as a separate item on the property tax bill for each parcel.

CONCLUSION:

Staff recommends that the Town Council adopt the attached seven resolutions to continue the annual process of renewing the Landscape and Lighting Assessment Districts 1 & 2 for F Y 2021/22. If the Town Council approves these actions, staff will mail Notices of Intention to Levy Annual Assessments for FY 2021/22 to all property owners within the districts prior to the public hearing in June.

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 of 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 Approving Engineer's Report for FY 2021/22.
2. Resolution of Intention to Order the Levy and Collection of Assessments - Blackwell Drive Benefit Zone.
3. Resolution of Intention to Order the Levy and Collection of Assessments – Kennedy Meadows Benefit Zone.
4. Resolution of Intention to Order the Levy and Collection of Assessments – Santa Rosa Heights Benefit Zone.
5. Resolution of Intention to Order the Levy and Collection of Assessments – Vasona Heights Benefit Zone.
6. Resolution of Intention to Order the Levy and Collection of Assessments – Hillbrook Drive Benefit Zone.
7. Resolution of Intention to Order the Levy and Collection of Assessments – Gemini Court Benefit Zone.
8. Engineer's Report for FY 2021/22.
9. Resolution 2021-008.

RESOLUTION 2021-
RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
APPROVING THE ENGINEER'S REPORT FOR
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICTS NO. 1 & 2 FOR
FISCAL YEAR 2021/22

WHEREAS, pursuant to the Landscaping and Lighting Act of 1972, on the 20th day of April 2021, said Council did adopt its Resolution No. 2021-008 "A Resolution Describing Improvements and Directing Preparation of Engineer's Report For Fiscal Year 2021/22 for the Town of Los Gatos Landscape and Lighting Assessment Districts No. 1 & 2," in said Town and did refer the proposed improvements to the Engineer of the Town and did therein direct said Engineer to prepare and file with the Town Clerk of said Town a report, in writing, all as therein more particularly described; and

WHEREAS, said Town Engineer prepared and filed with the Town Clerk a report in writing as called for in said Resolution No. Resolution No. 2021-008 and under and pursuant to said Act, which report has been presented to this Council for consideration; and

WHEREAS, said Council has duly considered said report and each and every part thereof, and finds that each and every part of said report is sufficient, and that neither said report, nor any part thereof should be modified in any respect.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That the plans and specifications for the existing improvements and the proposed new improvements to be made within the assessment districts or within any zone thereof, contained in said report, be, and they are hereby preliminarily approved.

ATTACHMENT 1

2. That the Engineer's estimate of the itemized and total costs and expenses of said improvements, maintenance and servicing thereof, and of the incidental expenses in connection therewith, contained in said report, be, and each of them are hereby preliminarily approved.

3. That the diagram showing the exterior boundaries of the assessment districts referred to and described in said Resolution No. Resolution No. 2021-008 and also the boundaries of any zones therein, and the lines and dimensions of each lot or parcel of land within said districts as such lot or parcel of land is shown on the County Assessor's maps for the fiscal year to which the report applies, each of which lot or parcel of land has been given a separate number upon said diagram, as contained in said report, be, and it hereby is preliminarily approved.

4. That the proposed assessment of the total amount of the estimated costs and expenses of the proposed improvements upon the several lots or parcels of land in said assessment districts in proportion to the estimated benefits to be received by such lots or parcels, respectively, from said improvements including the maintenance or servicing or both, thereof, and of the expenses incidental thereto, as contained in said report, be, and they are hereby preliminarily approved.

5. That said report shall stand as the Engineer's Report for the purpose of all subsequent proceedings to be had pursuant to said Resolution No. Resolution No. 2021-008.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, at a meeting thereof held on the 4th day of May 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: _____

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
OF ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS
FOR FISCAL YEAR 2021/22 IN
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1--
BLACKWELL DRIVE BENEFIT ZONE,
AND TO SET PUBLIC MEETING AND PUBLIC HEARING
TO CONSIDER THE PROPOSED ASSESSMENTS**

WHEREAS, Landscape and Lighting Assessment District No. 1--Blackwell Drive Benefit Zone is generally located in Tract No. 8306, as generally shown in Part D hereto and generally consists of the following improvements:

Landscaping and appurtenances in the median island and the streetlights constructed as a part of Tract No. 8306, Blackwell Drive and National Avenue.

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 assessment to support those improvements; and

WHEREAS, the Town Engineer has prepared and filed that report; and

WHEREAS, the Town Council has considered and approved that report; and

WHEREAS, no substantial changes are proposed to be made in the improvements in the District; and

ATTACHMENT 2

WHEREAS, the Engineer's Report contains a detailed description of the improvements in the District, the boundaries of the District and the benefit zones within the District, and the proposed assessments upon assessable lots and parcels of land within the District; and

WHEREAS, the Town Council intends to consider levying and collecting assessments upon the assessable lots and parcels of land within the District that are equal to those levied and collected in Fiscal Year 2020/21; and

WHEREAS, the proposed assessment should be set for public hearing in accordance with the Streets and Highways Code,

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Town Council will consider the levying and collection of assessment in Landscape and Lighting Assessment District No. 1--Blackwell Drive Benefit Zone at a public hearing Tuesday, June 15, 2021, at 7:00 p.m., via teleconference, when all interested persons may attend and be heard. This hearing may be continued from time to time.
2. Persons wishing to protest the levy and collection of assessments may do so by mailing the protest to the Town Clerk at 110 E. Main Street, Los Gatos, CA 95030; emailing to the Town Clerk – Clerk@LosGatosCA.gov, or attending the public hearing by teleconference and speaking. Any written protest must be received by the Town Clerk no later than the public hearing of June 15, 2021, as described above.
3. The Town Clerk is ordered to cause notice of the hearing to be published once in the Los Gatos Weekly Times at least 10 days before the public hearing.

4. The Town Clerk is further ordered to cause notice of the public hearing to be mailed to the owners of assessable lots and parcels within the district at least 10 days before the public hearing.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, at a meeting thereof held on the 4th day of May 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: _____

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
OF ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS
FOR FISCAL YEAR 2021/22 IN
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1--
KENNEDY MEADOWS BENEFIT ZONE,
AND TO SET PUBLIC MEETING AND PUBLIC HEARING
TO CONSIDER THE PROPOSED ASSESSMENTS**

WHEREAS, Landscape and Lighting Assessment District No. 1--Kennedy Meadows Benefit Zone is generally located in Tract No. 8612, as generally shown in Part D hereto and generally consists of the following improvements:

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.

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 assessment to support those improvements; and

WHEREAS, the Town Engineer has prepared and filed that report; and

ATTACHMENT 3

WHEREAS, the Town Council has considered and approved that report; and

WHEREAS, no substantial changes are proposed to be made in the improvements in the district; and

WHEREAS, the Engineer's Report contains a detailed description of the improvements in the District, the boundaries of the District and the benefit zones within the District, and the proposed assessments upon assessable lots and parcels of land within the District; and

WHEREAS, the Town Council intends to consider levying and collecting assessments upon the assessable lots and parcels of land within the District that equal to those levied and collected in Fiscal Year 2020/21; and

WHEREAS, the proposed assessment should be set for public hearing in accordance with the Streets and Highways Code,

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Town Council will consider the levying and collection of assessment in Landscape and Lighting Assessment District No. 1--Blackwell Drive Benefit Zone at a public hearing Tuesday, June 15, 2021, at 7:00 p.m., via teleconference, when all interested persons may attend and be heard. This hearing may be continued from time to time.
2. Persons wishing to protest the levy and collection of assessments may do so by mailing the protest to the Town Clerk at 110 E. Main Street, Los Gatos, CA 95030; emailing to the Town Clerk – Clerk@LosGatosCA.gov, or attending the public hearing by teleconference and speaking. Any written protest must be received by the Town Clerk no later than the public hearing of June 15, 2021, as described above.

3. The Town Clerk is ordered to cause notice of the hearing to be published once in the Los Gatos Weekly Times at least 10 days before the public hearing.
4. The Town Clerk is further ordered to cause notice of the public hearing to be mailed to the owners of assessable lots and parcels within the district at least 10 days before the public hearing.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, at a meeting thereof held on the 4th day of May 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: _____

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
OF ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS
FOR FISCAL YEAR 2021/22 IN
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1--
SANTA ROSA HEIGHTS BENEFIT ZONE,
AND TO SET PUBLIC MEETING AND PUBLIC HEARING
TO CONSIDER THE PROPOSED ASSESSMENTS**

WHEREAS, Landscape and Lighting Assessment District No. 1--Santa Rosa Heights Benefit Zone is generally located in Tract No. 8400, as generally shown in Part D hereto and generally consists of the following improvements:

Open space and a maintained trail constructed as a part of Tract No. 8400, Santa Rosa Drive and Shannon Road.

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 assessment to support those improvements; and

WHEREAS, the Town Engineer has prepared and filed that report; and

WHEREAS, the Town Council has considered and approved that report; and

WHEREAS, no substantial changes are proposed to be made in the improvements in the District; and

ATTACHMENT 4

WHEREAS, the Engineer's Report contains a detailed description of the improvements in the District, the boundaries of the District and the benefit zones within the District, and the proposed assessments upon assessable lots and parcels of land within the District; and

WHEREAS, the Town Council intends to consider levying and collecting assessments upon the assessable lots and parcels of land within the District that are equal to those levied and collected in Fiscal Year 2020/21; and

WHEREAS, the proposed assessment should be set for public hearing in accordance with the Streets and Highways Code,

NOW, THEREFORE, BE IT **RESOLVED AS FOLLOWS**:

1. The Town Council will consider the levying and collection of assessment in Landscape and Lighting Assessment District No. 1--Blackwell Drive Benefit Zone at a public hearing Tuesday, June 15, 2021, at 7:00 p.m., via teleconference, when all interested persons may attend and be heard. This hearing may be continued from time to time.
2. Persons wishing to protest the levy and collection of assessments may do so by mailing the protest to the Town Clerk at 110 E. Main Street, Los Gatos, CA 95030; emailing to the Town Clerk – Clerk@LosGatosCA.gov, or attending the public hearing by teleconference and speaking. Any written protest must be received by the Town Clerk no later than the public hearing of June 15, 2021, as described above.
3. The Town Clerk is ordered to cause notice of the hearing to be published once in the Los Gatos Weekly Times at least 10 days before the public hearing.
4. The Town Clerk is further ordered to cause notice of the public hearing to be

mailed to the owners of assessable lots and parcels within the district at least 10 days before the public hearing.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, at a meeting thereof held on the 4th day of May 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: _____

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
OF ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS
FOR FISCAL YEAR 2021/22 IN
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1--
VASONA HEIGHTS BENEFIT ZONE,
AND TO SET PUBLIC MEETING AND PUBLIC HEARING
TO CONSIDER THE PROPOSED ASSESSMENTS**

WHEREAS, Landscape and Lighting Assessment District No. 1--Vasona Heights Benefit Zone is generally located in Tract No. 8280, as generally shown in Part D hereto and generally consists of the following improvements:

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.

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 assessment to support those improvements; and

WHEREAS, the Town Engineer has prepared and filed that report; and

WHEREAS, the Town Council has considered and approved that report; and

WHEREAS, no substantial changes are proposed to be made in the improvements in the District; and

ATTACHMENT 5

WHEREAS, the Engineer's Report contains a detailed description of the improvements in the District, the boundaries of the District and the benefit zones within the District, and the proposed assessments upon assessable lots and parcels of land within the District; and

WHEREAS, the Town Council intends to consider levying and collecting assessments upon the assessable lots and parcels of land within the District that are equal to those levied and collected in Fiscal Year 2020/21; and

WHEREAS, the proposed assessment should be set for public hearing in accordance with the Streets and Highways Code,

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Town Council will consider the levying and collection of assessment in Landscape and Lighting Assessment District No. 1--Vasona Heights Benefit Zone at a public hearing Tuesday, June 15, 2021, at 7:00 p.m., via teleconference, when all interested persons may come and be heard. This hearing may be continued from time to time.
2. Persons wishing to protest the levy and collection of assessments may do so by mailing the protest to the Town Clerk at 110 E. Main Street, Los Gatos, CA 95030; emailing to the Town Clerk – Clerk@LosGatosCA.gov, or attending the public hearing by teleconference and speaking. Any written protest must be received by the Town Clerk no later than the public hearing of June 15, 2021, as described above.
3. The Town Clerk is ordered to cause notice of the hearing to be published once in the Los Gatos Weekly Times at least 10 days before the public hearing.

4. The Town Clerk is further ordered to cause notice of the public hearing to be mailed to the owners of assessable lots and parcels within the district at least 10 days before the public hearing.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, at a meeting thereof held on the 4th day of May 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: _____

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
OF ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS
FOR FISCAL YEAR 2021/22 IN
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1--
HILLBROOK BENEFIT ZONE
AND TO SET PUBLIC HEARING CONSIDERING
THE PROPOSED ASSESSMENTS**

WHEREAS, Landscape and Lighting Assessment District No. 1--Hillbrook Benefit Zone is generally located along Fairmead Lane and Hillbrook Drive, as generally shown in Part D hereto and generally consists of the following improvements:

Landscaping, turf, lighting and appurtenances on Assessor's Parcel Number 523-11-028, located at the southeast corner of Blossom Hill Road and Hillbrook Drive.

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 Benefit Zone, regarding the improvements in the District and proposed assessment to support those improvements; and

WHEREAS, the Town Engineer has prepared and filed that report; and

WHEREAS, the Town Council has considered and approved that report; and

WHEREAS, no substantial changes are proposed to be made in the improvements in the District; and

ATTACHMENT 6

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, the Town Council intends to consider levying and collecting assessments upon the assessable lots and parcels of land within the District that are equal to those levied and collected in Fiscal Year 2020/21; and

WHEREAS, this proposed assessment should be set for public hearing in accordance with the Streets and Highways Code,

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Town Council will consider the levying and collection of assessment in Landscape and Lighting Assessment District No. 1--Hillbrook Benefit Zone at a public hearing Tuesday, June 15, 2021, at 7:00 p.m., via teleconference, when all interested persons may come and be heard. This hearing may be continued from time to time.
2. Persons wishing to protest the levy and collection of assessments may do so by mailing the protest to the Town Clerk at 110 E. Main Street, Los Gatos, CA 95030; emailing to the Town Clerk – Clerk@LosGatosCA.gov, or attending the public hearing by teleconference and speaking. Any written protest must be received by the Town Clerk no later than the public hearing of June 15, 2021, as described above.
3. The Town Clerk is ordered to cause notice of the hearing to be published once in the Los Gatos Weekly Times at least 10 days before the public hearing.

4. The Town Clerk is further ordered to cause notice of the public hearing to be mailed to the owners of assessable lots and parcels within the district at least 10 days before the public hearing.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, at a meeting thereof held on the 4th day of May 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: _____

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
OF ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS
FOR FISCAL YEAR 2021/22 IN
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 2--
GEMINI COURT BENEFIT ZONE,
AND TO SET PUBLIC MEETING AND PUBLIC HEARING
TO CONSIDER THE PROPOSED ASSESSMENTS**

WHEREAS, Landscape and Lighting Assessment District No. 2--Gemini Court Benefit Zone is generally located in Tract No. 8439, as generally shown in Part D hereto and generally consists of the following improvements:

Landscaping and appurtenances in the landscape strips and the streetlights constructed as a part of Tract No. 8439, Gemini Court and Blossom Hill Road.

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 Benefit Zone, regarding the improvements in the District and proposed assessment to support those improvements; and

WHEREAS, the Town Engineer has prepared and filed that report; and

WHEREAS, the Town Council has considered and approved that report; and

WHEREAS, no substantial changes are proposed to be made in the improvements in the District; and

ATTACHMENT 7

WHEREAS, the Engineer's Report contains a detailed description of the improvements in the District, the boundaries of the District and the benefit zones within the District, and the proposed assessments upon assessable lots and parcels of land within the District; and

WHEREAS, the Town Council intends to consider levying and collecting assessments upon the assessable lots and parcels of land within the District that are equal to those levied and collected in Fiscal Year 2020/21; and

WHEREAS, the proposed assessment should be set for public hearing in accordance with the Streets and Highways Code,

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Town Council will consider the levying and collection of assessment in Landscape and Lighting Assessment District No. 2--Gemini Court Benefit Zone at a public hearing Tuesday, June 15, 2021, at 7:00 p.m., via teleconference, when all interested persons may come and be heard. This hearing may be continued from time to time.
2. Persons wishing to protest the levy and collection of assessments may do so by mailing the protest to the Town Clerk at 110 E. Main Street, Los Gatos, CA 95030; emailing to the Town Clerk – Clerk@LosGatosCA.gov, or attending the public hearing by teleconference and speaking. Any written protest must be received by the Town Clerk no later than the public hearing of June 15, 2021, as described above.
3. The Town Clerk is ordered to cause notice of the hearing to be published once in the Los Gatos Weekly Times at least 10 days before the public hearing.

4. The Town Clerk is further ordered to cause notice of the public hearing to be mailed to the owners of assessable lots and parcels within the district at least 10 days before the public hearing.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, at a meeting thereof held on the 4th day of May 2021 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

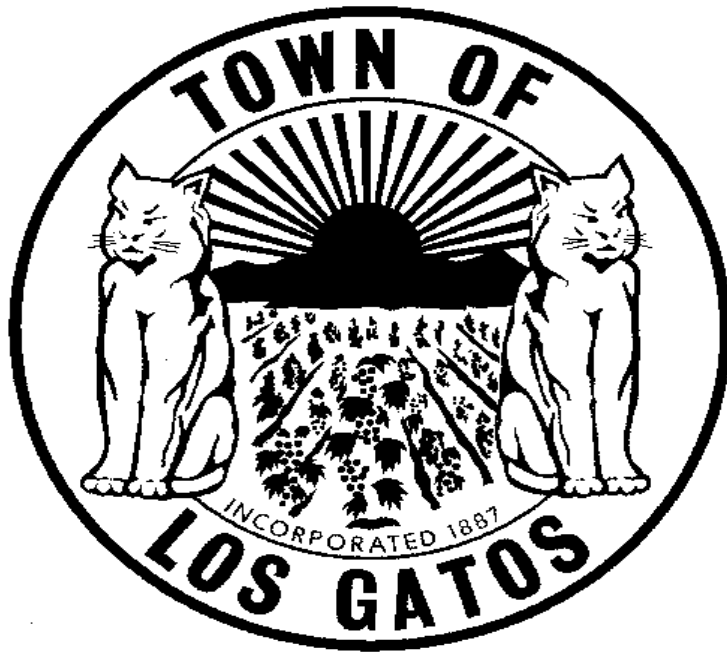
MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____



**Landscape and Lighting
Assessment Districts No. 1 and 2**

**Fiscal Year
2021/22**

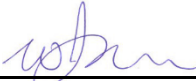
ENGINEER'S REPORT

ATTACHMENT 8

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 _____ day of _____, 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-_____

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

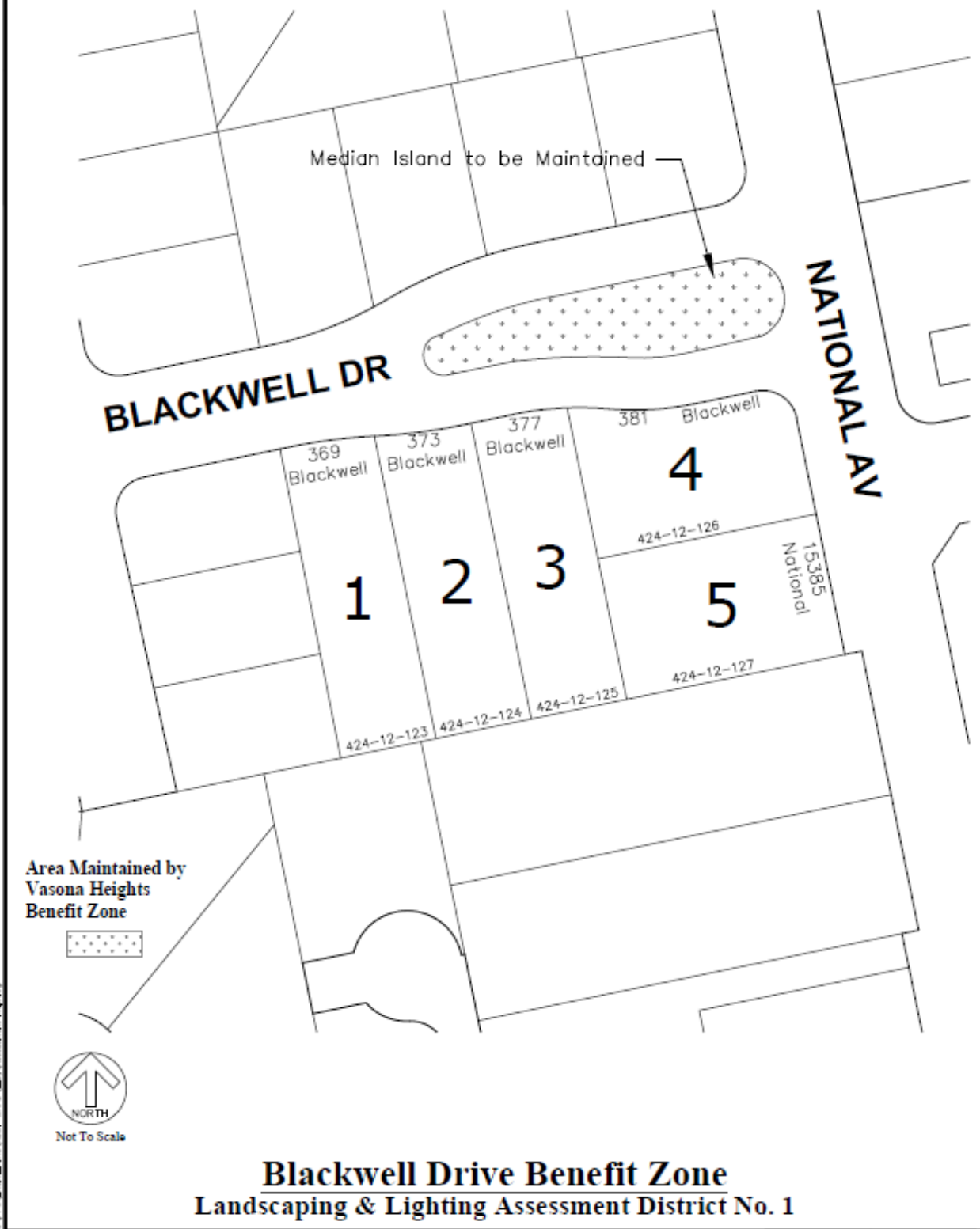
The total amount of the assessment was apportioned equally to all the lots within the Blackwell Drive Benefit Zone of Landscape and Lighting Assessment District No. 1.

BLACKWELL DRIVE BENEFIT ZONE

PROPERTY OWNERS LIST

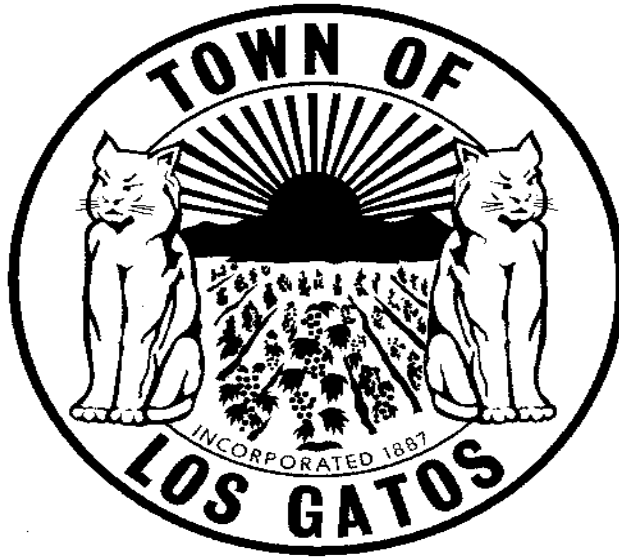
APN	Owner
42412123	HEPLER BRAD D & UMALI PAMELA
42412124	VUPPUNUTULA VENKAT REDDY AND REDDY SAHITHI
42412125	URRICARIET CHRISTIAN M & MARTINEZ-VISBAL
42412126	JOSHI ANILA & ROHIT
42412127	MORADI MOSTAFA

PART "D"
Assessment Diagram



Blackwell Drive Benefit Zone
Landscaping & Lighting Assessment District No. 1

11/18/2010 10:28:10 AM 11/18/2010 10:28:10 AM 11/18/2010 10:28:10 AM



**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

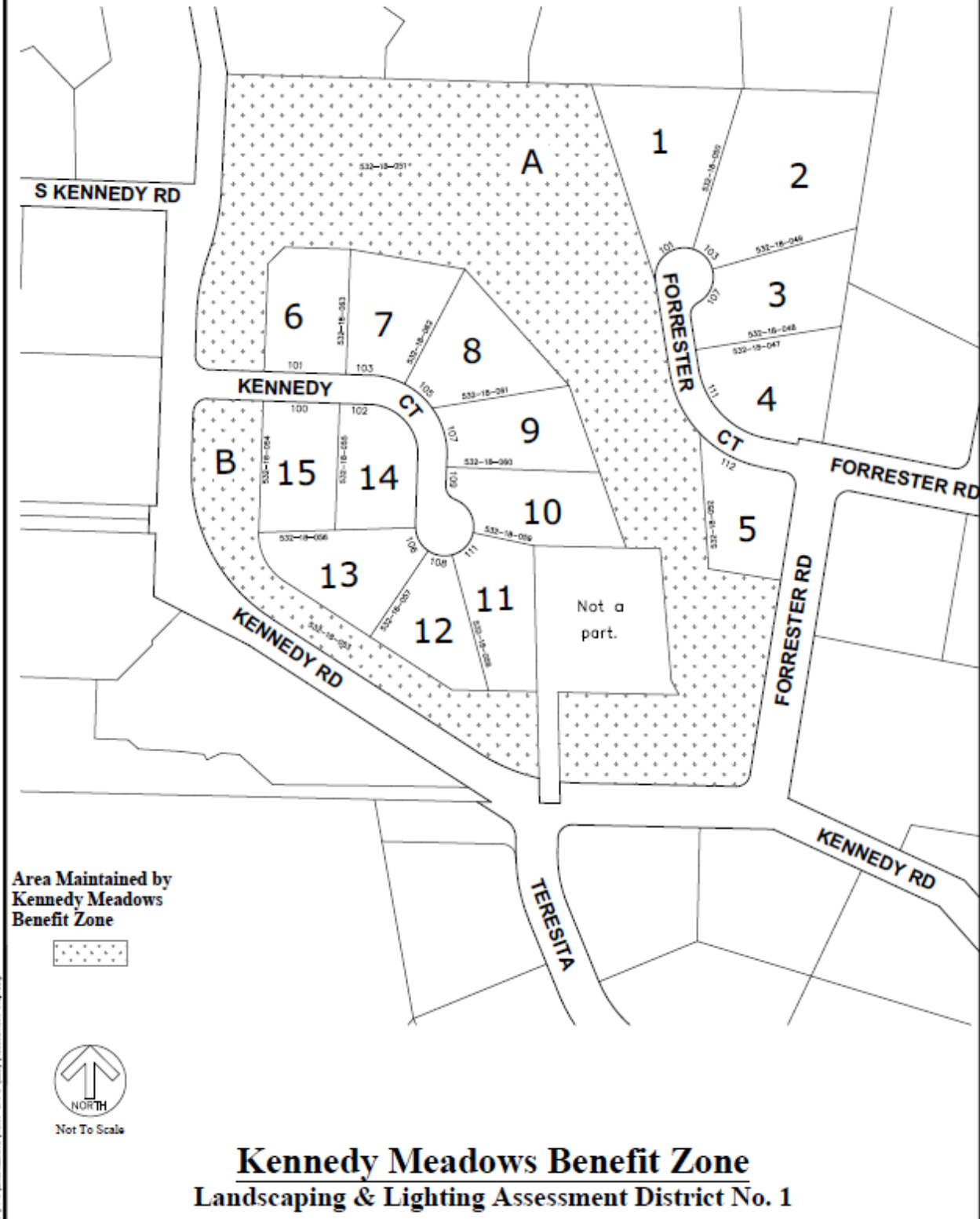
The total amount of the assessment was apportioned equally to all the lots within Kennedy Meadows Benefit Zone of Landscape and Lighting Assessment District No. 1.

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	HUBLU 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\p\d\BENEFIT_ZONE\ASST-JAES (L101)\assessments\map.dwg



**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

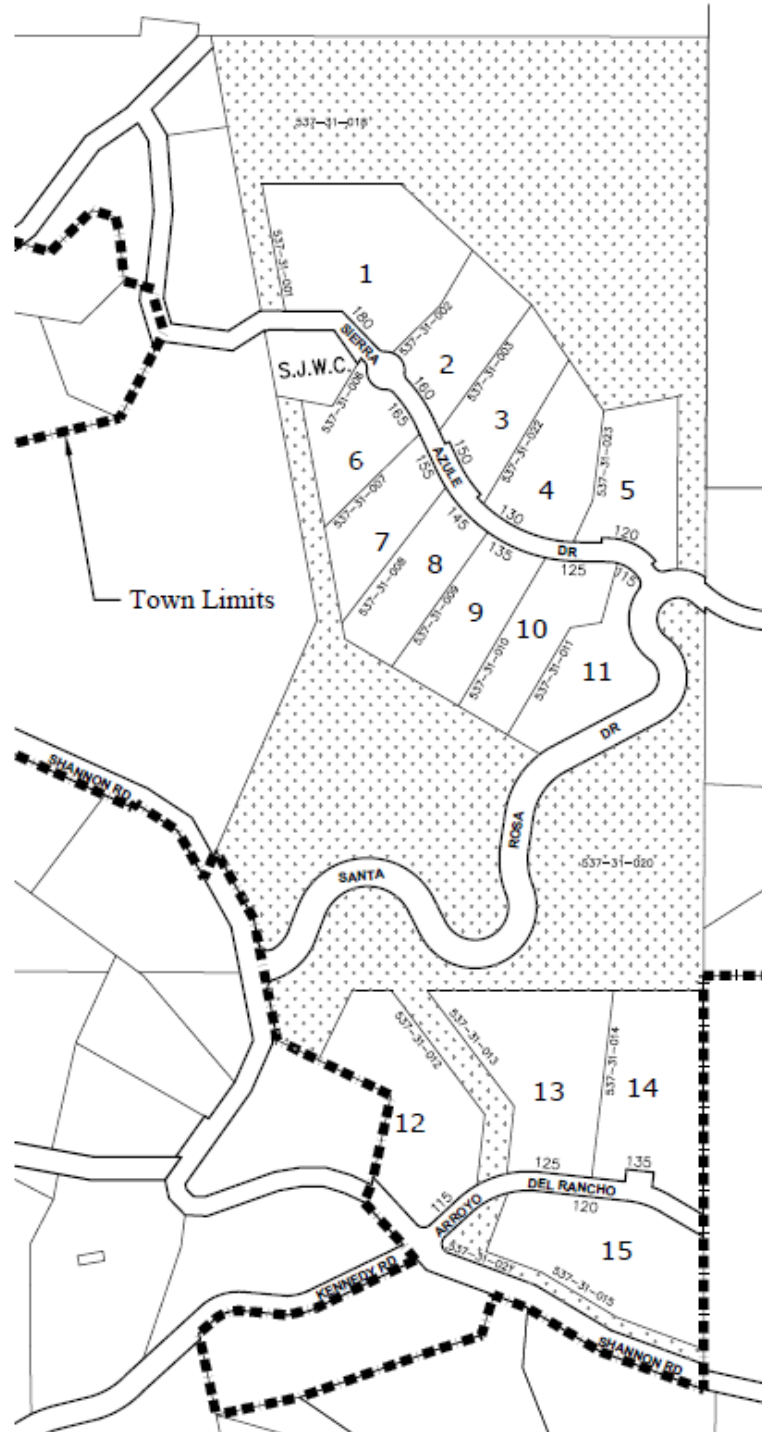
The total amount of the assessment was apportioned equally to all the lots within Santa Rosa Heights Benefit Zone of Landscape and Lighting Assessment District No. 1.

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



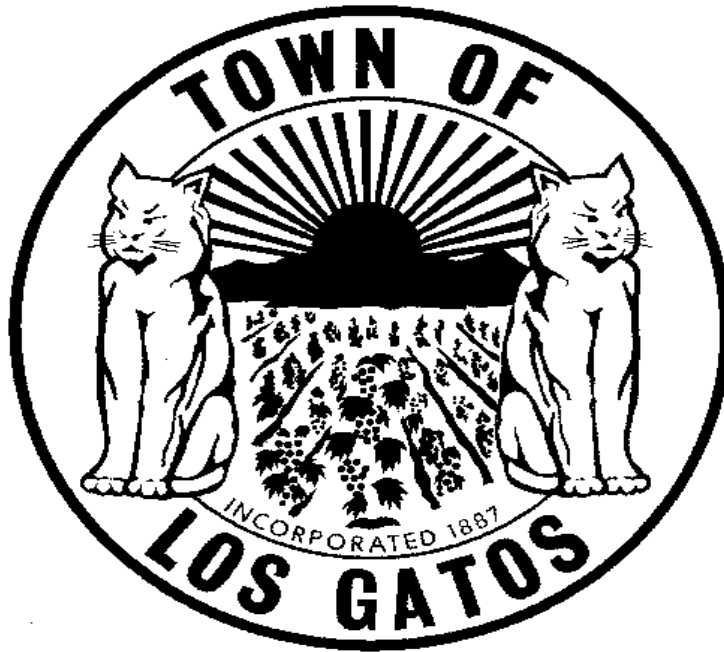
Area Maintained by
Santa Rosa Heights
Benefit Zone



Not To Scale

Santa Rosa Heights Benefit Zone
Landscaping & Lighting Assessment District No. 1

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**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.

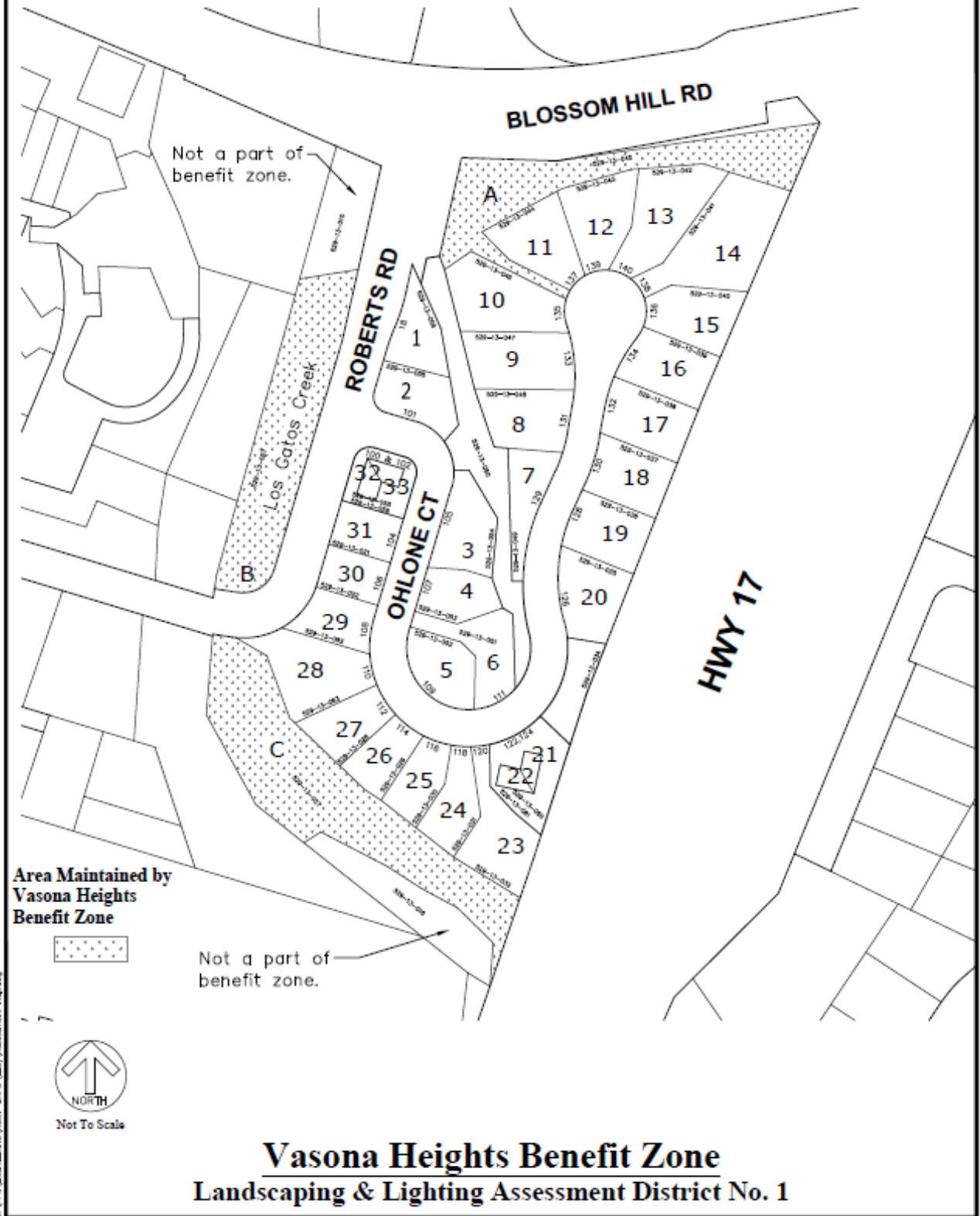
The total amount of the assessment was apportioned equally to all the lots within Vasona Heights Benefit Zone of Landscaping and Lighting Assessment District No. 1.

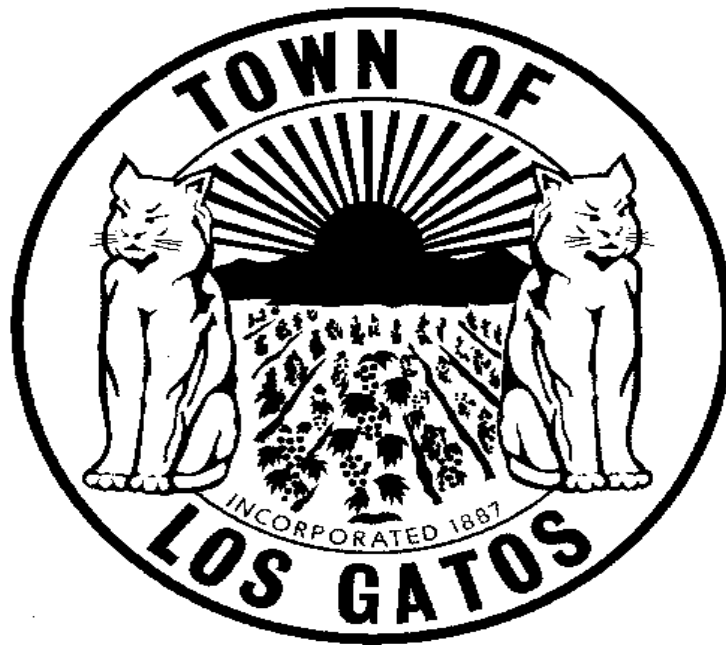
VASONA HEIGHTS BENEFIT ZONE

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





**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

HILLBROOK DR

EX.
OAK

523-11-028

LAWN

EX.
OAK

EX. SHRUBS

EX. SHRUBS



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

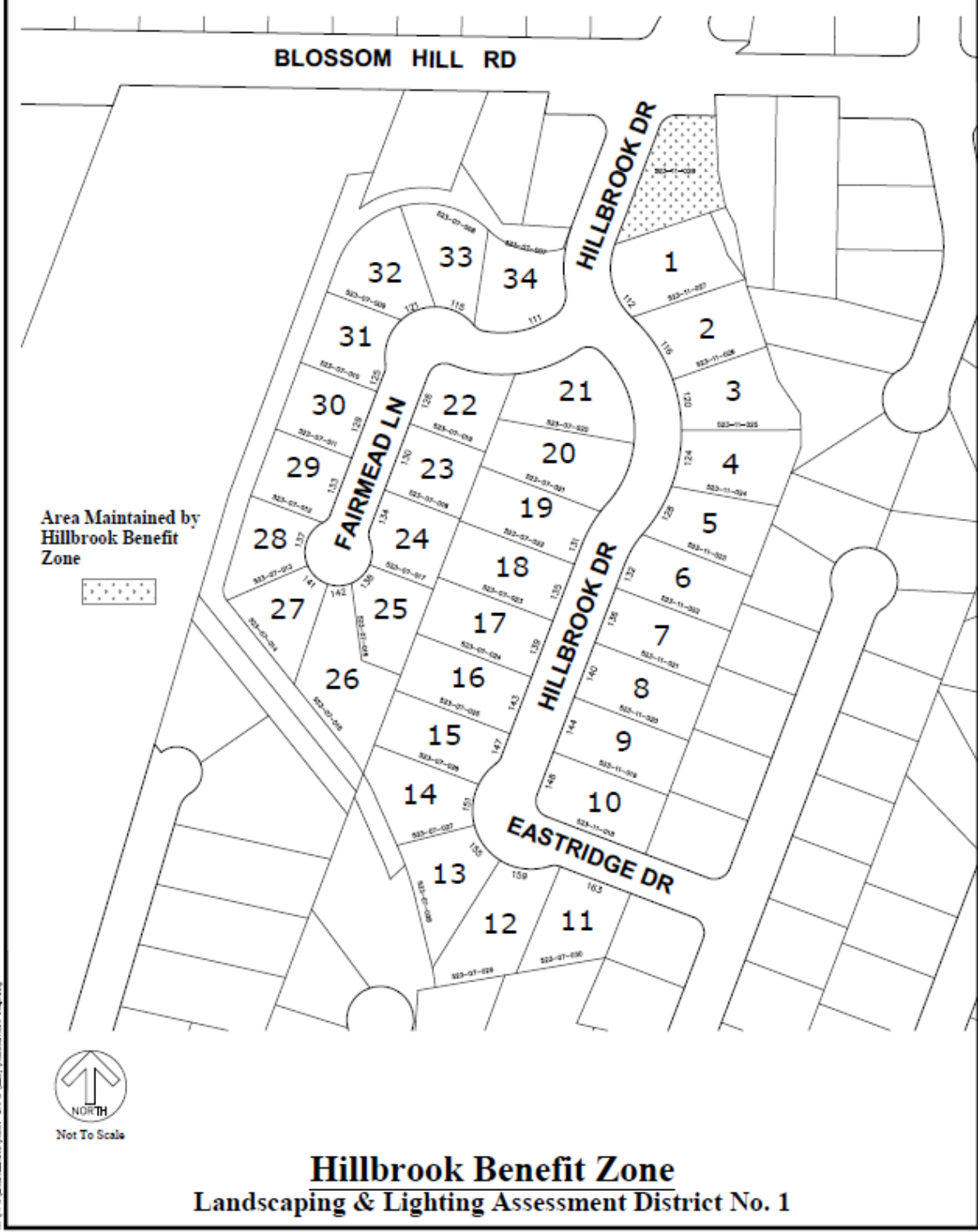
The total amount of the assessment was apportioned equally to all the lots within Landscape and Lighting Assessment District No. 1--Hillbrook Benefit Zone.

HILLBROOK BENEFIT ZONE

PROPERTY OWNERS LIST

APN	Owner
52307007	SCHNEIDER LINDA TRUSTEE
52307008	DESANTIS JUSTIN
52307009	BERGKAMP JAMES J & KIMBERLY L TRUSTEE
52307010	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



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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

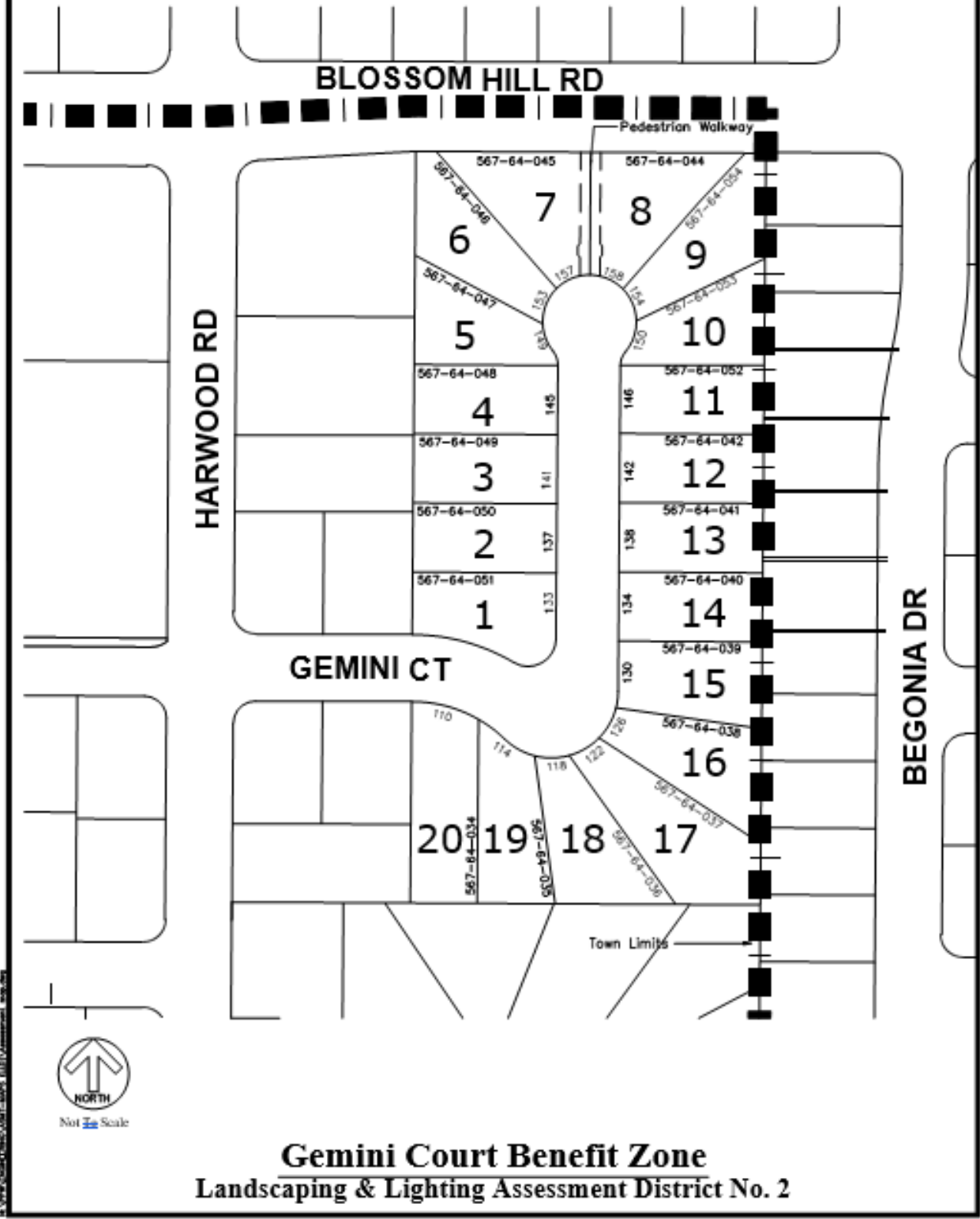
The total amount of the assessment was apportioned equally to all the lots within the Gemini Court Benefit Zone of Landscape and Lighting Assessment District No. 2.

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 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

RESOLUTION 2021-008

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
DESCRIBING IMPROVEMENTS AND
DIRECTING PREPARATION OF ENGINEER'S REPORT
FOR FISCAL YEAR 2021/22
TOWN OF LOS GATOS
LANDSCAPE AND LIGHTING ASSESSMENT DISTRICTS NO. 1 AND 2**

WHEREAS, the Town Council did, pursuant to the provisions of the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the Streets and Highways Code of the State of California, conduct proceedings for the formation of the Town of Los Gatos Landscaping and Lighting Assessment Districts No. 1 and 2; and

WHEREAS, the public interest, convenience and necessity require, and it is the intention of said Council to undertake proceedings for the levy and collection of assessments upon the several lots or parcels of land in said Districts, for the construction or installation of improvements, including the maintenance or servicing, or both, thereof, for the fiscal year 2021/22; and

WHEREAS, the improvements to be constructed or installed, including the maintenance or servicing, or both, thereof, are more particularly described in (Exhibit A) hereto attached and by reference incorporated herein; and

WHEREAS, the costs and expenses of said improvements, including the maintenance or servicing, or both, thereof, are to be made chargeable upon said Districts, the exterior boundaries of which Districts are the composite and consolidated area as more particularly shown on a map thereof on file in the Clerk Department of the Town of Los Gatos to which reference is hereby made for further particulars. Said map indicates, by a boundary line, the extent of the territory included in said Districts and of any zone thereof and shall govern for all details as to the extent of the assessment districts; and

NOW, THEREFORE, BE IT RESOLVED: The Engineer of said Town is hereby directed to prepare and file with said Town Clerk a report, in writing, referring to the assessment districts

by their distinctive designations, specifying the fiscal year to which the report applies, and, with respect to that year, presenting the following:

- a. Plans and specification of the existing improvements and for proposed new improvements, if any, to be made within the assessment districts or within any zones thereof;
- b. An estimate of the costs of said proposed new improvements, if any, to be made, the costs of maintenance or servicing, or both, thereof, and of any existing improvements, together with the incidental expenses in connection therewith;
- c. A diagram showing the exterior boundaries of the assessment districts and of any zones within said districts and the lines and dimensions of each lot or parcel of land within the districts as such lot or parcel of land is shown on the County Assessor's map for the fiscal year to which the report applies, each of which lots or parcels of land shall be identified by a distinctive number or letter on said diagram; and
- d. A proposed assessment of the total amount of the estimated costs and expenses of the proposed new improvements, including the maintenance or servicing, or both, thereof, and of any existing improvements upon the several lots or parcels of land in said districts in proportion to the estimated particular and distinct benefits to be received by each of such lots or parcels of land, respectively, from said improvements, including the maintenance or servicing, or both, thereof, and of the expenses incidental thereto.

NOW, THEREFORE, BE IT FURTHER RESOLVED: The Office of the Engineer of said Town is hereby designated as the office to answer inquiries regarding any protest proceedings to be had herein and may be contacted during regular office hours at 41 Miles Avenue, Los Gatos, California 95030 or by calling (408) 399-5770.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 20th day of April 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: _____

EXHIBIT A

DESCRIPTION OF IMPROVEMENTS TOWN OF LOS GATOS LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT NO. 1

1. General Description of Improvements:

The design, construction or installation, including the maintenance or servicing, or both, thereof, of landscaping, including trees, shrubs, grass or other ornamental vegetation, statuary, fountains or other ornamental structures and facilities, and public lighting facilities for the lighting of any public places, ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances, including the cost of repair, removal or replacement of all or any part thereof; providing for the life, growth, health and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing and treating for disease or injury; the removal of trimmings, rubbish, debris and other solid waste; electric current or energy, gas or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements; and the operation of any fountains or the maintenance of any other improvements.

2. Specific Descriptions of Improvements:

Blackwell Drive Benefit Zone - Maintenance of the landscaping in the median island on Blackwell Drive constructed as a part of the public improvements required of Tract No. 8306, and maintenance of the street lights installed along Blackwell Drive and National Avenue installed as a part of the public improvements required of Tract No. 8306.

Hillbrook Benefit Zone - 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.

Kennedy Meadows Benefit Zone - The maintenance of trees, landscaping, irrigation systems, trail and street lights within the open space areas (Parcels A and B) and along Kennedy Court and Forrester Court, installed as a part of the public improvements required of Tract No. 8612, and the implementation of mitigation and enhancement measures within the riparian and wetlands areas of said Tract described in the report prepared by H.T. Harvey Associates, dated November 11, 1994.

Santa Rosa Heights Benefit Zone - The maintenance of trees, landscaping, trails and retaining walls constructed as a part of the public improvements required of Tract No. 8400.

Vasona Heights Benefit Zone - The maintenance of trees, landscaping, irrigation systems, trails, emergency access roads and retaining walls within the open space areas required as a part of the public improvements required of Tract No. 8280.

EXHIBIT A

DESCRIPTION OF IMPROVEMENTS TOWN OF LOS GATOS LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT NO. 2

1. General Description of Improvements:

The design, construction or installation, including the maintenance or servicing, or both, thereof, of landscaping, including trees, shrubs, grass or other ornamental vegetation, statuary, fountains or other ornamental structures and facilities, and public lighting facilities for the lighting of any public places, ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances, including the cost of repair, removal or replacement of all or any part thereof; providing for the life, growth, health and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing and treating for disease or injury; the removal of trimmings, rubbish, debris and other solid waste; electric current or energy, gas or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements; and the operation of any fountains or the maintenance of any other improvements.

2. Specific Description of Improvements:

Gemini Court Benefit Zone - The maintenance of trees, landscaping, irrigation systems, lighting, sound walls, and fences installed as a part of the public improvements required of Tract No. 8439.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 8

DATE: April 28, 2021

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Approve a Funding Agreement with the Santa Clara Valley Transportation Authority for the State Route 17 Corridor Congestion Relief Project (CIP NO. 813-0237)

RECOMMENDATION:

Approve a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for the State Route 17 Corridor Congestion Relief Project (CIP No. 813-0237).

BACKGROUND:

In 2016, voters passed the countywide Measure B sales tax initiative. This Measure increased the local sales tax to pay for transportation related maintenance and improvements. As the Measure language was being crafted, the Town Council and staff lobbied for inclusion of categories and projects that would allow for the return of sales tax to the Town.

One of the most competitive categories within Measure B is the Highways category. Within this category, potential projects are identified with specific language for Los Gatos that reads:

Highway 17 Corridor Congestion Relief: Upgrade Highway 17/9 interchange to improve pedestrian and bicycle safety, mobility, and roadway operations; deploy advanced transportation technology to reduce freeway cut through traffic in Los Gatos, including traffic signal control system upgrades in Los Gatos, Traveler Information System, advanced ramp metering systems; support Multi-Modal Congestion Relief Solutions, including enhanced Highway 17 Express Bus service, implementing local bus system improvements that reduce auto trips to schools, work, and commercial areas in Los Gatos; and develop park and ride lots to serve as transit hubs for express bus, shuttles, local bus system connections.

PREPARED BY: Matt Morley
Parks and Public Works Director

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

PAGE 2 OF 3

SUBJECT: Approve a Funding Agreement with the Santa Clara Valley Transportation Authority for the State Route 17 Corridor Congestion Relief Project (CIP NO. 813-0237)

DATE: April 28, 2021

BACKGROUND (continued):

This was an important achievement as the Highway program is significantly oversubscribed (potential projects far exceed the available funds in the Measure B Highway category). The Town has advanced a Highway 17 Congestion Relief project to provide relief from cut through traffic that occurs on weekdays and during summer weekends (known as beach traffic). Although Measure B may not be able to fund all of the project, having it proceed early allows for maximizing the funding that does go towards the project.

For this project, the Valley Transportation Authority (VTA) is acting as the project lead with the Town and Caltrans as major stakeholders. Town staff have been working with VTA on initial stages of the project. On March 16, 2021 the Town Council supported continued advancement of this project.

DISCUSSION:

The project is ready to move to the next phase of design through execution of a funding agreement with the VTA to proceed with the Project Approval and Environmental Document (PAED). This agreement formalizes the Town's commitment of \$600,000 to advance the project. At the completion of the PAED phase, the total cost of the project will be approximately \$4 million, inclusive of Town funds.

CONCLUSION:

Approval of the Funding Agreement will allow for this project to proceed to the PAED phase.

COORDINATION:

This project is coordinated with VTA and Caltrans.

SUBJECT: Approve a Funding Agreement with the Santa Clara Valley Transportation Authority for the State Route 17 Corridor Congestion Relief Project (CIP NO. 813-0237)

DATE: April 28, 2021

FISCAL IMPACT:

The Adopted FY 2020/21 Capital Improvement Program budget includes sufficient funds for this phase of the project, as demonstrated in the fiscal table below.

Highway 17/9 Interchange & Capacity Improvements Project 813-0237		
	Budget	Costs
Traffic Mitigation Fund	\$600,000	
Total Budget	\$600,000	
Santa Clara Valley Transportation Authority		\$600,000
Total Expenditures		\$600,000
Remaining Balance		\$0

ENVIRONMENTAL ASSESSMENT:

The project will begin an environmental assessment during the next phase of the project. This report is ministerial and not subject to environmental review.

Attachment:

1. Funding Agreement

**FUNDING AGREEMENT
BETWEEN THE TOWN OF LOS GATOS
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR THE STATE ROUTE 17 CORRIDOR CONGESTION RELIEF PROJECT**

THIS AGREEMENT ("**AGREEMENT**") dated as of the last date of signature by the parties hereto, as set forth in the signature block below ("**Effective Date**"), is made and entered into by and between the TOWN OF LOS GATOS, a municipal corporation of the State of California ("**TOWN**"), and SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency organized as a special district under California law ("**VTA**"). Hereinafter, TOWN and VTA may be individually referred to as "**PARTY**" or collectively referred to as "**PARTIES**".

I. RECITALS

1. Whereas, on June 24, 2016, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2016 to authorize a one-half of one percent retail transaction and use tax ("**2016 MEASURE B**") for 30 years for nine transportation-related program categories; and
2. Whereas, on November 8, 2016, the voters of Santa Clara County enacted 2016 MEASURE B for 30 years to pay for the nine transportation-related program categories;
3. Whereas, the duration of 2016 MEASURE B will be 30 years from the initial year of collection, beginning April 1, 2017, and continuing through March 31, 2047;
4. Whereas, on October 5, 2017, the VTA Board of Directors established the 2016 Measure B Program ("**PROGRAM**") and adopted the 2016 Measure B Program Category Guidelines;
5. Whereas, the PROGRAM includes a "Highway Interchange" program category ("**HIGHWAY CATEGORY**"), which includes a list of eligible projects, that funds highway projects throughout Santa Clara County;
6. WHEREAS, to the PARTIES desire to implement a project to improve traffic operations and circulations, and to relieve congestion on State Route ("**SR**") 17 and SR 9 in the Town of Los Gatos, Santa Clara County, California, as further described herein(the "**PROJECT**");
7. Whereas, the PROJECT is an eligible project identified in the Program and therefore eligible for HIGHWAY CATEGORY funds;
8. Whereas, the 2016 Measure B Program Category Guidelines for the HIGHWAY CATEGORY require a minimum 10% non-2016 Measure B contribution for development of PROJECT;

ATTACHMENT 1

9. WHEREAS, on March 19, 2019, the TOWN’s Council approved and supported the PROGRAM which includes improvements to SR 17 and SR 9; and
10. WHEREAS, the PARTIES wish to set forth in this AGREEMENT their respective obligations in connections with the PROJECT.

NOW, THEREFORE, in consideration of the mutual promises contained in this AGREEMENT, the PARTIES agree as follows:

II. AGREEMENT

1. **PROJECT Description.** The PROJECT includes the construction of a new State Route 17 – State Route 9 Interchange and a widening of State Route 17 between Lark Avenue and State Route 9 to accommodate new auxiliary lanes as shown in Attachment A, attached hereto and incorporated herein (“**PROJECT LOCATION MAP**”).
2. **Scope of Work** The scope of work of this AGREEMENT (“**Scope of Work**”) includes, but is not limited to: (i) all necessary approvals required from any and all governmental or regulatory agency or entity for the Project Initiaion Document (“**PID**”) and Project Approval/Environmental Document (“**PAED**”), (ii) those planning and design activities necessary to complete the PID and PAED.
3. **Cost of Scope of Work** The estimated cost of PROJECT’s PID and PA/ED phases is Six Million Dollars (\$6,000,000).
4. **VTA’s Financial Contribution for Cost of Scope of Work.** VTA will contribute to the PROJECT up to Five Million, Four Hundred Thousand Dollars (\$5,400,000) of HIGHWAY CATEGORY funds (herein after, “**VTA’s Contribution**”) towards the development and completion of PID and PA/ED.

2016 MEASURE B Funds Limitation. Notwithstanding any funding obligations set forth in this Agreement, 2016 MEASURE B funds must not be used to finance more than ninety percent (90%) of the Total Scope of Work Costs.

5. **TOWN's Financial Contribution for Cost of Scope of Work.** TOWN will contribute to the PROJECT Six Hundred Thousand Dollars (\$600,000) (hereinafter, "**TOWN's Contribution**") as the non-2016 Measure B project contribution towards the development and completion of PID and PA/ED.

Upon execution of the AGREEMENT, VTA will invoice the TOWN for the TOWN’s Contribution and, upon receipt, will deposit the TOWN’s Contribution into an interest-bearing account. The

ATTACHMENT 1

TOWN must pay to VTA the amount set forth in the VTA invoice within thirty (30) calendar days after receipt of invoice.

The TOWN's Contribution and any interest earned will be considered toward the required minimum 10% non-2016 Measure B contribution for the listed cost of PROJECT as identified in the 2016 Measure B Program Category Guidelines for the HIGHWAY CATEGORY.

The TOWN's Contribution towards PS&E, ROW and Construction phases will be subject to future negotiation and mutually agreed upon written amendment.

6. **Cost of Scope of Work Savings.** If the PID and PA/ED are anticipated to be delivered under budget, HIGHWAY CATEGORY funds will be reduced in proportion to Town's Contribution to development and completion of the Scope of Work.
7. **Use of the TOWN's Contribution.** VTA will use the TOWN's Contribution and the interest earned thereon for allowable costs and expenses for the sole purpose of completing the Scope of Work, as set forth in this AGREEMENT.
8. **TOWN's Obligations.** The TOWN is the sponsor of the PROJECT. During the term of the AGREEMENT, the TOWN shall provide TOWN staff oversight of, and participation in, the PROJECT, and necessary and appropriate coordination with all departments of the TOWN. The TOWN shall provide timely reviews, comments, and approvals of PROJECT's documents submitted by VTA to the TOWN. The TOWN costs to administer and participate in PROJECT as described in this AGREEMENT will not be allowable costs against TOWN's Contribution.
9. **VTA's Role in PROJECT.**
 - a. **Tasks.** VTA shall perform and/or be responsible for the following tasks to complete the PROJECT:
 - i. Service as project manager for PROJECT;
 - ii. Coordination with the State of California for its review and approval of PROJECT;
 - iii. Conduct of a conceptual alternatives analysis for PROJECT;
 - iv. Completion of PID work for PROJECT;
 - v. Completion of the PA/ED work for PROJECT;
 - vi. Support Town Staff in obtaining Town Council approval of the project; and
 - vii. Completion of PS&E, ROW and Construction work for the PROJECT, subject to future funding availability and agreement amendment.

Costs and expenses to perform these tasks shall be considered allowable costs and expenses pursuant to this AGREEMENT.

- b. **Consultants.** VTA may retain design consultants to perform any of the functions listed in Section 9(a). VTA's administrative costs to procure and manage consultant agreements as well as the actual costs of such consultants shall be allowable costs pursuant to this

ATTACHMENT 1

AGREEMENT.

- c. Other Project Management Duties VTA shall include the TOWN staff as an active participant within VTA's project management process, hold periodic meetings as agreed upon by the project team(s) to assess the progress of development for PROJECT and address PROJECT issues as they arise. VTA shall also prepare regular reports on activity and progress of PROJECT for the TOWN.
- d. Project Cost Updates/ Amendments to TOWN's Contribution. VTA shall actively monitor actual expenditures for PROJECT to ensure that TOWN's Contribution is used to pay for allowable PROJECT expenditures. If, at any time, planned PROJECT expenditures are projected to exceed the TOWN's Contribution, VTA shall immediately notify the TOWN of such facts. The Parties shall then have the following options:
 - i. Revise the PROJECT scope in accordance with the available funds, which revision can be accomplished only by written amendment mutually agreed upon by the Parties and approved by the TOWN'S Town Council;
 - ii. Seek additional funding to complete scope of PROJECT by revising the TOWN'S Contribution to be accomplished only by written amendment to this AGREEMENT;
 - iii. VTA may formulate and implement a strategy to continue the PROJECT to the satisfaction of the TOWN'S Director of Parks and Public Works.
 - iv. The PARTIES may terminate this AGREEMENT which can be accomplished by either PARTY giving written notice to the other PARTY of such termination consistent with Section 12 below.

10. Compliance with Governmental Requirements. The PARTIES shall comply with all applicable laws and regulations pertaining to the AGREEMENT.

11. Compliance with 2016 Measure B Requirements. The PARTIES must comply with and must ensure PROJECT compliance with all 2016 MEASURE B requirements set forth in the 2016 Measure B Program Category Guidelines for the HIGHWAY CATEGORY as identified in Attachment B, attached hereto and incorporated herein.

12. Written Termination. In addition to termination pursuant to the terms of the preceding section, this AGREEMENT may be terminated upon mutual written agreement of the PARTIES.

13. Refund of TOWN's Contribution. Any balance of TOWN's Contribution, including interest, if applicable, remaining after the first to occur of: (a) expiration of the term of this AGREEMENT, or (b) termination of this AGREEMENT in its entirety as provided in Sections 9.d.(iv) and 12 above, or (c) completion of PROJECT, less any amounts necessary to pay for eligible expenses incurred prior to the date of completion of PROJECT or the effective date of the expiration or termination of the AGREEMENT, shall be refunded to the TOWN. VTA shall refund to the TOWN such remaining balance, if any, within thirty (30) calendar days after the effective date of completion of PROJECT or sooner termination of the AGREEMENT. For purposes of this

AGREEMENT a PROJECT shall be deemed complete only upon concurrence by both PARTIES of such completion.

14. Audit and Record Retention. The TOWN may audit the expenses incurred in the performance of this AGREEMENT. VTA shall retain all records related to the PROJECTS for three (3) years after the completion of PROJECT. During this period, VTA shall make these records available within a reasonable time to the TOWN for inspection upon request.

15. Parties' Representatives. The General Manager of VTA or the General Manager's designee is hereby made the representative of VTA for all purposes under this AGREEMENT. The Director of the Parks and Public Works for the TOWN or the Director's designee is hereby made the representative of the TOWN for all purposes under this Agreement.

16. Indemnification.

A. Neither VTA nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the TOWN under or in connection with any work, authority or jurisdiction associated with the AGREEMENT. In addition, pursuant to Government Code §895.4, the TOWN shall fully indemnify and hold VTA harmless from any liability imposed for injury (as defined by Government Code §810.8) arising out of or relating to the TOWN's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction delegated to the TOWN under this AGREEMENT.

B. Neither the TOWN nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by VTA under or in connection with any work, authority or jurisdiction associated with the AGREEMENT. In addition, pursuant to Government Code §895.4, VTA shall fully indemnify and hold the TOWN harmless from any liability imposed for injury (as defined by Government Code §810.8) arising out of or relating to VTA's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction delegated to VTA under this AGREEMENT.

17. No Waiver. The failure of either PARTY to insist upon the strict performance of any of the terms of this AGREEMENT shall not be deemed a waiver of any right or remedy that either PARTY may have, and shall not be deemed a waiver of the PARTY's right to require strict performance of all of the terms thereafter.

18. Notice. Any notice required to be given by either PARTY, or which either PARTY may wish to give, must be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA: Santa Clara Valley Transportation Authority

ATTACHMENT 1

Gene Gonzalo, Highway Capital Program Manager
3331 North First Street, Bldg. B-2
San Jose, CA 95134-1906

To TOWN: Town of Los Gatos
Matt Morley, Director, Parks and Public Works
Department of Public Works
110 East Main Street
Los Gatos, CA 95030

Notice will be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.

19. **Dispute Resolution.** If a question arises regarding interpretation of this AGREEMENT or its performance, or the alleged failure of a PARTY to perform, the PARTY raising the question or making the allegation must give written notice thereof to the other PARTY. The PARTIES must 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 or binding arbitration, may be pursued by mutual AGREEMENT. It is the intent of the PARTIES to the extent possible that litigation be avoided as a method of dispute resolution.
20. **Entire AGREEMENT** This AGREEMENT constitutes the entire understanding between the PARTIES pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations, and understandings of the PARTIES relative thereto.
21. **Term of AGREEMENT** This AGREEMENT will become effective upon the Effective Date and will remain in effect through June 30, 2024. Upon written request of VTA, the Director of the Parks and Public Works for the TOWN or a designee is authorized to extend the term of the Agreement for up to six (6) months after the initial termination date, upon written notice to VTA and without formal amendment of this Agreement. Extensions of more than six (6) months must be incorporated by the formal Amendment process in Section 22.
22. **Amendments** Future amendments or changes to this AGREEMENT must be made by mutual written agreement of the PARTIES. Whenever reasonably practicable, the PARTY proposing the amendment will provide the other PARTY with a written request to amend this AGREEMENT ninety (90) calendar days prior to the desired effective date of such amendment.
23. **Warranty of Authority to Execute AGREEMENT.** 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.

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

WITNESS THE EXECUTION HEREOF the day and year set forth below.

“TOWN”: TOWN OF LOS GATOS,
a California charter city and municipal
corporation

By: _____
Laurel Prevetti
Town Manager

APPROVED AS TO CONTENT:

Matt Morley
Park and Public Works Director

APPROVED AS TO FORM:

Robert Schultz
Town Attorney

ATTEST:

Shelley Neis, MMC, CPMC, Town Clerk

“VTA”: SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY, a public
agency

By: _____
Evelynn Tran
General Counsel and
Interim General Manager/CEO

APPROVED AS TO FORM:

Victor Pappalardo
Senior Assistant Counsel

Attachment A:
Project Location Map



ATTACHMENT B
Highway Interchanges Program Guidelines

Definition from Resolution No. 2016.06.17

To fund highway projects throughout the valley that will provide congestion relief, improved highway operations and freeway access, noise abatement, roadway connection overcrossings, and deploy advanced technology through Intelligent Transportation Systems (ITS).

Total Funding

- \$750 million in 2017 dollars.

Distribution

- VTA Board of Directors will allocate funding on a 2-year cycle.
- Funds will be distributed through two programs: capital projects and noise abatement.
- Funds will be available on a reimbursement basis.

Implementation

- VTA staff will work with local agency staff to identify and prioritize projects in the Highway Interchange Program Candidate List on 2016 Measure B. The following criteria will be considered:
 - Project Readiness
 - Level of local contribution
 - Geographic consideration
- VTA staff will work with member agency staff to advance projects.
- Noise Abatement projects will be a separate category within the Highway Interchange Program.
 - Projects identified in the 2011 VTA Soundwall Study will receive higher consideration during Call for Projects.
- Funds will be available on a reimbursable basis. Agencies may submit invoices to VTA on a monthly, quarterly or annual basis. Invoices must be submitted within one year of the date posted on the contractor's invoice.
- The cost of each phase of a proposed Highway Interchanges project will be finalized with execution of agreements with VTA for project funding.

Criteria

- Only VTA, Caltrans and Member Agencies can serve as an implementing agency.
- Only projects and programs currently listed on 2016 Measure B are eligible.

Requirements

- Projects require a minimum 10% non-2016 Measure B contribution.
- Reporting requirements will be detailed in agreements executed with VTA for project funding.
- All applications must include a delivery schedule.
- All projects must comply with VTA's Complete Streets Reporting Requirements.
- All collateral material will be required to display a 2016 Measure B logo.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 9

DATE: April 27, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt an Ordinance for a Zone Change from O:LHP (Office with a Landmark and Historic Preservation Overlay) to R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay) for Property Located at **246 Almendra Avenue**. APN: 510-14-019. Zone Change Application Z-20-001. Property Owner: Gary Filizetti. Applicant: Brett Brenkwitz.

RECOMMENDATION:

Adopt an ordinance for a zone change from O:LHP (Office with a Landmark and Historic Preservation Overlay) to R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay), for property located at 246 Almendra Avenue.

DISCUSSION:

On April 20, 2021, the Council considered and voted to introduce an Ordinance to effect a zone change from O:LHP (Office with a Landmark and Historic Preservation Overlay) to R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay), for property located at 246 Almendra Avenue. Adoption of the attached Ordinance (Attachment 1) would finalize that decision.

Attachment:

1. Draft Ordinance, with Exhibit A

PREPARED BY: Ryan Safty
Associate Planner

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

DRAFT ORDINANCE

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING THE ZONING CODE
FROM O:LHP (OFFICE WITH A LANDMARK AND HISTORIC PRESERVATION OVERLAY)
TO R-1D:LHP (SINGLE-FAMILY RESIDENTIAL DOWNTOWN WITH A LANDMARK AND
HISTORIC PRESERVATION OVERLAY)
FOR PROPERTY LOCATED AT 246 ALMENDRA AVENUE**

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

SECTION I

The Town Code of the Town of Los Gatos is hereby amended to change the zoning of the property at 246 Alameda Avenue (Santa Clara County Assessor Parcel Number 510-14-019) as shown on the map attached hereto as Exhibit A, and is part of this Ordinance, from O:LHP (Office with a Landmark and Historic Preservation Overlay) to R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Property Overlay).

SECTION II

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 20th day of April 2021, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 4th day of May 2021. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

ATTACHMENT 1

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____



246 Almendra Avenue

TOWN OF LOS GATOS

Application No. Z-20-001

A.P.N. # 510-14-019

Change of zoning map amending the Town Zoning Ordinance.

Zone Change

From: O:LHP To: R-1D:LHP

Prezoning



Forwarded by Planning Commission

Date:

Approved by Town Council

Date:

Ord:

Clerk Administrator

Mayor

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 10

DATE: April 27, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt an Ordinance for a Zone Change from R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay) to C-2:LHP (Central Business District with a Landmark and Historic Preservation Overlay), for Property Located at **4 Tait Avenue**. APN: 510-44-054. Zone Change Application Z-20-002. Property Owner: Town of Los Gatos. Applicant: Jim Foley.

RECOMMENDATION:

Adopt an ordinance for a zone change from R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay) to C-2:LHP (Central Business District with a Landmark and Historic Preservation Overlay), for property located at 4 Tait Avenue.

DISCUSSION:

On April 20, 2021, the Council considered and voted to introduce an Ordinance to effect a zone change from R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay) to C-2:LHP (Central Business District with a Landmark and Historic Preservation Overlay), for property located at 4 Tait Avenue. Adoption of the attached Ordinance (Attachment 1) would finalize that decision.

Attachment:

1. Draft Ordinance, with Exhibit A

PREPARED BY: Jennifer Armer, AICP
Senior Planner

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

Draft Ordinance: subject to
modification by Town Council
based on deliberations and
direction

DRAFT ORDINANCE

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING THE ZONING CODE
FROM R-1D:LHP (SINGLE-FAMILY RESIDENTIAL DOWNTOWN WITH A LANDMARK
AND HISTORIC PROPERTY OVERLAY)
TO C-2:LHP (CENTRAL BUSINESS DISTRICT WITH A LANDMARK AND HISTORIC
PROPERTY OVERLAY)
FOR A PROPERTY LOCATED AT 4 TAIT AVENUE**

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

SECTION I

The Town Code of the Town of Los Gatos is hereby amended to change the zoning of the property at 4 Tait Avenue (Santa Clara County Assessor Parcel Number 510-44-054) as shown on the map attached hereto as Exhibit A, and is part of this Ordinance, from R-1D:LHP (Single-Family Residential Downtown with a Landmark and Historic Property Overlay) to C-2:LHP (Central Business District with a Landmark and Historic Property Overlay).

SECTION II

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 20th day of April 2021, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 4th day of May 2021. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

ATTACHMENT 1

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

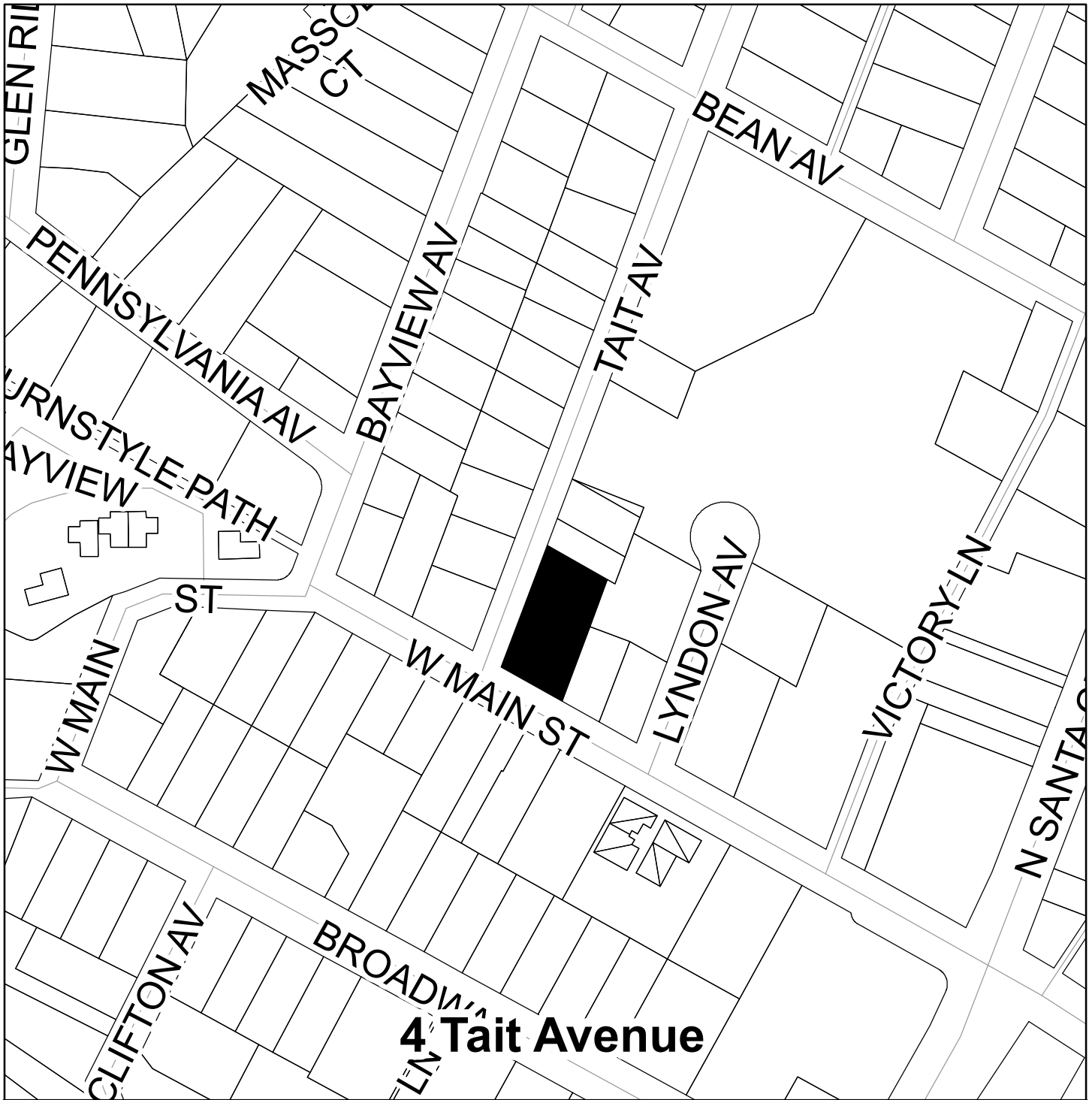
MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____



TOWN OF LOS GATOS

Application No. Z-20-002

A.P.N. # 510-44-054

Change of the zoning map amending the Town Zoning Ordinance.

Zone Change

From: R-1D:LHP To: C-2:LHP

Prezoning



Forwarded by Planning Commission

Date:

Approved by Town Council

Date:

Ord:

Clerk Administrator

Mayor

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 11

DATE: April 22, 2021

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Execute Agreements with the County of Santa Clara for:

- a. Countywide Household Hazardous Waste Collection Program; and
- b. AB939 Implementation Fee Collection and Distribution

RECOMMENDATION:

Authorize the Town Manager to execute agreements with the County of Santa Clara for:

- a. Countywide Household Hazardous Waste Collection Program; and
- b. AB939 Implementation Fee Collection and Distribution.

BACKGROUND:

The Santa Clara County Household Hazardous Waste (HHW) Program provides household hazardous waste disposal services to Town residents. The funding for this program is provided partially through landfill disposal fees (the AB939 part of this agenda item) and partially through an augmentation fee that the Town pays to cover the service used by Los Gatos residents. The Town receives designated revenue from its solid waste hauler, West Valley Collection and Recycling, to fully cover the cost of the augmentation fee. The HHW Program tracks resident activity and provides reports to Town staff to ensure adequate funding is available. The revenue and expenditures for this program are included in the Parks and Public Works Operating budget.

AB 939 allows for the establishment of fees to further recycling goals. The Agency Agreement for Countywide AB939 Implementation Fee outlines the terms and conditions under which the

PREPARED BY: Daniel Keller
Facilities & Environmental Services Manager

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

PAGE 2 OF 2

SUBJECT: Authorize the Town Manager to execute agreements with the County of Santa Clara for:

- a. Countywide Household Hazardous Waste Collection Program and
- b. AB939 Implementation Fee Collection and Distribution.

DATE: April 22, 2021

BACKGROUND (cont'd):

County collects and distributes the \$4.10 per ton fee assessed on waste disposal at each disposal facility within the County. These fees are used to fund HHW programs, as well as implementation of the Countywide Integrated Waste Management Plan. Participating agencies must approve the agreement before the fees can be collected.

DISCUSSION:

Funds from these programs flow through the Town on a cost recovery basis. The agreement in Attachment 1 establishes the County program as the program for Los Gatos residents. The agreement in Attachment 2 establishes the County as the fee collection and distribution agency for landfill charges. These fees are passed along to the Town to pay for the program.

The current agreements for these two programs expire on June 30, 2021. These new agreements will be effective July 1, 2021 through June 30, 2024.

CONCLUSION:

Approval of this agenda item will allow for the continuation of the Household Hazardous Waste Collection Program.

FISCAL IMPACT:

Funding of \$51,117 is included in the Proposed FY 2021/22 Operating Budget for the Town's augmentation. The FY 2021/22 estimated augmentation is \$66,018. If the actual augmentation, typically determined in the fall, is higher than \$51,117, staff will request a budget adjustment during the FY 2021/22 Mid-Year Budget Report.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Agreement for Countywide Household Hazardous Waste Collection Program
2. Agreement for Countywide AB939 Implementation Fee

**AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM**

This Agreement is made by and between the _____ (CITY) and the County of Santa Clara (COUNTY) on the _____ day of _____ 2021.

RECITALS

WHEREAS, the County Board of Supervisors has approved a Countywide Household Hazardous Waste Collection Program whereby residents of the County and cities and towns participating in the Countywide program will have an opportunity to safely dispose of household hazardous wastes (HHW), regardless of the specific location at which the collection has been scheduled; and

WHEREAS, CITY desires to provide residents with convenient opportunities to safely dispose of their HHW in order to encourage the proper disposal of toxic products, and avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard; and

WHEREAS, CITY desires to provide a safe, convenient, and economical means for residents to dispose of HHW. These wastes include, but are not limited to, common household products such as household cleaning products, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, car batteries, mercury thermostats, fluorescent lamps, household batteries, and electronic waste; and

WHEREAS, CITY desires to schedule Household Hazardous Waste Collection Events (Events) for residents for FY 2022 through FY 2024 (July 1, 2021 – June 30, 2024); and

WHEREAS, CITY desires to provide household hazardous waste collection services to a minimum of 4% of the households per fiscal year in its jurisdiction; and

WHEREAS, CITY desires to participate in the Countywide Household Hazardous Waste Collection Program to meet these objectives; and

WHEREAS, pursuant to Public Resources Code Section 41901, the County Board of Supervisors has approved the collection of a \$4.10 per ton Countywide AB939 Implementation fee, including a \$2.60 per ton Household Hazardous Waste Fee (AB939 HHW Fee), for FY 2022 through FY 2024 (July 1, 2021 – June 30, 2024) on all wastes landfilled or incinerated within the County, received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County, collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County, or removed from any location in the county by any person or business for disposal or incineration outside the County; and

WHEREAS, the AB939 HHW Fee is allocated to the Countywide Household Hazardous Waste Program and participating jurisdictions to fund HHW program costs in accordance with the terms of the Countywide AB939 Implementation Fee Agreement; and

WHEREAS, CITY desires for COUNTY to utilize CITY's share of the AB939 HHW Fee to provide HHW services for CITY residents.

NOW THEREFORE, CITY and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CITY will participate in the Countywide Household Hazardous Waste Collection Program (CoHHW Program) available to its residents. Participating jurisdictions are those jurisdictions that enter into an AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM with the County.

2. PROGRAM FUNDING SOURCE

HHW Program services are mandated by State law, Public Resources Code Section 41500 et seq. State law authorizes cities and counties to impose fees in amounts sufficient to support planning and implementation of integrated waste management programs, including HHW elements. The AB939 HHW Fee, of \$2.60 per ton, imposed by the County as part of the AB939 Implementation Fee and collected and distributed in accordance with the AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for CoHHW Program services. CITY agrees that COUNTY may utilize CITY's share of the AB939 HHW fee to provide HHW Program services in accordance with the terms and conditions of this Agreement.

Funds derived from the AB939 HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San José Facility Use Surcharge will be apportioned based on CITY residents' participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San José, CA 95133.
- C. Variable Cost Per Car is the cost associated with labor, waste disposal, transportation, and other services provided to residents at the County HHW Collection Facilities and at temporary HHW collection events. The Variable Cost Per Car is based on the estimated cost of providing a base level service to 4% of

households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."

- D. Available Discretionary Funding is allocated based on tonnage generated per participating jurisdiction, and after allocation of Fixed Program Costs, San Jose Facility Use Surcharge, and Variable Cost Per Car allocation.
- E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations as defined in Public Resources Code Section 41904.

The projected AB939 HHW Fee Allocation by jurisdiction is set out in Attachment A, attached hereto and incorporated herein.

3. FIXED PROGRAM COST

Estimated HHW Fixed Program Costs are projected in Attachment B, attached hereto and incorporated herein. Fixed Program Costs are allocated to CITY at the conclusion of each fiscal year based on CITY's proportional share of the County population and will not exceed \$3.75 per household for Fiscal Years 2022, 2023, and 2024. Fixed Program Costs may include, but are not limited to, up to eleven (11) County HHW Program staff members, facility lease costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance and union negotiated salary and benefit changes.

4. ABANDONED WASTE DISPOSAL COST

The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations. The Abandoned Waste Disposal Cost is based on the cost to the County to dispose of abandoned waste allocated among participating jurisdictions based on their proportional share of the County population and shall not exceed \$0.05 per household. Projected Abandoned Waste Disposal Costs to the CITY based on a charge of \$.05 per household are set forth in Attachment A, attached hereto and incorporated herein.

For the purposes of this Agreement, "Nonprofit Charitable Reuser Organization" is defined in accordance with Public Resources Code Section 41904 as follows: a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

5. SAN JOSÉ FACILITY USE SURCHARGE

The total San José Facility Use Surcharge for CITY will be based on CITY residents' proportional participation at the County Household Hazardous Waste Collection Facility located

at 1608 Las Plumas Avenue, San José. Estimated San José Facility Use Surcharges are projected in Attachment A, attached hereto and incorporated herein. The San José Facility Use Surcharge will vary depending on facility usage but will not exceed \$8.29 per car for Fiscal Years 2022, 2023, and 2024.

6. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$58.20 per participating resident car for Fiscal Years 2022, 2023 and 2024. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program Costs and San José Facility Use Surcharge are allocated on a per household basis, the Variable Cost Per Car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached in the CITY, the CoHHW Program may use the remaining balance of funds, in cooperation with the CITY, to increase public outreach and/or provide additional services in that jurisdiction the following year.

7. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, San José Facility Use Surcharge, and Variable Cost Per Car allocation. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events. COUNTY has discretion to determine appropriate uses of Available Discretionary Funding in accordance with the terms and conditions in this Agreement, and to apply the funding toward those uses.

8. ADMINISTRATION AND PAYMENT OF THE AB939 HHW FEE

The County of Santa Clara Recycling and Waste Reduction Division will administer the AB939 HHW Fee, as part of the existing online disposal reporting and payment system. Administration and payment will be made in accordance with the AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE and this Agreement. Notwithstanding the foregoing, the COUNTY shall maintain records of the amount, use, and distribution of Fixed Program Cost expenditures for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. CITY may request in writing a review by COUNTY of the Fixed Program Cost records. The review shall be performed within 30 days of request and results shall be reported to participating cities in writing.

9. PROGRAM PUBLICITY

The CoHHW Program shall produce and make available to the public an HHW brochure for distribution. The brochure will be made available at various events, including but not limited to, environmental events and community fairs. The brochure may also be distributed, upon request, to cities within the County and to County residents and businesses. The CITY shall be responsible for developing and coordinating citywide awareness of the HHW Program. The CoHHW Program shall be responsible for Countywide public education for used oil recycling. CoHHW Program public awareness responsibilities shall include, but not be limited to, the following activities:

- Serving as the formal contact to the local media such as local newspapers and television news stations;
- Providing participating jurisdictions with educational materials developed for the CoHHW Program;
- Promoting oil and oil filter recycling by developing, purchasing, and distributing educational materials, media relations materials, basic art work and camera ready advertising materials for distribution countywide and for use by jurisdictions;
- Representing the program through educational presentations at schools and businesses and attendance at community events such as local fairs and festivals; and
- Providing participating jurisdictions opportunities to review and comment on the development of countywide outreach materials.

CITY's public awareness responsibilities, at the sole discretion of the CITY, shall include, but not be limited to, the following activities:

- Providing a copy of HHW promotional materials to the CoHHW Program for review for accuracy and completeness, prior to publication;
- Developing and distributing HHW promotion communications to residents for local and CITY newsletters, newspapers and to the electronic media;
- Providing the CoHHW Program with a copy of HHW promotion materials produced by the CITY; and,
- Conducting and supporting outreach and publicity to attain the goal of 4% of households in the CITY participating in the CoHHW Program.

10. TEMPORARY HHW EVENTS

COUNTY shall conduct Temporary HHW Events at various sites located in Santa Clara County. COUNTY shall obtain all necessary permits and licenses required for the Temporary HHW Events and shall provide or contract for the services of properly trained, qualified personnel and hazardous waste haulers, and shall provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at the Temporary HHW Events.

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11. HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

COUNTY shall conduct collection operations at two County Household Hazardous Waste Collection Facilities (CoHHWCF).

The CoHHWCF are located at:

- ◆ *San Martin, 13055 Murphy Avenue, San Martin, CA 95046*
- ◆ *San José, 1608 Las Plumas, San José, CA 95133*

The COUNTY shall obtain all necessary permits and licenses required for the CoHHWCF and shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected.

12. SMALL BUSINESS RECYCLING AND DISPOSAL PROGRAM

COUNTY will provide services to accept hazardous waste from Conditionally Exempt Small Quantity Generators (CESQG) in accordance with California Health and Safety Code Section 25218.3, as amended from time to time. Eligible businesses within the County will be allowed to bring their hazardous waste to CoHHWCF. These services to businesses located within the CITY will be provided on a cost recovery basis, which will include program administration, on-site collection, transportation, and disposal costs. COUNTY will assume responsibility for fee collection from participating businesses. The CITY may choose to pay for services for CESQG's within the City of San José and will notify the COUNTY in writing with 30-day advance notice in order to exercise this option. If the CITY exercises this option, the COUNTY will invoice the CITY for all costs associated with CSQG's within the CITY. If CITY has available Discretionary Funding, COUNTY may use this funding to pay for CESQG costs. For purposes of this Agreement, CESQG has the meaning provided by Health and Safety Code Section 25218.1.

13. ABANDONED HOUSEHOLD HAZARDOUS WASTE

The CoHHW Program will allow for the disposal of abandoned HHW by government agencies and qualified nonprofit charitable reusers. Abandoned HHW means HHW left at a property by an unknown party. Abandoned household hazardous waste does not include waste generated by a known organization or agency in the course of normal business operations such as, but not limited to, the assembly or manufacture of products from new or used materials or the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee.

A) GOVERNMENT AGENCIES

Government agencies shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs.

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B) NONPROFIT CHARITABLE REUSER

In order to qualify as a Nonprofit Charitable Reuser, the business must submit to the County Executive a request to be so designated. The County Executive shall review the request and supporting documentation and shall make a final decision on the designation. COUNTY will accept abandoned HHW from Nonprofit Charitable Reusers and will waive disposal fees on the cost of disposal of the abandoned HHW in an annual amount not to exceed funds available from the existing unexpended abandoned waste fund. Funding for disposal available to Nonprofit Charitable Reuser shall be on a first come first serve basis. Once the cost for disposal of the abandoned HHW from Nonprofit Charitable Reusers is equal to the available funds, disposal fees shall no longer be waived, and Nonprofit Charitable Reusers shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs. No additional costs shall be applied to the budget of the CITY or any other participating jurisdiction.

14. HOUSEHOLD HAZARDOUS WASTES ACCEPTED

HHW accepted by the CoHHW Program shall be limited to those materials that qualify as Hazardous Waste under Health and Safety Code Section 25218.1, as amended from time to time. These materials include, but are not limited to, automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals, household cleaners, pool chemicals, mercury thermostats, fluorescent lamps containing mercury, household batteries, e-waste and other common hazardous consumer products.

15. WASTES NOT ACCEPTED

Certain hazardous wastes shall not be accepted for collection and disposal. These include, but are not limited to, compressed gas cylinders larger than 5 gallons, radioactive materials, and explosives. Other wastes not accepted by the CoHHW Program are wastes generated as part of operating a business, including a home operated business, except that waste from CESQGs as provided for in Section 12 of this Agreement shall be accepted.

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY must augment funding provided under this Agreement to cover the cost of a minimum participation level of 4% of CITY households; CITY may also elect to augment funding to provide additional services to increase CITY participation beyond the 4% minimum participation level. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive Officer or designee. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$ 66,018 to the Countywide HHW Program during Fiscal Year 2022 for the purpose of attaining or increasing CITY household participation above the 4% minimum participation level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated, where applicable, at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to offset the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

17. INFORMATION AND APPOINTMENT LINE

COUNTY will operate a telephone information and appointment desk Monday through Friday, from the hours of 9:00 a.m. to 5:00 p.m. The information service will register residents for the Temporary HHW Events and the collections at CoHHWCF. The information service will provide information about hazardous household materials. CITY will be notified immediately if resident participation approaches a level of service that may not be supported by available funding.

18. SCHEDULING AND SITE SELECTION

COUNTY shall work with CITY to determine the date(s) of Temporary Events and collections at the CoHHWCF. CITY shall coordinate with COUNTY in locating and securing sites for Temporary HHW Events. It is recognized that some of the jurisdictions participating in the CoHHW Program may not have appropriate sites available. A proposed HHW schedule for Fiscal Year 2022 of Temporary Events and collections at CoHHWCF is included as Attachment C. COUNTY will schedule an adequate number of collection days to serve the 4% level of service. The COUNTY determines the adequate number of collection days by tracking attendance at each event.

19. OUTSIDE FUNDING

During the term of this Agreement, COUNTY may seek outside funding sources for services that would supplement existing HHW services such as permanent collection sites, equipment, retail take-back collection and operational funding. If outside funding is obtained, the CoHHW Program will, at COUNTY'S discretion, proceed with development of additional programs using that outside funding without drawing on CITY'S funding provided under this Agreement.

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20. REGIONAL GRANT AND OIL PAYMENT PROGRAM PARTICIPATION

The CITY authorizes the CoHHW Program to apply for lead agency grants, including but not limited to Used Oil Payment Program grants, from the California Department of Resources Recycling and Recovery (CalRecycle), on behalf of participating jurisdictions. The CoHHW Program will act on behalf of all participating jurisdictions, as the lead applicant and administrator. The CoHHW Program will oversee how the moneys are used and work in cooperation with CITY as to how the funds will be spent. Nothing in this section shall preclude the COUNTY or a participating jurisdiction from applying for grant funds in any case where the CoHHW Program does not apply for the grant opportunity.

21. EMERGENCY SERVICES

Participating jurisdictions, at their option, may desire to provide residents with convenient emergency opportunities to safely dispose of their HHW in the event of a disaster. The purpose of this emergency planning for HHW is to minimize potential public health and safety impacts, as well as to minimize costs and confusion. Attachment D sets out CITY and COUNTY responsibilities for the collection of household hazardous wastes in response to an emergency. CITY shall make good faith efforts to provide the public with information related to the problems associated with HHW. Upon the decision to hold an emergency collection event, it is CITY's responsibility to make a good faith effort to prepare and disseminate the necessary outreach to notify the public of an emergency collection event. An emergency collection event shall be initiated by a written request from CITY to COUNTY. Emergency collection events can be scheduled in as little as ten (10) working days of CITY's written request or at an agreed upon date thereafter. The emergency collection plan is set out in Attachment D, Household Hazardous Waste Emergency Collection Plan.

COUNTY agrees to conduct the Emergency Collection Event at a mutually agreeable site and time. The COUNTY will obtain the necessary permit from the State Department of Toxic Substances Control and will handle wastes in accordance with State law. COUNTY will bill CITY for all Emergency Collection Events on a cost recovery basis and all payments shall be due COUNTY within thirty days following the receipt of the invoice.

22. PRIVATE SPONSORED EVENTS

COUNTY may also secure funding from corporations or agencies to conduct HHW Collection Events for corporate employees and residents of participating jurisdictions and to pay for special programs such as Universal Waste collection at retail locations. The transportation, treatment and disposal liability for nonresident employee participation in these events shall be shared by all participating jurisdictions, including the CITY, and the COUNTY, as described in Section 26 of this Agreement. Summary information concerning these corporate sponsored events, if any, will be included in the CoHHW Program's annual report to the participating jurisdictions.

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23. INSURANCE REQUIREMENTS

Contractors who provide hazardous waste transportation, treatment, or disposal services shall have the required insurance as outlined in Attachment E, Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contract. Other contractors shall have insurance in amounts to be determined by COUNTY Insurance Manager, after consultation with CITY. COUNTY shall obtain insurance certificates from each of the contractors prior to the contractor providing service to the program naming the COUNTY as an additional insured.

24. WASTE TRACKING AND REPORTING

COUNTY will provide a mid-year report to CITY regarding participation rates from each participating jurisdiction by March 15 of each year. Mid-year and year end reports will outline the types and quantities of waste collected, the amount of waste diverted for reuse or recycling and the waste management method for each waste stream and associated costs for services. COUNTY will prepare a report summarizing program activities which will be delivered to the participating jurisdictions no later than six months after the end of COUNTY's fiscal year.

It will be assumed for cost and reporting purposes that each participating jurisdiction is contributing to the waste stream in proportion to the number of its residents who directly participate.

COUNTY shall take steps to assure that the bi-annual statements to jurisdictions reflect the funds necessary to cover costs for CITY participation in services scheduled during the next quarter.

25. PARTICIPATION REPORTING

COUNTY shall employ means necessary to verify the place of residence of all participants in the CoHHW Program.

26. HOLD HARMLESS AND INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 23 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the COUNTY as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY, at minimum, for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

27. TERMINATION

This Agreement may be terminated by either the COUNTY or CITY upon thirty (30) days written notice given by the terminating party.

28. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2021 to June 30, 2024, or until all revenue from the last quarter's AB939 fee payments have expended and/or distributed, whichever is later.

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29. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

30. EXECUTION BY COUNTERPART

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which shall together constitute one and the same instrument.

31. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

32. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

33. NOTICES

All notices and communications herein required shall be in writing to the other party as follows, unless expressly changed in writing:

CITY of _____	City Representative _____
	Representative's Title _____
	City Address _____

Santa Clara County	Director
	Consumer and Environmental Protection Agency
	1553 Berger Drive
	San José, California 95112

34. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect

as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM on the dates as stated below:

Date: _____

COUNTY OF SANTA CLARA

JEFFREY V. SMITH
County Executive

Date: _____

“CITY”

CITY/TOWN OF _____
Title _____
A municipal corporation

APPROVED AS TO FORM AND LEGALITY:

STEPHANIE SAFDI
Deputy County Counsel

Attachments:

- A Projected Fiscal Years 2022, 2023, and 2024 AB939 HHW Fee Funding Allocation by Jurisdiction
- B Estimated HHW Program Fixed Costs for Fiscal Years 2022, 2023, and 2024
- C HHW Schedule of Collection Events for Fiscal Year 2022
- D Household Hazardous Waste Emergency Collection Plan
- E Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contracts

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ATTACHMENT A: PROJECTED FISCAL YEARS 2022-2024 ANNUAL HHW FEE FUNDING ALLOCATION BY JURISDICTION

Cities	No of Households	4% of Households	Disposal Tonnage	AB939 HHW Fee \$2.60 per Ton	Fixed Cost \$3.75 per HH	SJ Facility \$8.29 Surcharge	Variable Cost \$58.20 per Car	Abandoned Waste Disposal Cost \$.05 per Household	Discretionary Fund	Estimated Augmentation	Anticipated Participation	Anticipated Participation at SJ Facility
Campbell	18,158	726	40,970	\$ 106,521	\$ 68,093	\$ 7,162	\$ 42,272	\$ 908	\$ (11,913)	\$ 45,525	1,268	1,221
Cupertino	21,050	842	41,603	\$ 108,168	\$ 78,938	\$ 4,242	\$ 49,004	\$ 1,053	\$ (25,068)	\$ 36,963	1,034	723
Gilroy	16,676	667	53,681	\$ 139,571	\$ 62,535	\$ 1,086	\$ 38,822	\$ 834	\$ 36,295	\$ 23,027	1,038	185
Los Altos	11,677	467	17,678	\$ 45,963	\$ 43,789	\$ 4,188	\$ 27,184	\$ 584	\$ (29,781)	\$ 90,803	1,451	714
Los Altos Hills	3,180	127	9,303	\$ 24,188	\$ 11,925	\$ 958	\$ 7,403	\$ 159	\$ 3,743	\$ 4,413	259	163
Los Gatos	13,637	545	25,338	\$ 65,878	\$ 51,139	\$ 6,784	\$ 31,747	\$ 682	\$ (24,474)	\$ 66,018	1,216	1,157
Milpitas	22,553	902	100,225	\$ 260,586	\$ 84,574	\$ 5,247	\$ 52,503	\$ 1,128	\$ 117,135	\$ 24,851	1,303	895
Monte Sereno	1,383	55	1,278	\$ 3,323	\$ 5,186	\$ 789	\$ 3,220	\$ 69	\$ (5,941)	\$ 11,138	139	135
Morgan Hill	15,350	614	43,759	\$ 113,774	\$ 57,563	\$ 2,252	\$ 35,735	\$ 768	\$ 17,456	\$ 78,579	1,881	384
Mountain View	36,727	1,469	77,033	\$ 200,285	\$ 137,726	\$ 4,700	\$ 85,500	\$ 1,836	\$ (29,478)	\$ 39,356	1,628	802
Palo Alto	29,298	0	63,437	\$ 164,936		\$ -	\$ -	\$ 1,465	\$ 163,471			
San Jose	336,507	13,460	810,331	\$ 2,106,860	\$ 1,261,901	\$ 114,172	\$ 783,388	\$ 16,825	\$ (69,427)	\$ 476,507	20,026	19,470
Santa Clara	48,975	1,959	160,175	\$ 416,455	\$ 183,656	\$ 9,178	\$ 114,014	\$ 2,449	\$ 107,157	\$ 121,604	3,920	1,565
Saratoga	11,301	452	19,996	\$ 51,990	\$ 42,379	\$ 4,458	\$ 26,309	\$ 565	\$ (21,720)	\$ 45,244	831	760
Sunnyvale	60,273	2,411	116,128	\$ 301,932	\$ 226,024	\$ 6,717	\$ 140,316	\$ 3,014	\$ (74,138)	\$ 152,321	3,672	1,145
Unincorporated	18,558	742	38,112	\$ 99,092	\$ 69,593	\$ 4,640	\$ 43,203	\$ 928	\$ (19,271)	\$ 57,932	1,677	791
Total	665,303	25,440	1,619,047	\$ 4,209,522	\$ 2,385,019	\$ 176,572	\$ 1,480,620	\$ 33,265	\$ 134,047	\$ 1,274,282	41,345	30,110

Notes: Number of HH and Disposal tonnage are based on FY2019-2020 actuals. Anticipated participation and anticipated participation at SJ facility are based on 15% increase from FY2018-2019 actual participation.

**ATTACHMENT B: ESTIMATED ANNUAL HHW PROGRAM FIXED COSTS
FOR FISCAL YEARS 2022, 2023, AND 2024**

FIXED COST		
Staff Salary and Benefits		\$1,568,216
County Admin Overhead		\$421,899
County Counsel		\$13,650
Phones and Communications		\$10,605
Facilities Lease Costs	San Jose	\$176,572
Vehicle Costs		\$34,125
Office Supplies and postage		\$1,916
Maintenance, Software		\$115,500
HHW Hotline		\$50,000
Garbage & Utilities		\$36,488
Membership & Dues		\$15,750
Training & Conference		\$5,250
Safety Wear		\$21,840
Printing		\$13,583
Other Services & Supplies		\$56,175
ESTIMATED ANNUAL TOTAL		\$2,541,568

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY
COLLECTION EVENTS FOR FISCAL YEAR 2021-2022***

2021/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Thurs,Fri	1,2	San Jose	Permanent	
	Saturday	3	No Event	No Event	4th OF JULY WEEK
	Wed,Thurs,Fri,Sat	7,8,9,10	San Jose	Permanent	
	Fri,Sat	9,10	San Martin	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Saturday	17	Sunnyvale	Temporary	TBD
	Wed,Thurs,Fri,Sat	21,22,23,24	San Jose	Permanent	
	Thurs,Fri,Sat	29,30,31	San Jose	Permanent	
August	Wed,Thurs,Fri,Sat	4,5,6,7	San Jose	Permanent	
	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Saturday	14	Mountain View	Temporary	TBD
	Wed,Thurs,Fri,Sat	18,19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
September	Wed,Thurs,Fri	1,2,3	San Jose	Permanent	
	Saturday	4	No Event	No Event	LABOR DAY WEEKEND
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Fri,Sat	10,11	San Martin	Permanent	
	Wed,Thurs,Fri,Sat	15,16,17,18	San Jose	Permanent	
	Saturday	18	Santa Clara	Temporary	TBD
	Wed,Thurs,Fri,Sat	22,23,24,25	San Jose	Permanent	
	Thursday	30	San Jose	Permanent	
October	Fri,Sat	1,2	San Jose	Permanent	
	Fri, Sat	1,2	San Martin	Permanent	
	Wed,Thurs,Fri,Sat	6,7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Saturday	16	Sunnyvale	Temporary	TBD
	Wed,Thurs,Fri,Sat	20,21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	San Jose	Permanent	
November	Wed,Thurs,Fri,Sat	3,4,5,6	San Jose	Permanent	
	Fri, Sat	5,6	San Martin	Permanent	
	Fri,Sat	12,13	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	17,18,19,20	San Jose	Permanent	
	Tuesday	23	San Jose	Permanent	
	Thurs,Fri,Sat	25,26,27	No Event	No Event	THANKSGIVING
December	Wed,Thurs,Fri,Sat	1,2,3,4	San Jose	Permanent	
	Fri, Sat	3,4	San Martin	Permanent	
	Wed,Thurs,Fri,Sat	8,9,10,11	San Jose	Permanent	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Tues,Wed,Thurs	21,22,23	San Jose	Permanent	
	Fri,Sat	24,25	No Event	No Event	CHRISTMAS
	Tues,Wed,Thurs	28,29,30	San Jose	Permanent	
	Friday	31	No Event	No Event	NEW YEAR's DAY

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY
COLLECTION EVENTS FOR FISCAL YEAR 2021-2022* (Continued)**

2022/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
2022/Jan	Saturday	1	No Event	No Event	NEW YEAR's DAY
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Fri, Sat	7,8	San Martin	Permanent	
	Wed,Thurs,Fri,Sat	12,13,14,15	San Jose	Permanent	
	Saturday	15	Sunnyvale	Temporary	TBD
	Wed,Thurs,Fri,Sat	19,20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
	Saturday	29	Santa Clara	Temporary	TBD
February	Wed,Thurs,Fri,Sat	2,3,4,5	San Jose	Permanent	
	Fri, Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	16,17,18,19	San Jose	Permanent	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
March	Wed,Thurs,Fri,Sat	2,3,4,5	San Jose	Permanent	
	Fri, Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	16,17,18,19	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	23,24,25,26	San Jose	Permanent	
April	Fri,Sat	1,2	San Jose	Permanent	
	Fri, Sat	1,2	San Martin	Permanent	
	Wed,Thurs,Fri,Sat	6,7,8,9	San Jose	Permanent	
	Saturday	9	Los Altos	Temporary	TBD
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Saturday	16	Sunnyvale	Temporary	TBD
	Wed,Thurs,Fri,Sat	20,21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	San Jose	Permanent	
	Saturday	30	Santa Clara	Temporary	TBD
May	Wed,Thurs,Fri,Sat	4,5,6,7	San Jose	Permanent	
	Fri, Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	18,19,20,21	San Jose	Permanent	
	Thurs,Fri	26,27	San Jose	Permanent	
	Saturday	28	No Event	No Event	MEMORIAL DAY WEEKEND
June	Wed,Thurs,Fri,Sat	1,2,3,4	San Jose	Permanent	
	Fri, Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Wed,Thurs	15,16	San Jose	Permanent	
	Friday	17	No Event	No Event	JUNETEENTH DAY
	Saturday	18	San Jose	Permanent	
	Saturday	25	Milpitas	Temporary	TBD
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
	Wed,Thurs	29,30	San Jose	Permanent	
*SUBJECT TO CHANGE					

ATTACHMENT D:

COUNTY HOUSEHOLD HAZARDOUS WASTE EMERGENCY COLLECTION PLAN

1. PURPOSE

The purpose of the Household Hazardous Waste Emergency Collection Plan is to minimize potential public health and safety impacts, as well as to minimize costs and confusion during an emergency or disaster. This Attachment describes the services the County can provide and the responsibilities of each party for the collection of household hazardous wastes (HHW) in response to an emergency as defined by the local jurisdiction.

Jurisdictions should contact local emergency agencies, the Governor's Office of Emergency Services (OES), and the Department of Toxic Substances Control (DTSC) for more specific information on hazardous materials emergency response.

2. Timing of HHW

While it is important to have special collection opportunities for disaster-related HHW as soon as possible to avoid illegal disposal or harm to people and/or the environment, having an event or service too soon after a disaster may result in low participation. Sufficient public notification, assessment and monitoring of the disaster and cleanup process by the designated City HHW Coordinator(s) is essential.

3. Public Information/Notification:

Cities should be prepared to provide the public with information related to the problems associated with HHW along with information about special collection events and services. Upon the decision to hold an emergency collection event, it is the City's responsibility to prepare and deliver the necessary public outreach to notify the public of an upcoming event. A City's public outreach program should evaluate all forms of media including: newspaper ads, posters, flyers, press releases, banners, door-to-door notices, roadside signs, signs on dumpsters, radio public service announcements, social media outlets and television public access stations. Be aware of communities where multiple language outreach efforts will be necessary.

4. State HHW Collection Permits

The State Department of Toxic Substances Control (DTSC) is responsible for issuing the necessary state permits for HHW collection facilities. During an emergency, the County will obtain the necessary emergency permit for special collection of household hazardous waste from DTSC through their expedited approval process.

5. Collection Events

Temporary collection events can be set-up at various sites including parking lots, city maintenance yards, within neighborhoods needing service, and at landfills or a centralized location to service larger segments of the population. Waste collected will be transported with a transportation vehicle provided by the HHW Program. In addition, events can be scheduled at the two existing Countywide Household Hazardous Waste Collection Facilities (CoHHWCF). The following options are available to each participating City.

- Neighborhood Drop-off Events: The County is able to provide localized service to specific areas in need of household hazardous waste collection services. The County will work with City Solid Waste Coordinators to conduct coordinated efforts to residents in the affected area. After a specific event, waste will be transported by County staff or a hazardous waste contractor to an appropriate facility.
- Mobile HHW Event: The County conducts Household Hazardous Waste Collection Event (Events) at various sites located in Santa Clara County throughout the year. Events will be expanded to give priority to disaster victims when requested by the City. The County shall obtain all necessary permits and licenses required for the events and shall provide and/or contract for the services of properly trained personnel and hazardous waste haulers. The County shall also provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at events.
- CoHHWCF: The County operates two permitted HHW collection facilities for the collection and storage of HHW. The County shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected at the CoHHWCF.

The CoHHWCF are located at:

- *San Martin, 13055 Murphy Ave, San Martin*
- *San Jose, 1608 Las Plumas, San Jose*

6. Costs, Documentation, and Reimbursements

Cities will be billed on a cost recovery basis. Costs of emergency events will be tracked and billed separately. Emergency funding applications pending from the State or Federal government for reimbursements in no way relieves the City of responsibility to make timely payment to the County in accordance with the terms of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

The County agrees to provide the City with a detailed accounting of services provided for an emergency collection. Documentation will track the time and materials of staff, outside contractor expenses, and quantities and types of waste collected to demonstrate that the wastes were generated above and beyond existing collection programs.

Services to businesses will be provided on a cost recovery basis and according to Section 12 of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, which includes program administration, on-site collection,

transportation, and disposal costs. The County will assume responsibility for collecting fees from participating businesses.

7. State and Federal Assistance and Funds

It is the City responsibility to pursue reimbursement from State or Federal agencies.

State Office of Emergency Services (OES)

The OES is responsible for requesting assistance on behalf of local jurisdictions for resources beyond the capability of the jurisdiction. State assistance may include assistance available from State, Federal, or private sources. If a local jurisdiction is declared a state disaster area, and the local jurisdiction deems that the needs of the disaster response are beyond its capabilities, then the local jurisdiction can request assistance and reimbursement of costs from OES.

Follow Standardized Emergency Management System (SEMS)

All requests and emergency responses must be in accordance with the SEMS. The State Department of Toxic Substances Control may have funding available for hazardous waste response and collection.

Federal Assistance

If a state disaster area is declared a federal disaster, then federal funding assistance may be available through the State OES. Funding and assistance may be available from Federal agencies such as FEMA and the U.S. EPA.

Damage estimates: The city should provide to the State OES estimates of damages and a "scope of work requested." It is recommended that the local HHW coordinator meet ahead of time with local emergency agencies or State OES contacts regarding the proper procedures and wording of requests for assistance.

Funding Process: The funding process may vary depending on the unique circumstances of the disaster. The process can either be the traditional FEMA reimbursement process, or by direct assistance from EPA.

REFERENCES

California Integrated Waste Management Board, Integrated Waste Management Disaster Plan: Guidance for local government on disaster debris management, January 1997.

Emergency Planning Contacts and Personnel

Primary County Contact: County of Santa Clara
Consumer and Environmental Protection Agency
Recycling and Waste Reduction Division
Household Hazardous Waste Program
ATTN: Hazardous Materials Program Manager
(408)-918-1967

For Non-Emergency after-hours, contact County Communications at: (408) 977-3220

Responsibility: Coordinate and establish proper collection and disposal methods for household hazardous waste. Assess the need for HHW and CESQG services in consultation with the City and other operations.

Cal OES Public Safety Communications Main Office

601 & 630 Sequoia Pacific Boulevard
Sacramento, CA 95811
(916) 657-9494

Cal OES

3650 Schriever Avenue
Mather, CA 95655-4203
(916) 845-8510

CHEMTREC Emergency number, (800) 424-9300
Non-emergency (800) 262-8200

Chemtrec is a public service established by the Chemical Manufacturers Association. The Center was developed as a resource for obtaining immediate emergency response information to mitigate accidental chemical releases, and as a means for emergency responders to obtain technical assistance from chemical industry product safety specialists, emergency response coordinators, toxicologists, physicians, and other industry experts to safely mitigate incidents involving chemicals.

INSURANCE REQUIREMENTS FOR
ENVIRONMENTAL SERVICES CONTRACTS

(Hazardous Waste Disposal, Remediation Services, Environmental Consulting, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

EXHIBIT B-2D (revised)

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. Coverage shall include Environmental Impairment Liability Endorsement MCS90 for contracts requiring the transportation of hazardous materials/wastes.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Contractors Pollution Liability Insurance

Coverage shall provide a minimum of not less than five million dollars (\$5,000,000) per occurrence and aggregate for bodily injury, personal injury, property damage and cleanup costs both on and offsite.

7. Professional Errors and Omissions Liability Insurance (required for contractors providing professional services, such as through a professional engineer, registered geologist, etc.)

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.

EXHIBIT B-2D (revised)

- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

8. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
- 3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
- 4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or

EXHIBIT B-2D (revised)

countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

**AGREEMENT FOR COUNTYWIDE
AB939 IMPLEMENTATION FEE**

This Agreement is made by and among the Cities and Towns of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Morgan Hill, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale (CITIES) and the County of Santa Clara (COUNTY) on the _____ day of _____ 2021. The term CITIES may refer to CITIES collectively or individually.

RECITALS

WHEREAS, pursuant to Public Resources Code Section 41901, a city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing a countywide integrated waste management plan;

WHEREAS, State law, Public Resource Code Section 41750, requires that the countywide integrated waste management plans contain a household hazardous waste (“HHW”) element for each city within the county as well as for the unincorporated area of the county;

WHEREAS, the County of Santa Clara Board of Supervisors (“Board”) has imposed a Countywide AB939 Implementation Fee (“Fee”) since July 1, 1992 to pay for the costs of preparing, adopting, and implementing integrated waste management plans and programs, including HHW program elements;

WHEREAS, the Board has approved reimposing the Fee for Fiscal Years 2022, 2023, and 2024 (July 1, 2021 through June 30, 2024) at \$4.10 per ton of waste landfilled or incinerated in the County; received at any nondisposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; and removed from any location in the County by any person or business for disposal or incineration outside the County;

WHEREAS, HHW programs provide household hazardous waste management services to residents of Santa Clara County and are necessary to meet HHW planning and management requirements under State law;

WHEREAS, jurisdictions in Santa Clara County desire to provide safe, convenient, and economical means for residents to properly dispose of household hazardous wastes in an environmentally safe manner in order to avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground or in any other manner which creates a health or environmental hazard. These wastes include, but are not limited to, common household products such as household cleaning products, spot remover, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, fluorescent lamps, and batteries; and

WHEREAS, the County will collect the Fee on behalf of the fifteen cities and for the unincorporated area of the County and will apportion the Fee according to the terms of this Agreement.

NOW THEREFORE, CITIES and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which the COUNTY will collect and distribute the Fee of \$4.10 per ton of waste to be disposed in Fiscal Years 2022, 2023 and 2024. The Fee is divided into two parts: 1) a Program Fee of \$1.50 per ton to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan in the fifteen cities and the unincorporated area of the County; and 2) a Household Hazardous Waste Fee of \$2.60 per ton to provide funding to implement the Countywide HHW Program. The Program Fee will be allocated among the CITIES and COUNTY as described in Exhibit B, attached hereto and incorporated herein. The HHW Fee will be allocated to the COUNTY, CITIES, and Countywide HHW Program as described in Exhibit C, attached hereto and incorporated herein. The Fee shall be imposed on each ton of waste landfilled or incinerated within the County; received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; or removed from any location in the County by any person or business for disposal or incineration outside the County. Non-Disposal Facilities are defined as those facilities included in the County of Santa Clara Non-Disposal Facility Element (and subsequent amendments to that Element) and are listed in Exhibit A, attached hereto and incorporated herein.

2. SERVICES PROVIDED BY COUNTY

COUNTY will collect and distribute the Fee. COUNTY will collect the Fee from landfills and non-disposal facilities listed in Exhibit A, and any landfill or non-disposal facility subsequently permitted, on a quarterly basis using data from tonnage reports filed by landfill and non-disposal facility operators with the County Recycling and Waste Reduction Division. COUNTY shall require each landfill and non-disposal facility to submit required payment, documentation of tonnages disposed, and state-mandated Disposal Reporting System Reports on a quarterly basis, within 45 days of the end of each calendar quarter. Late submissions and/or payments shall be subject to a late filing penalty and delinquent penalties. COUNTY will research Santa Clara County tonnage reported to COUNTY by landfills outside the COUNTY in significant amounts to determine the identity of the hauler. That hauler will subsequently be billed in the same fashion subject to the same penalties as mentioned above. Collected funds and any late filing payments and delinquency penalties shall be distributed to CITIES and Countywide HHW Program based on the formula set forth in Exhibits B and C. COUNTY shall not be obligated to distribute funds that COUNTY has been unable to collect from landfill or non-disposal facility operators.

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3. ROLE OF CITIES

CITIES shall review the Disposal Reporting System Reports as prepared and submitted by the COUNTY and within 30 days of receipt shall report to COUNTY, with appropriate documentation, errors in waste allocations among jurisdictions.

4. COLLECTION AND USE OF FEE

Each ton of waste will be subject to the fee if it is landfilled or incinerated in the County; received at any non-disposal facility or collection facility in the County and subsequently transported for disposal or incineration outside the County; collected from any location within the County by a solid waste hauler operating under franchise, contract, license, or permit issued by a local jurisdiction and subsequently transported for disposal or incineration outside the County; or removed from any location in the County by any person or business for disposal or incineration outside the County. Best efforts will be made to prevent tonnage from being assessed a double fee (for instance, once at a non-disposal facility and again at a landfill within Santa Clara County). The Program Fee funding share paid to CITIES shall be used to assist in funding the CITIES' costs of preparing, adopting, and implementing the integrated waste management plan of each of the CITIES and the unincorporated area of the COUNTY. The HHW Fee portion shall be applied to fund the costs of CITIES' share of Countywide Household Hazardous Waste services; any HHW fees directly disbursed to CITIES as provided in this Agreement shall be used to fund the costs of preparing, adopting, and implementing the jurisdiction's HHW element of the Countywide integrated waste management plan, including providing HHW services to residents.

5. INSURANCE

Each party shall maintain its own insurance coverage, through third party insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage or liability arising out of the performance of its responsibilities pursuant to this Agreement. CITIES agree to provide evidence of such insurance to COUNTY via Certificate of Insurance or other documentation acceptable to the COUNTY upon request.

6. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITIES and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree that each of the parties hereto shall fully indemnify and hold each of the other parties harmless from any claim, expense or cost, damage or liability arising out of, or in connection with, performance of its responsibilities pursuant to this Agreement and as described in Exhibit D.

Additionally, CITIES shall indemnify, hold harmless, and defend COUNTY, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses, including attorney fees and court costs, arising from any misuse of the Fee distributed to CITIES. COUNTY shall indemnify, hold harmless, and defend CITIES, its officers, agents, and

employees with respect to any loss, damage, liability, cost or expenses, including attorney fees and court costs, brought by third parties based on COUNTY's sole negligence in the collection or distribution of said Fees.

7. DISTRIBUTION OF FEE

COUNTY shall distribute the AB939 Program Fee to CITIES and the HHW Program Fee to the Countywide HHW Program pursuant to the formulas described in Exhibits B and C within 45 days of receipt of landfill and non-disposal facility payments and disposal documentation required for calculation of Fee distribution amounts. Distributions shall begin December 15, 2021, and continue quarterly through October 15, 2024.

8. PARTICIPATION IN THE COUNTYWIDE HHW PROGRAM

CITIES, at their option, may individually participate in the Countywide HHW Program by entering into the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

9. LATE PAYMENTS

If Fee payments and disposal documentation are not received from landfill or non-disposal facility operators prior to scheduled distribution of payments to CITIES and the Countywide HHW Program, payment distribution shall be calculated on a pro rata share of monies received. Upon collection, late payments and accrued delinquent penalties, if any, shall be distributed among CITIES and the Countywide HHW Program according to the formula in Exhibits B and C.

10. ACCOUNTING

COUNTY shall maintain records of all transactions related to collection, use and distribution of the Fee for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. Such records will be available for inspection upon written request by CITIES, and will include but not be limited to tonnage reports submitted by landfills and non-disposal facilities, waste stream documentation provided by cities, payments made by the landfills and non-disposal facilities to the COUNTY and by the COUNTY to CITIES, and expenditures for programmatic and overhead costs.

11. REQUEST FOR REVIEW

In the event CITIES have a dispute regarding the calculation of its share of the Fee or the distribution or use of the Fee, CITIES may request in writing a review by COUNTY within 10 days of receipt of their Fee allocation. The review shall be performed within 30 days of request and results shall be reported to CITIES in writing.

12. EFFECTIVE DATE OF AGREEMENT

This agreement is effective upon approval by all fifteen CITIES and the COUNTY.

13. AMENDMENT

This Agreement may be amended only by an instrument signed by all fifteen CITIES and the COUNTY.

14. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

15. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2021 to June 30, 2024, or until all funds from the last quarter’s Fee payments have been distributed, whichever is later. COUNTY shall bill the operators of the landfills and non-disposal facilities listed in Exhibit A for the Fee commencing with the Quarter ending September 30, 2021. Said landfills and non-disposal facilities will be billed for the Fee through June 30, 2024.

16. NOTICES

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such address as the party may designate in writing in accordance with this section.

City of Town of Los Gatos
Contact: Dan Keller
Title: Facilities and Environmental Services Manager
Address: 41 Miles Avenue, Los Gatos, CA 95030

County of Santa Clara
Contact: Recycling and Waste Reduction Program Manager
Recycling and Waste Reduction Division
Address: 1555 Berger Drive, Suite 300
San Jose, CA 95112

17. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

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18. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designees.

19. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

20. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

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IN WITNESS WHEREOF, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

Date: _____

COUNTY OF SANTA CLARA

MIKE WASSERMAN, President
Board of Supervisors

Date: _____

“CITY”

CITY/TOWN OF LOS GATOS
Title TOWN MANAGER

A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors
ATTEST:

APPROVED AS TO FORM:

ROBERT SCHULTZ
Town Attorney

MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

STEPHANIE SAFDI
Deputy County Counsel

EXHIBIT A

LANDFILLS LOCATED IN SANTA CLARA COUNTY

Guadalupe Rubbish Disposal Site
Kirby Canyon Sanitary Landfill
Newby Island Sanitary Landfill
Zanker Materials Processing Facility
Zanker Road Landfill

NON-DISPOSAL FACILITIES AND TRANSFER STATIONS LOCATED IN SANTA CLARA COUNTY

California Waste Solutions Recycling & Transfer Station
City of Palo Alto Green Composting Facility
Environmental Resource Recovery, Inc. (Valley Recycling)
Green Earth Management LLC Kings Row Recycling Facility
Green Waste Materials Facility and Transfer Station
Green Waste Recovery Facility
GreenTeam of San Jose Material Recovery Facility and Transfer Station
Guadalupe Landfill
Lam Hauling Inc. Chipping and Grinding
Lam Hauling Inc. Inert Debris Type A
Leo Recycle
Material Recovery Systems Facility
Mission Trail Waste Systems, Inc.
Newby Island Compost Facility
Pacheco Pass Transfer Station
Pacific Coast Recycling, Inc.
Premier Recycle Facility
Recology Silicon Valley Processing and Transfer Facility
The Recyclery at Newby Island
San Martin Transfer Station
Smurfit-Stone Recycling San Jose Facility
South Valley Organics
Stanford Recycling Center and Direct Transfer Facility
Sunnyvale Materials Recovery and Transfer Station (SMaRT Station)
Valley Recycling San Jose CDI Processing/Transfer Facility
Wood Processing Facility at Recology Pacheco Pass
Z-Best Composting Facility
Zanker Materials Processing Facility
Zanker Road Class III Landfill
Zero Waste Energy Development Company Anaerobic Digestion Facility

EXHIBIT B

FORMULA FOR DISTRIBUTION OF AB939 PROGRAM FEE

Each of the CITIES, and the COUNTY for its unincorporated area, will receive \$1.50 per ton of solid waste disposed of in landfills or taken to non-disposal facilities located in Santa Clara County that originates from that jurisdiction, as documented in quarterly reports submitted by the County to the State Disposal Reporting System.

Fees collected from undocumented disposed tonnage, or tonnage originating outside of Santa Clara County, will be distributed according to each jurisdiction's percent of countywide population, according to the latest available population report issued by the California Department of Finance.

EXHIBIT C

COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE PROGRAM FEE (HHW Fee)

1. PROGRAM FUNDING SOURCE

HHW Program services are mandated by State law, Public Resources Code Section 41500 et seq. Public Resources Code Section 41901 authorizes imposition of a fee to support planning and implementation of integrated waste management programs, including their HHW elements. The HHW Fee, of \$2.60 per ton, collected as part of the AB939 Implementation Fee, will be the primary source of funding for Countywide Household Hazardous Waste Collection Program (CoHHW Program) services.

Funds derived from the HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San Jose Facility Use Surcharge will be apportioned based on CITIES' anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose.
- C. Variable Cost Per Car is the cost associated with labor, waste disposal, transportation, and other services provided to residents at the County HHW Collection Facilities and at temporary HHW collection events. The Variable Cost Per Car is based on the estimated cost of providing a base level service to 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- D. Available Discretionary Funding is allocated based on tonnage generated per participating jurisdiction, and after allocation of Fixed Program Costs, San Jose Facility Use Surcharge, and Variable Cost Per Car allocation.
- E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations as defined in Public Resources Code Section 41904.

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2. FIXED PROGRAM COST

Funds shall be allocated on a per household basis for Fixed Program Costs at the conclusion of each Fiscal Year. This portion of the funds shall be distributed directly to the Countywide HHW Program to pay for HHW Program costs. Fixed Program Costs funding shall be calculated shall not exceed \$3.75 per household in Fiscal Years 2022, 2023, and 2024. Fixed Program Costs may include, but are not limited to eleven (11) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance, and union negotiated salary and benefit changes.

3. ABANDONED WASTE DISPOSAL COST

The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations. The Abandoned Waste Disposal Cost is based on the cost to the County to dispose of abandoned waste allocated among participating jurisdictions based on their proportional share of the County population and shall not exceed \$0.05 per household. Projected Abandoned Waste Disposal Costs to the CITY based on a charge of \$.05 per household are set forth in Attachment A, attached hereto and incorporated herein. Any existing unexpended non-profit abandoned waste fund balance may be allocated toward funding of disposal of HHW illegally abandoned at nonprofit charitable reuser organizations as defined in Public Resources Code Section 41904.

For the purposes of this agreement, a nonprofit charitable reuse organization has the definition provided in Public Resources Code Section 41904 as follows: “Nonprofit charitable reuser” means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

4. SAN JOSE FACILITY USE SURCHARGE

The total San José Facility Use Surcharge for CITY will be based on CITY residents’ proportional participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San José. The San José Facility Use Surcharge will vary depending on facility usage but will not exceed \$8.29 per car for Fiscal Years 2022, 2023, and 2024. The total San Jose Facility Use Surcharge for CITY will be based on CITY’s participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose.

5. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County HHW Collection Facilities and Temporary Events. This portion of the funds shall be distributed directly to the Countywide HHW Program. The Variable Cost Per Car is estimated to be \$58.20 per car for

Fiscal Years 2022, 2023, and 2024. The estimated cost per car will be adjusted annually to reflect actual service costs. After fixed costs and San Jose Facility Use Surcharge are allocated on a per household basis, the variable cost per car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached, the Countywide HHW Program will use the remaining balance of funds, in cooperation with the CITIES, to increase public outreach and/or provide additional services in that jurisdiction where the level of 4% is not reached the following year.

6. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion will be allocated based on the tons of waste generated within each jurisdiction and after allocation of Fixed Program Cost, San Jose Facility Use Surcharge, and Variable Per Car Cost. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in the jurisdiction by the Countywide HHW Program, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events. CITIES authorize the COUNTY to determine appropriate uses of available discretionary funding and to use CITIES' Available Discretionary Funding portion of the AB939 HHW Fee to provide for additional HHW services requested by the CITIES.

7. PROGRAM FUNDING PASS-THROUGH

Annual funding calculations include HHW Fees collected on behalf of all jurisdictions in the County. CITIES, at their option, may participate in the Countywide HHW Program by entering into the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. If CITIES elect to participate in the Countywide HHW Program, their pro-rata share of the HHW Fee shall be retained by the County to utilize for HHW Program costs, as provided in this Agreement and the Agreement for Countywide Household Hazardous Waste Collection Program. The COUNTY will distribute to CITIES not participating in the Countywide Household Hazardous Waste Collection Program their pro-rata share of funding received by the COUNTY from the HHW Fee, except that the COUNTY may retain and expend that portion of the non-participating CITIES' fee attributable to Abandoned Waste Disposal Costs.

If CITIES not participating in the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM desire to allow residents to participate in HHW Program services on an emergency basis, then services to these residents will be provided on a cost recovery basis. A charge equal to the established rates charged by the Countywide HHW Program to Conditionally Exempt Small Quantity Generators will be billed to the CITIES. A CITIES' representative must call the Countywide HHW Program appointment line to schedule an appointment for the resident. Liability shall be apportioned as provided in Exhibit D to this Agreement.

EXHIBIT D

SECTION 28 OF AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

HOLD HARMLESS AND INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 23 of the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the county as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require Conditionally Exempt Small Quantity Generators (“CESQG”) and Nonprofit Charitable Reusers to indemnify COUNTY for, at minimum, their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY’s apportioned share of any liability for household hazardous waste.

2378874



**TOWN OF LOS GATOS
TOWN COUNCIL
REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 12

DATE: April 27, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Five-Year Agreement for Consultant Services with TruePoint Solutions DigEplan (LCT Software) for Electronic Plan Review Services in an Amount Not to Exceed \$89,474, Including a 3 Percent Increase Each Year with the First Year Not to Exceed \$16,859.

RECOMMENDATION:

Authorize the Town Manager to execute a five-year agreement for consultant services with TruePoint Solutions DigEplan (LCT Software) for electronic plan review services in an amount not to exceed \$89,474, including a 3 percent increase each year with the first year not to exceed \$16,859.

BACKGROUND:

The Town has been working with TruePoint Solutions since 2011 and TruePoint Solutions DigEplan (LCT Software) since May 1, 2020 to provide electronic plan review services for the Community Development Department during the COVID-19 pandemic.

DISCUSSION:

The original 2020 Agreement was for a 1-year term at \$6,480. Subsequent amendments increased the number of licenses and the rate to the current annual rate of \$16,859. The proposed increase is 3 percent annually from the current contract rate over the five-year term of the agreement.

Subscription Term:

1-year, form July 1st, 2021 to June 30th, 2022 - \$16,859
2-year, form July 1st, 2022 to June 30th, 2023 - \$17,364
3-year, form July 1st, 2023 to June 30th, 2024 - \$17,855
4-year, form July 1st, 2024 to June 30th, 2025 - \$18,422
5-year, form July 1st, 2025 to June 30th, 2026 - \$18,974

DISCUSSION (continued):

TruePoint Solutions DigEplan (LCT Software) is sole source vendor. TruePoint is the only company in the US that is certified by LCT Software and the only supplier of the software DigEplan who is authorized to implement, quote, and sell for them.

CONCLUSION:

TruePoint's consulting services assist the Town in serving the land use permitting needs of the community. Based on TruePoint's extensive knowledge of the Town's Accela implementation, excellent support history with the Town, and competitive pricing, staff recommends that the Town Council authorize the Town Manager to enter into an agreement for the software licensing and related services not to exceed \$89,474 for a five-year term.

COORDINATION:

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

FISCAL IMPACT:

The funds are available in the Information Technology budget.

ENVIRONMENTAL ASSESSMENT:

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

ATTACHMENTS:

1. Sole Source
2. Draft Agreement for Consultant Services
3. Master Services Agreement

PREPARED BY: Joel Paulson,
Director of Community Development

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



MEMORANDUM

DATE: April 28, 2021
TO: Robert Schultz, Town Attorney
FROM: Joel Paulson, Community Development Director
SUBJECT: Sole Source Approval by the Town Attorney: TruePoint - DigEplan (LCT Software) Online Permitting Services

BACKGROUND:

Please approve this sole source for TruePoint in the amount of \$89,474.00 for annual services for the purchase of DigEplan (LCT Software) for electronic plan review services from July 1, 2021 to June 30, 2026 which will have an option of being renewed annually thereafter.

TruePoint is the only company in the US that is certified by LCT Software and the only supplier of the software DigEplan who is authorized to implement, quote, and sell for them.

Staff recommends that TruePoint provide services for the Town.

Recommended/Approved By:

<u><i>Joel Paulson</i></u> <small>Joel Paulson (Apr 28, 2021 11:35 PDT)</small>	Apr 28, 2021
Joel Paulson Community Development Department	Date:

Approved as to Form:

<u><i>Robert Schultz</i></u> <small>Robert Schultz (Apr 28, 2021 13:52 PDT)</small>	Apr 28, 2021
Robert Schultz, Town Attorney	Date:

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AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on July 1, 2021 by and between TOWN OF LOS GATOS, a California municipal corporation (“Town”), and TruePoint Solutions (“Consultant”), whose address is 3262 Penryn Road, Suite 100-B, Loomis, CA 95650. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage the Consultant to provide DigEplan support services and training for software provided by LCT Software.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 The Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. The Consultant acknowledges that the Town has relied upon these warranties to retain the Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. The Consultant shall provide services as described in that certain Master Services Agreement sent to the Town on April 14, 2021, which is hereby incorporated by reference and attached as Exhibits A, B, and C.
- 2.2 Term and Time of Performance. This contract will remain in effect from July 1, 2021 to June 30, 2026. Consultant shall perform the services described in the Master Services Agreement along with Exhibits A, B, and C.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state, and local laws. The Consultant represents and warrants to the Town that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for the Consultant to practice its profession. The 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. The 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 the 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 the Consultant’s services or at the Town’s written request. All reports, information, data, and exhibits prepared or assembled by the 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 the Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at the Town's risk, unless the Consultant expressly consents to such use in writing. The Town further agrees that it will not appropriate any methodology or technique of the Consultant which is and has been confirmed in writing by the Consultant to be a trade secret of Consultant.

- 2.6 Compensation. Compensation for the Consultant's professional services **shall not exceed \$89,474.00**, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.7 Billing. Billing shall be annually 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. The Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. The 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. The Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. The 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 the Consultant or is based on allegations of the Consultant's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. The 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. The 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, The 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. The Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in the performance of this Agreement. If after employment of a person, the Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, the Consultant shall promptly notify the Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

- 2.12 Equal Employment Opportunity. The Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither the 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. The 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. The 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. The Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. The Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. The 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 the 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 the Consultant; and 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 in 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, 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 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, the 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, the Consultant shall ensure that all subcontractors employed by the 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, and reports performed to date by the Consultant. In the event of such termination, the Town shall pay the 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

TruePoint Solutions
 Attn: Keith Hobday
 3262 Penryn Road, Suite 100-B
 Loomis, CA 95650

or personally delivered to the Consultant to such address or such other address as the Consultant designates in writing to the 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 the 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 the Consultant have executed this Agreement.

Town of Los Gatos by:

Consultant, by:

Laurel Prevetti, Town Manager

Keith Hobday, Partner

Recommended by:

Joel Paulson,
Community Development Director

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC
Town Clerk

Between
**TruePoint Solutions, (LCT Software
LLC)**

and
Town of Los Gatos, CA

Master Services Agreement

www.digeplan.com

Parties

1. This Master Service Agreement (this “**Agreement**”) is entered into as of the date of last signature (the “**Effective Date**”) by and between TruePoint Solutions (DigEplan reseller and service provider) located at 3262 Penryn RD suite 100-B, Loomis CA and LCT Software LLC a Florida corporation principally located at 4500, 140th Avenue North Suite, 101 Clearwater, FL 33762 (“LCT Software”), and the Town of Los Gatos, CA, 110 E. Main St., Los Gatos, CA 95030 (the **Customer**.)

Background

- a) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet for the purpose of subscribers
- b) The customer wishes to use the Supplier's service in its business operations.
- c) The Supplier has agreed to provide, and the customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

Agreed terms

- 1.1. **Definitions** - Unless otherwise defined in this Agreement, terms used herein have the same meanings as set out in the Exhibits to this Agreement (including any supplements or attachments thereto).
- 1.2. “**Optional Services**” refers to certain optional add-ons to the Subscription Service as may be offered by LCT Software from time to time.
- 1.3. “**Professional Services**” refers to LCT Software’s delivery, training, performance optimization and related services as set out in the Professional Services Terms. The Professional Services described in this Agreement are applicable to Customer if and as ordered.
- 1.4. “**Professional Services Terms**” refers to those additional Professional Services Terms and Conditions attached hereto at Exhibit D.
- 1.5. “**Services**” refers to the Subscription Service together with any Professional Services and/or Optional Services, as applicable.
- 1.6. “**Subscription Service**” refers to DigEplan’s cloud-based service designed to provide government entities with Integrated Electronic Plan Review.
- 1.7. “**Subscription T’s & C’s**” refers to the Subscription Terms and Conditions attached hereto at Exhibit C

Customer agrees that its purchase of the Services hereunder is neither contingent on the delivery of nor any oral or written comments about any future functionality or features of the Subscription Service.

2. Procurement of Services

Customer may purchase the Services by submitting orders in a form designated or approved by LCT Software (each, an “**Order**”) or, in the case of certain Professional Services, by executing Statements of Work designated or approved by LCT Software (each an “**SOW**”). Upon Order (or SOW) acceptance and subject to Customer’s payment of the corresponding Services Fees, LCT Software will make the Services available to Customer.

2.1. **Governing Terms.** The Subscription Service will be subject to this Agreement and the Subscription T's & C's for the Subscription Period and number of End Users as specified in each Order. Professional Services will be subject to this Agreement and the Professional Services Terms for the designated performance period as specific in the applicable Order or SOW. Any Optional Services will be subject to the Subscription Terms or such other documentation as designated by LCT Software.

2.2. **Order Acceptance.** No Order for Services will be deemed accepted by LCT Software unless and until LCT Software accepts such Order (or SOW) in writing. Any terms and conditions contained in any quote, invoice, purchase order or Order that are inconsistent with the terms and conditions of this Agreement will be deemed stricken, unless expressly agreed to in writing by LCT Software with explicit reference to the accepted terms and conditions. All Orders and SOWs will reference this Agreement. Upon acceptance of an Order as provided above, it will become part of this Agreement.

2.3. **Adding End Users.** If Customer desires to increase the number of End Users that are permitted to use the Subscription Service, a new Order must be issued for the additional End Users. LCT Software may, in its discretion, allow or require the initial Subscription Period of newly-purchased subscriptions to be adjusted to expire or renew simultaneously with Customer's pre-existing subscription(s).

2.4. **Optional Services.** Purchase of Optional Services from LCT Software will be subject to any price quote LCT Software provides to Customer and the Order procedure described above. As designated by LCT Software at the time of Customer's purchase, use of the Optional Services may be subject to Exhibit D or additional terms and conditions beyond or in lieu of those in Exhibit C.

3. Fees and Payment for Services

3.1. **Fees.** Customer will pay all fees for the Services per the prices quoted to Customer by LCT Software and finalized via an Order or SOW. Unless expressly set out in an Order or SOW, price increases will not apply to any Order or SOW that has already been accepted by LCT Software. Except as otherwise agreed by the parties in writing, Services Fees are quoted and payable in United States dollars, and Customer's payment obligations are non-cancelable, and Fees paid are non-refundable.

3.2. **Invoicing and Payment.** TruePoint Solutions will invoice Customer in advance for the Services unless otherwise expressly agreed by the parties.

3.3. **Subscription Service fees** are due upon invoice and payable within forty-five (45) days of the invoice date. Subscription Service fees will be due no later than the first day of each Subscription Period to which the payment relates. If Customer orders additional End User quantities part-way through an existing Subscription Period, and the initial Subscription Period for the additional quantity is adjusted as described in Section 2.3, then the Subscription fee for such additional quantity will be pro-rated accordingly. Optional Services will be due at the same time as payment for the corresponding Subscription Service, or (if applicable) as otherwise specified in the applicable Order or governing terms. Subscription Service fees will be subject to an automatic annual increase by the percentage of the prior year's Subscription Service fees (the "Uplift") listed in the Order.

3.4. **Professional Services fees and expenses** are due upon invoice and payable within thirty (30) days of the invoice date. Professional Services fees and expenses may be subject to additional payment terms if and as designated in the applicable Order or SOW. Generally, Professional Services expenses will be billed as accrued and invoiced to Customer monthly in accordance with LCT Software's expenses travel policy.

3.5. **Billing Info & Overdue Charges.** Customer is responsible for keeping LCT Software accurately and fully informed of Customer's billing and contact information, including providing any purchase order numbers in advance of invoice issuance. If any Fees are not received from Customer by the due date, they will accrue interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

3.6. **Overdue Payments.** If any amount owing by Customer under this Agreement for any of the Services is thirty (30) or more days overdue, LCT Software may, without limiting LCT Software's other rights and remedies, accelerate Customer's unpaid fee obligations under this Agreement (including any Order or SOW) so that all such obligations become immediately due and payable, suspend the Subscription Service and/or stop performance of the Professional Services until such amounts are paid in full.

3.7. **Taxes.** LCT Software's Services fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If LCT Software has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides LCT Software with a valid tax exemption certificate authorized by the appropriate taxing authority prior to invoice issuance. For clarity, LCT Software is solely responsible for taxes assessable against it based on LCT Software income, property and employees.

4. Term and Termination

4.1. **Term of Agreement.** Unless terminated earlier in accordance with Section 4.2, this Agreement commences on the Effective Date and will continue with respect to the Services as enumerated below:

4.1.1. **Subscription Service.** The Subscription T's & C's at **Exhibit C** will commence on the date listed in the first Order and continue for a period of one (1) year (the "Initial Subscription Period"). Thereafter, the Subscription Term will automatically renew for additional one-year periods (each a "Renewal Subscription Period") unless and until either party gives written notice of non-renewal at least thirty (30) days in advance. Customer must send written notice of non-renewal to **Accounts@lctsoftware.com**. Should Customer not provide written notice of non-renewal at least thirty (30) days in advance, then Customer is obligated to pay for the subsequent renewal in full.

4.1.2. **Professional Services.** If and as applicable to Customer, the Professional Services Terms at Exhibit D will commence on the date listed in the first Order or SOW and continue for the period designated in such Order or SOW. The effectiveness of the Professional Services Terms will be automatically extended to the last date specified in all SOWs and Professional Services Orders issued by LCT Software. Upon Customer request, LCT Software may, in its sole discretion, reinstate expired Professional Services Terms after a lapse in effectiveness under previously issued SOWs or Professional Services Orders.

4.2. **Termination.** Either party may terminate this Agreement upon written notice if the other party materially breaches this Agreement and fails to correct the breach within thirty (30) days following written notice specifying the breach. The Services will be subject to additional termination provisions if and as designated in the respective Exhibits to this Agreement.

4.3. Effect of Termination. Termination or expiration of this Agreement will not terminate any then-current Customer Subscriptions to the Subscription Service (which will continue to be governed by the terms of **Exhibit C**, including the termination provisions set forth therein); provided, however, that in the case of termination of this Agreement by LCT Software for Customer's uncured breach of this Agreement, LCT Software may simultaneously terminate any such Subscriptions. Subject to the Professional Services Terms, termination of this Agreement will terminate all on-going and planned Professional Services.

5. Additional customer terms.

Any terms and conditions required by Customer under applicable statute, judicial order or agency policy will be as stated in this Section 5 (the "Additional Customer Terms"). Alternatively, the Parties may set forth Additional Customer Terms at Exhibit C to this Agreement as warranted under the circumstances. Notwithstanding anything to the contrary in Section 6, the Additional Customer Terms will govern over the body of this Agreement in the event of a direct conflict of terms. In the absence of any inclusion of Additional Customer Terms in this Section 5 or at Exhibit C, the parties agree that no additional contractual obligations are intended in respect of the Services provided hereunder.

6. General

6.1 The parties acknowledge that the terms of each of the Exhibits to this Agreement (inclusive of any supplements or attachments thereto), including, but not limited to, the disclaimers, limitations of liability, and other general provisions thereof, are incorporated into and form a part of this Agreement.

6.2 In the event of a direct conflict between the body of this Agreement and the terms of the Exhibits hereto, the terms in the body of this Agreement will govern. Each party specifies its address set forth above for receipt of notices under this Agreement. This Agreement may be signed in one or more identical counterparts, each of which will be an original, but all of which together will constitute one instrument.

Subscription Fees and Term

1. Subscription Fees

- The yearly Subscription Fees **for 2021** shall amount to a total of **\$16,859**. This is based for 16 user subscriptions. Each additional yearly subscription renewal will be subject to a 3% uplift.

3. Additional User Subscription Fees

Additional User Subscriptions may be purchased by the Agency in accordance with clause 2.3 at \$89.00 per User Subscription per month for users 1 to 10, \$79 per User Subscription per month for users 11 to 20. If more than 20 users' subscriptions are requested subscriptions for user 21+ can be purchased by the Agency at \$69.00 per User Subscription per month.

4. Subscription Term:

- 1-year, form July 1st, 2021 to June 30th, 2022 - \$16,859
- 2-year, form July 1st, 2022 to June 30th, 2023 - \$17,364
- 3-year, form July 1st, 2023 to June 30th, 2024 - \$17,855
- 4-year, form July 1st, 2024 to June 30th, 2025 - \$18,422
- 5-year, form July 1st, 2025 to June 30th, 2026 - \$18,974

Exhibits List:

- Exhibit A - Standard Support Policy
- Exhibit B – Service Level Commitment
- Exhibit C – Subscription Terms and Conditions

Signed on behalf of Town of Los Gatos, CA

Signed

Print Name

Position

Date

Signed by on behalf of TruePoint Solutions

Signed

Print Name

Position

Date

Signed by on behalf of LCT Software LLC

Signed

Print Name

Position

Date

Exhibit – A

Standard Support Policy

This LCT Software LLC’s SaaS Support Policy (“Support Policy”) is a policy governing the use of DigEplan’s software-as- service products (the “Service(s)”) under the terms of the services agreement (the “Agreement”) between LCT Software, LLC and its affiliates (“LCT Software”, “us” or “we”) and the purchaser of DigEplan’s Service (“Customer”). This Support Policy may be updated from time to time by LCT Software at its sole discretion.

General Requirements and Hours of Operation

Ticketing Support: LCT Software will provide access to a ticketing system, which will be available twenty-four (24) hours per day, seven (7) days per week. A qualified support specialist shall use commercially reasonable efforts to answer questions and resolve problems regarding the Subscription Service during normal business hours of Monday-Friday, 8:00 A.M. until 5:00 P.M PST.

Telephone and E-mail Support: DigEplan’s Customer Support will be available to Customer from 8:00 A.M. until 5:00 P.M. Pacific Standard Time Monday through Friday, excluding LCT Software LLC’s observed holidays.

Online Support Material: Available twenty-four (24) hours, seven (7) days a week, LCT Software will make available to Customer certain technical information in DigEplan’s online support database.

Updates

Updates may address security fixes, critical patches, general maintenance functionality, and documentation and shall be made available at LCT Software’s discretion. LCT Software is under no obligation to develop any future functionality or enhancements unless otherwise specified in the Agreement. If an update for the Service is made available to Customer pursuant to this Support Policy, it will automatically replace the previous version of the applicable Service.

Where practical, LCT Software will schedule Updates during non-business hours and will provide Customers with advance notice of all Updates.

Upgrade/Downgrade of Severity Level

If, during the Support Request process, the issue either warrants assignment of a higher severity level than currently assigned or no longer warrants the severity level currently assigned based on its current impact on the production operation of the SaaS offering, then the severity level will be upgraded or downgraded accordingly to the severity level that most appropriately reflects its current impact.

Third Party Product Support

If any third-party software is not supplied by LCT Software, LCT Software disclaims all support obligations for such third-party software, unless expressly specified by LCT Software in Customer’s Agreement.

Exclusions

The following Support Exclusions are not covered by this Support Policy: (a) Support required due to Customer's or any End User's or third party's misuse of the Services; (b) Support during times outside of LCT Software regular business hours stated above; (c) Support necessitated by external factors outside of LCT Software's reasonable control, including any force majeure event or Internet access or related problems beyond the Service demarcation point; (d) Support of or caused by customizations (if outside of LCT Software's best practice recommendations), configuration changes, scripting, or data loss caused by or on behalf of Customer or any End User; (e) Support of or caused by Customer's or any End User's or third party's equipment, software or other technology (other than third party equipment within LCT Software's direct control); (f) Support to resolve or work-around conditions which cannot be reproduced in LCT Software's support environment and (g) Support of any software add-ons supplied together with the Service (except where specified in the Agreement). Any support services falling within these Support Exclusions may be provided by LCT Software at its discretion and, if so provided, may be subject to additional pricing and support terms as specified by LCT Software

Support Classifications

Error Classification	Criteria
Critical Severity Issue (Priority 1)	The Service is down or there is a major malfunction (deeming Service non-functional or severely affected), resulting in a business revenue loss and impacting the Service functionality for a majority of users. No reasonable workaround exists.
High Severity Issue (Priority 2)	High loss of Service functionality or performance, impacting the Service functionality for a high number of users (e.g. Service response is very slow, day to day operations continue, but are impacted by the issue). No reasonable workaround available or the workaround is impractical.
Medium Severity Issue (Priority 3)	Moderate loss of Service functionality or performance, impacting multiple users. A convenient workaround exists (e.g. non-critical feature is unavailable or requires additional user intervention).
Low Severity Issue (Priority 4)	Minor loss of Service functionality or feature in question.

Functional Definitions: For the purposes of error classification, essential or major functions include: data capture features, SLA and alarming features, performance management features and application performance problem resolution features.

Response Time: LCT Software shall use commercially reasonable efforts to respond to error reports in accordance with the table set forth below. LCT Software will use reasonable means to repair the error and keep Customer informed of progress. LCT Software makes no representations as to when a full resolution of the error may be made.

Error Classification	Initial Response and Acknowledgement	Updates	Resolution Goal
Critical	1 Business Hour	Daily	LCT Software will put forth our best effort to provide a workaround, fix, or estimated completion date within seventy-two (72) hours after the problem has been diagnosed and/or replicated.
High	4 Business Hours	Weekly	LCT Software will put forth our best effort to provide a workaround or fix or estimated completion date within four (4) business days after the problem has been diagnosed and/or replicated.
Medium	8 Business Hours	As available	LCT Software will put forth our best effort to provide a workaround or fix or estimated completion date within seven (7) business days after the problem has been diagnosed and/or replicated.
Low	24 Business Hours	None	Resolution for the Issue may be released as a patch set or be incorporated into a future schedule release of the product.

Exhibit B

SERVICE LEVEL COMMITMENT

This SaaS Service Level Commitment (“SLC”) is a policy governing the use of LCT software-as-service products (individually or collectively, the “Service” or “DigEplan”) under the terms of the LCT Software Master Services Agreement (the “Agreement”) between LCT Software LLC and its affiliates (“LCT Software”, “us” or “we”) and the purchaser of LCT Software’s Subscription Service (“Customer”).

Unless otherwise provided herein, this SLC is subject to the terms of the Agreement and capitalized terms will have the meaning specified in the Agreement. LCT Software reserves the right to change the terms of this SLC in accordance with the Agreement.

Definitions

“Monthly Uptime Percentage” is calculated by subtracting from 100% the percentage of minutes during the month in which the Service was Unavailable. Measurement of the Monthly Uptime Percentage excludes downtime resulting directly or indirectly from any SLC Exclusion.

“Service Credit” is a dollar credit, calculated as set forth below, that LCT Software may credit back to an eligible Customer account.

“Unavailable” means, as applicable: (i) Customer is repeatedly unable to log into the Service; (ii) Customer experiences repeated connection request failures; (iii) Customer experiences lack of connectivity of external, public instances or sites lasting for more than ten (10) minutes;

The foregoing events must be verifiable or replicable by LCT Software or its designee. Availability of Accela APIs which are used by DigEplan to connect, is expressly excluded from this SLC.

Service Commitment

LCT Software will use commercially reasonable efforts to make the Service available with a Monthly Uptime Percentage of at least 99.9%, in each calendar month of the Subscription Period (the “Commitment”). In the event the Service does not meet this Commitment, Customer will be eligible to receive a Service Credit as described below.

Scheduled & Emergency Maintenance

LCT Software will maintain certain scheduled maintenance windows during which regular, planned maintenance of the Service may be performed. LCT Software will use commercially reasonable efforts to provide Customer with no less than twenty-four (24) hours’ notice prior to Services unavailability due to planned maintenance. LCT Software’s standard maintenance window will generally fall between the hours of 12:00 AM (00:00) and 5:00 AM [05:00] on a day of our choosing, local time.

In exceptional circumstances where updates may take more time than the weekly time slot, it may be necessary to run updates over w-ends.

LCT Software will endeavour to provide as much notice as is practicable under the circumstances for patches, updates, fixes and other emergency maintenance activities which may be applied on an urgent basis.

LCT Software will provide three (3) business days’ notice prior to any planned network, server hardware, operating environment, or database modifications of a material nature.

Service Credits Monthly Uptime Percentage	Service Credit Percentage
Less than 99.9% but equal to or greater than 99.0%	2%
Less than 99.0%	5%

LCT Software will apply any Service Credits only against future Service payments otherwise due from Customer. Service Credits will not entitle Customer to any refund or other payment from LCT Software.

Service Credits may not be transferred or applied to any other account.

Unless otherwise provided in the Agreement, Customer’s sole and exclusive remedy for any unavailability, non-performance, or other failure by LCT Software to provide the Service is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLC.

Service Credit Requests

To receive a Service Credit, Customer must submit a claim in writing to accounts@lctsoftware.com

To be eligible for a Service Credit, the claim must be received by LCT Software in the calendar quarter in which the incident occurred and must include:

- the words “SLC Credit Request” in the subject line;
- the dates and times of each Unavailability incident that Customer is claiming; and
- the quantity or scope of affected Users (as indicated by User ID, number of departments or similar metric);
- Supporting evidence from the support service desk

If the Monthly Uptime Percentage of such Service Credit request is confirmed by us and is less than the Service Commitment, LCT Software will issue the Service Credit to Customer within one billing cycle following the month in which Customer’s request is confirmed by LCT Software. Customer’s failure to provide the request and other information as required above will disqualify Customer from receiving a Service Credit.

SLC Exclusions

The Service Commitment does not apply to any unavailability, suspension or termination of the Service or any Service performance issues: (i) caused by factors outside of LCT Software’s reasonable control, including any force majeure event or Internet access or related problems beyond the Service demarcation point; (ii) that result from customizations (if outside of LCT Software’s best practice recommendations), configuration changes by or on behalf of Customer or any End User; (iii) that result from Customer’s or any End User’s or third party’s equipment, software or other technology or integrations (other than third party equipment within LCT Software’s direct control); (iv) that result from any maintenance as provided for pursuant to the above terms; or (vii) arising from our suspension or termination of Customer’s right to use the Service in accordance with the Agreement (collectively, the “SLC Exclusions”). If availability is impacted by factors other than those used in the Monthly Uptime Percentage calculation, LCT Software may issue a Service Credit with consideration to pertinent factors as assessed by LCT Software in its sole discretion.

EXHIBIT C

Subscription Terms & Conditions

Purchase or use of the Service (defined below) is subject to these Subscription Terms and Conditions (these “Terms”).

1. DEFINITIONS

“**Agreement**” means these Terms and, if applicable, the written master service agreement or other written agreement between Customer and LCT Software LLC that incorporates these Terms by reference.

“**Communication Data**” means any and all information transmitted, shared, or exchanged between Customer and any End User, or between End User and any third party (including any third-party network or website), using the Service, with respect to any transaction or other communication enabled by the Service, but excluding Security Data.

“**Customer**” means the entity that purchases a subscription to the Service, directly from LCT Software or through an authorized reseller, distributor, or other channel partner of LCT Software.

“**End Users**” means individuals who are authorized by Customer to use the Service and for whom Customer has purchased a subscription to the Service. End Users may include but are not limited to Customer’s employees, contractors and agents. Each End User will be associated with a single, unique email address for purposes of accessing (and being identified within) the Service.

“**Intellectual Property Rights**” means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

“**Optional Services**” mean the optional add-ons to the Service that may be available for purchase either directly from LCT Software or through an authorized reseller or partner of LCT Software, as more particularly described or identified in the applicable Order.

“**Order**” means written orders to purchase subscriptions to use the Service (or, where applicable, to purchase Optional Services).

“**Security Data**” means any and all information provided by Customer or any End User to establish secure transmissions through use of the Service, including but not limited to personal information, information used to identify account names or numbers, routing information, usernames, passwords, access codes and prompts.

“**Service**” or “**Subscription Service**” means the cloud-based network security service(s) for which Customer has obtained a subscription either directly from LCT Software or through an authorized reseller or other partner of LCT Software, as more particularly described in the applicable agreement or order under which such subscription was obtained. If and as designated in the Specifications, the Service may be inclusive of application programming interfaces (APIs) developed by LCT Software to enable interaction and integration with the Service. Unless otherwise specified herein or other applicable contractual terms, all references to “Service” will be deemed to include any and all Optional Services.

“**Software**” means any software (including client software for End Users’ devices) that LCT Software makes available for download or otherwise provides for use with the Service.

“**Subscription Period(s)**” means the duration of Customers and End Users active, paid access to the Service, as designated in the Order(s).

“**Supported Modification**” means a configuration of or modification to the Service requested by Customer that can be consistently supported by LCT Software via APIs, does not require direct database changes and is capable of being tested and maintained by LCT Software.

2. AUTHORIZED USERS. Only End Users may access or use the Service under Customer's account. Each End User may use any reasonable number of compatible devices for purposes of accessing the Service; provided that, LCT Software reserves the right to determine whether a number of devices is reasonable and, in its sole discretion, to place a corresponding cap on the number of devices. Unless expressly authorized by LCT Software, End User subscriptions cannot be shared or used by more than one individual but may be permanently reassigned to new End Users. The number of End User subscriptions purchased may be increased (under a new Order) but cannot be decreased during any Subscription Period.

3. USE OF THE SERVICE 3.1. **LCT Software's Responsibilities.** LCT Software will: (i) provide to Customer support related to the Service in accordance with the LCT Software Support Terms accessible at <https://zdrive.eu/gVe> (which URL location and content may be updated from time to time by LCT Software) and (ii) provide the Service only in accordance with applicable laws and government regulations.

3.2. **Customer's Responsibilities.** Customer will (i) be responsible for meeting LCT Software's applicable minimum system requirements for use of the Service; (ii) be responsible for End Users' compliance with these Terms 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 Communication Data, (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Service under its account, and notify LCT Software promptly of any such unauthorized access or use, and (v) use the Service only in accordance with the applicable documentation, laws and government regulations, and any written instructions provided by LCT Software to Customer.

3.3. **Prohibitions.** Customer will not, and will ensure that its End Users do not, (i) make the Service available to anyone other than End Users; (ii) sell, resell, rent, lease or transfer the Service in whole or in part to any third party (including Customer affiliates) without the express permission of LCT Software and execution of designated transfer documentation; (iii) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or intellectual property rights; (iv) use the Service to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein; (vi) attempt to gain unauthorized access to the Service or any related systems or networks; or (vii) obtain intellectual property rights to the use of any component of the Services (inclusive of APIs).

3.4. **Software.** End Users may need to download and install client Software (as made available by LCT Software or other third party authorized by LCT Software) on each device through which they intend to use the Service. All use of such Software will be governed by terms of the applicable license agreement or terms of use that accompanies or is made available in connection with the Software. Customer acknowledges that each End User (or authorized Customer representative) must accept such license agreement, and have Service-compatible device(s), to download, install, and/or use the Software. Nothing in these Terms will be deemed to grant to Customer rights of any kind in the Software.

3.5. **Security Data and Privacy.** Customer understands that failure to protect Security Data may allow an unauthorized person or entity to access the Service. In addition, Customer acknowledges that LCT Software generally does not have access to and cannot retrieve lost Security Data. If Customer loses Security Data, Customer may no longer have access to the Service. Customer agrees that: (i) Customer (or its End User) is solely responsible for collecting, inputting and updating all Security Data; (ii) LCT Software assumes no responsibility for supervision, management or control of Customer's and End Users' Security Data; and (iii) LCT Software assumes no responsibility for any fraudulent or unauthorized use of the Software or any portion of the Service. To the extent that LCT Software has access to any personally identifiable information gathered from Customer or from End Users in connection with the Service, such information will be governed by the provisions of the LCT's Privacy Policy, a copy of which is available on the LCT Software's website at <https://www.digeplan.com/privacy-policy/> (which URL location and content may be updated from time to time by LCT Software).

4. PROPRIETARY RIGHTS

4.1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, LCT Software reserves all rights, title and interest in and to the Service and any associated Software and documentation, including all

related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

4.2. Restrictions. In addition to the other prohibitions set forth in these Terms, Customer will not and will ensure that its agents do not (i) create derivative works based on the Service, (ii) copy, frame or mirror any part or content of the Service, other than copying or framing on Customer's own intranets or otherwise for Customer's internal business purposes in accordance with LCT Software's applicable documentation, (iii) reverse engineer the Service, or (iv) access the Service (inclusive of any APIs) in order to build or patent a competitive product or service or to copy any features, functions or graphics of the Service.

4.3. Communication Data Ownership. Customer reserves all its rights, title and interest in and to the Communication Data. No rights are granted to LCT Software hereunder with respect to the Communication Data, except that LCT Software may (i) store, copy, process, and transmit such Communication Data for purposes of providing the Service to Customer and (ii) otherwise utilize Communication Data if and as permitted by the LCT Software's Privacy Policy.

4.4. Customer Suggestions. Customer grants LCT Software a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Service (or LCT's other software or services) any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or End Users relating to the operation or features of the Service.

5. CONFIDENTIALITY 5.1. Definition. As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), 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 by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

5.2. **Protection.** Except as otherwise permitted in writing by the Disclosing Party and subject to the other terms of this Agreement (including LCT Software's Privacy Policy), (i) the Receiving 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 of the Disclosing Party for any purpose outside the scope of these Terms, and

(ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who are legally bound to protect such Confidential Information consistent with these Terms.

5.3. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party 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 cost, if the Disclosing Party wishes to contest, limit, or protect the disclosure.

6. WARRANTIES AND DISCLAIMERS 6.1. Specifications. Subject to the limitations set forth below, LCT Software warrants that the Service will operate in all material respects in accordance with the Specifications. As Customer's sole and exclusive remedy and LCT Software's entire liability for any breach of the foregoing warranty, LCT Software will use commercially reasonable efforts to modify the Service so that it conforms to foregoing warranty.

6.2. **Service Level Commitment.** During the Subscription Period, LCT Software further warrants that the Service will meet the performance level specified in the Service Level Commitment, as made available by LCT Software at <https://zdrive.eu/gVe> (which URL location and content may be updated from time to time by LCT Software). The Service Level Commitment sets forth Customer's sole and exclusive remedy for LCT Software's failure to achieve the stated Service performance level.

6.3. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, LCT SOFTWARE DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND LCT SOFTWARE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING OUT OF THE COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. LCT Software will not be responsible to the extent failure of the Service to operate as warranted is caused by or results from: (i) any modification to the Service other than a Supported Modification; (ii) combination, operation or use of the Service with Customer's or a third party's applications, software or systems; (iii) abuse, willful misconduct or negligence by anyone other than LCT Software or LCT Software's designee; (iv) use of the Service other than in accordance with the terms of this Agreement and/or the applicable Specifications and LCT Software documentation or (v) any of the SLC Exclusions (as defined in the Service Level Commitment).

7. MUTUAL INDEMNIFICATION

7.1. Indemnification by Customer. Customer will defend (or settle), indemnify and hold harmless LCT Software, its officers, directors, employees and subcontractors, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third-party claim that: (i) a third party has suffered injury, damage or loss resulting from Customer's or any End User's use of the Service (other than any claim for which LCT Software is responsible under Section 7.2); or (ii) Customer or any End User has used the Service in a manner that violates these Terms or applicable law. Customer's obligations under this Section 7.1 are contingent upon: (a) LCT Software providing Customer with prompt written notice of such claim; (b) LCT Software providing reasonable cooperation to Customer, at Customer's expense, in defense and settlement of such claim; and (c) Customer having sole authority to defend or settle such claim.

7.2. Indemnification by LCT Software. Party will defend (or settle) any suit or action brought against Customer to the extent that it is based upon a claim that the Service, as furnished by LCT Software 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 awarded against Customer. LCT Software's obligations under this Section 7.2 are contingent upon:

(a) Customer providing LCT Software with prompt written notice of such claim; (b) Customer providing reasonable cooperation to LCT Software, at LCT Software's expense, in the defense and settlement of such claim; and (c) LCT Software having sole authority to defend or settle such claim. THIS SECTION 7.2 STATES THE ENTIRE OBLIGATION OF LCT SOFTWARE AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICE. LCT Software will have no liability under this Section 7.2 to the extent that any third-party claims described herein are based on any combination of the Service with products, services, methods, or other elements not furnished by LCT Software, or any use of the Service in a manner that violates this Agreement or the instructions given to Customer by LCT Software.

7.3. Mitigation Measures. In the event that (i) any claim or potential claim covered by Section 7.2 arises or (ii) LCT Software's right to provide the Service is enjoined or in LCT Software's reasonable opinion is likely to be enjoined, LCT Software may, in its discretion, seek to mitigate the impact of such claim or injunction by obtaining the right to continue providing the Service, by replacing or modifying the Service to make it non-infringing, and/or by suspending or terminating Customer's use of the Service with reasonable notice to Customer. In the case of a suspension or termination pursuant to this Section 7.3, LCT Software will refund to Customer a portion of fees prepaid by Customer for the then-current Subscription period, prorated to the portion of that Subscription period that is affected by the suspension or termination).

8. LIMITATIONS OF LIABILITY. EXCEPT THE PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 7.1 AND 7.2, IN NO EVENT WILL PARTY'S LIABILITY TO OTHER PARTY OR ANY THIRD PARTY 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, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE INCIDENT.

8.1. Exclusion of Damages. NEITHER PARTY NOR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICE WILL 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 SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT 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. NOTHING IN THESE TERMS EXCLUDES OR RESTRICTS THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE.

8.2. Security and Other Risks. Customer acknowledges that, notwithstanding security features of the Service, 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, LCT Software will have no liability for any security breach caused by any such persons, entities, or technologies. Customer further acknowledges that the Service is not guaranteed to operate without interruptions, failures, or errors. If Customer or End Users use the Service 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 LCT Software and hold it harmless against those risks.

8.3. Basis of Bargain. THE LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH IN THIS SECTION 8 ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN LCT SOFTWARE AND CUSTOMER AND WILL APPLY TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW.

9. SUBSCRIPTION PERIOD AND TERMINATION 9.1. Term of End User Subscriptions. End User Subscriptions purchased by Customer commence on the start date specified in the applicable Order and, unless terminated earlier in accordance with these Terms, continue for the term specified therein (the “**Subscription Period**”). A Subscription Period and/or pricing there on may be subject to prorating where LCT Software deems it appropriate to cause newly purchased Subscriptions to expire or renew simultaneously with Customer’s pre-existing Subscription(s). Except as otherwise specified in the applicable Order, all Subscriptions will automatically renew for additional Subscription Periods equal to the expiring Subscription Period or one year (whichever is shorter), unless either party gives the other at least thirty (30) days’ notice of non-renewal before the end of the relevant Subscription Period. The per-unit pricing during any such renewal Subscription Period may be subject to annual pricing increase as designated by LCT Software and notified to Customer. Pricing increases will be effective upon renewal of the Subscription Period and annually thereafter, unless otherwise agreed to by the parties. If either party provides notice of non-renewal as set forth above, Customer’s right to use the Service will terminate at the end of the relevant Subscription Period.

9.2. Termination or Suspension for Cause. A party may terminate any Subscription 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. In addition, LCT Software may, at its sole option, suspend or terminate Customer’s or any End User’s access to the Service, or any portion thereof, immediately if LCT Software, in its sole discretion: (i) if suspects that any person other than Customer or an End User is using or attempting to use Security Data, (ii) suspects that Customer or an End User is using the Service in a way that violates these Terms and could expose LCT Software or any other entity to harm or legal liability, or (iii) is or reasonably believes it is required to do so by law or court order.

9.3. Effect of Termination. Within thirty (30) calendar days following the end of Customer’s final Subscription Period, Customer may request in writing LCT Software to provide a copy of Customer’s data and associated documents in a database dump file format. LCT Software will comply in a timely manner with such request; provided that, Customer (a) pays all costs of and associated with such copying, as calculated at LCT Software then-current time-and-materials rates; and (b) pays any and all unpaid amounts due to LCT Software.

9.4. **Surviving Provisions.** Sections 4 (Proprietary Rights), 5 (Confidentiality), 6.2 (Disclaimer), 7 (Mutual Indemnification), 8 (Limitation of Liability), 9.3 (Effect of Termination), 9.4 (Surviving Provisions) and 10 (General Provisions) will survive any termination or expiration of this Agreement.

10. **GENERAL** 10.1. **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) the second business day after mailing, or (iii) sending by confirmed email if sent during the recipient's normal business hours (or, if not, then on the next business day). 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 Service (or such other address as the recipient may thereafter specify by notice given in accordance with this Section 10.1).

10.2. **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 law's provisions. The exclusive jurisdiction and venue of any action related to the Service or this Agreement will be the state and federal courts located in California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

10.3. **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. Without limiting the foregoing, Customer will not permit End Users to access or use the Service in violation of any U.S. export embargo, prohibition or restriction.

10.4. **Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or similar relationship between the parties.

10.5. **Waiver and Cumulative Remedies.** 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.

10.6. **Severability.** 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.

10.7. **Assignment.** Customer may not assign or transfer this Agreement, whether by operation of law or otherwise, without the prior written consent of LCT Software. Any attempted assignment or transfer, without such consent, will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10.8. **Publicity.** Subject to the provisions of Section 5, each party will have the right to publicly announce the existence of the business relationship between parties. In addition, during the Subscription Period of Customer's Service use, LCT Software may use Customer's name, trademarks, and logos (collectively, "**Customer's Marks**") on LCT Software's websites and marketing materials to identify Customer as LCT Software's customer, and for providing the Service to Customer; provided that, LCT Software will use commercially reasonable efforts to adhere to any usage guidelines furnished by Customer with respect to Customer's Marks.

10.9. **Force Majeure.** The Parties 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 the Party.

10.10. **Entire Agreement.** These Terms, including any attachments hereto as mutually agreed upon by the Parties, constitute the entire agreement between the parties concerning its subject matter and supersedes all prior communications, agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of these Terms 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 therein, no additional or conflicting terms or conditions stated in Customer's order documentation will be incorporated into or form any part of these Terms, and all such terms or conditions will be null.

11.5. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this PSA 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.

11.6. Severability. If any provision of this PSA 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 PSA will remain in effect.

11.7. Assignment. Customer may not assign or transfer this PSA or any SOW or Order hereunder, whether by operation of law or otherwise, without the prior written consent of LCT Software. Any attempted assignment or transfer, without such consent, will be void. Subject to the foregoing, this PSA will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.8. Publicity. Subject to the provisions of Section 9, each party will have the right to publicly announce the existence of the business relationship between parties. In addition, during the Subscription Period of Customer's use of the Service, LCT Software may use Customer's name, trademarks, and logos (collectively, "**Customer's Marks**") on LCT Software's website and marketing materials to identify Customer as LCT Software's customer, and for providing the Service to Customer; provided that, LCT Software will use commercially reasonable efforts to adhere to any usage guidelines furnished by Customer with respect to Customer's Marks.

11.9. Force Majeure. LCT Software will not be liable for any delay or failure to perform under this PSA to the extent such delay or failure results from circumstances or causes beyond the reasonable control of LCT Software.

11.10. Entire Agreement. The parties acknowledge that they have had previous discussions related to the performance by LCT Software of Professional Services for Customer and the possible strategies which may be used by LCT Software to implement the Subscription Service to achieve the requirements identified by Customer. This PSA, together with mutually agreed-upon attachments that are incorporated by reference herein, constitutes the entire agreement between the parties concerning its subject matter and supersedes all prior communications, agreements, proposals or representations, written or oral, concerning its subject matter.

Notwithstanding any language to the contrary therein, no additional or conflicting terms or conditions stated in Customer's Order, any SOW or other order documentation will be incorporated into or form any part of this PSA, and all such terms or conditions will be null. Under no circumstances will the terms, conditions or provisions of any RFP, purchase order, invoice or other administrative document issued by Customer in connection to this PSA be deemed to modify, alter or expand this PSA, regardless of any failure of LCT Software to object to such terms, provisions, or conditions. No other act, document, usage, custom or waiver will be deemed to amend or modify this PSA unless agreed to in writing signed by a duly authorized representative of both parties. In the event of any inconsistency or conflict between the terms of this PSA, and SOW, the terms of the SOW will control with regards to the project described.

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 13

DATE: April 28, 2021

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Receive the Report and Presentation from West Valley Solid Waste Management Authority Regarding Senate Bill 1383 Updates and Implementation

RECOMMENDATION:

Receive the report and presentation from West Valley Solid Waste Management Authority regarding Senate Bill 1383 updates and implementation.

BACKGROUND:

The Town of Los Gatos is a member of the West Valley Solid Waste Management Authority, a Joint Power Authority (JPA) composed of the municipalities of Los Gatos, Campbell, Monte Sereno, and Saratoga. The JPA manages both the collection and disposal of trash and recyclables through various agreements. The JPA is managed by a Board with one Town Council representative from each participating city. Beginning January 2021, Town Council Member Mary Badame became the Town of Los Gatos representative serving on the Board. The Parks and Public Works Department provides support to the JPA and the Board.

On September 16, 2016, Governor Jerry Brown signed Senate Bill (SB) 1383 into law; associated regulations were finalized in November 2020. SB 1383 refers to regulations specific to solid waste (trash) reduction in California with the goal of reducing methane emissions. The focus of this law is to target residential and commercial trash generators and includes both performance targets and penalties that could be levied against local jurisdictions for non-compliance.

PREPARED BY: Marina Chislett
Environmental Programs Specialist

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

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SUBJECT: Receive the Report and Presentation from West Valley Solid Waste Management Authority Regarding Senate Bill 1383 Updates and Implementation

DATE: April 28, 2021

BACKGROUND (continued):

SB 1383 has been a topic of discussion with the JPA Board over the course of the agency's regular business, including JPA meetings, additional meetings with representatives from each of the West Valley municipalities and working closely with CalRecycle on creation of a toolkit for SB 1383 compliance.

Given that the regulations will go into effect on January 1, 2022, both the Town and JPA staff deemed it appropriate to provide an update to the Town Council as the regulations will require Town resources to implement and will directly impact Town residents and businesses. Marva Sheehan represents HF&H as the consultant in charge of the JPA operations and will be providing the presentation to Council.

DISCUSSION:

The implementation of SB 1383 brings a significant workload and additional responsibilities to both the Town and the Authority to achieve compliance. Staff is working closely with the JPA to stay up to date on SB 1383 progress and specific areas of implementation. Identified implementation options have been and will continue to be presented to the JPA Board.

One of the biggest changes from SB 1383 will be the implementation of an organics program (food waste composting) that will provide for collection of compostable materials from all residents and businesses. Implementation will likely occur by allowing the use of the green yard waste bins for all compostable material. By regulation, the introduction of food waste will change the type of facility that can handle the compostable material, resulting in increased costs. A local monitoring element will be put in place as well to ensure residents and businesses are complying with the new regulations.

Another element mandated by SB 1383 is a requirement for each jurisdiction to procure a predetermined (based on population) amount of compost or mulch material. This requirement provides two challenges. Primarily, jurisdictions, including the Town, will have a difficult time using all of the required material. Additionally, the market may not have adequate amounts of material available, potentially leading to price spikes and an inability to meet the requirements. Although not likely to occur in the early years of the program, SB 1383 allows for financial penalties for not achieving the required procurement levels of compost or mulch material. Additional requirements may impact the Town's procurement of other products such as paper and other office supplies. SB 1383 will also have increased reporting requirements that will require additional staff time.

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SUBJECT: Receive the Report and Presentation from West Valley Solid Waste Management Authority Regarding Senate Bill 1383 Updates and Implementation

DATE: April 28, 2021

DISCUSSION (continued):

Other elements of SB 1383 include public outreach and education, establishment of an edible food recovery program. The JPA and Town staff are currently exploring opportunities to implement these elements at the JPA or County level.

CONCLUSION:

Adoption of SB 1383 brings a large workload to the Town and the Authority to achieve compliance. Over the next few months, through negotiating an amendment between the Authority and West Valley Collection & Recycling, elements of SB 1383 that will be managed under the contract will be identified. Any remaining elements will require additional work undertaken by the Town to achieve compliance.

COORDINATION:

This report was prepared by the Parks and Public Works Department with information provided by the West Valley Solid Waste Management Authority, in which the Town of Los Gatos is a participating West Valley community.

FISCAL IMPACT:

The costs of SB 1383 will ultimately be borne by the ratepayers. The initial year of costs are expected to result in a rate increase in excess of \$3.40 a month per household for SB 1383 compliance alone. Other rate increases will add to the total bill. For a typical 35-gallon waste container, the monthly costs will increase from \$35.16 per month to an estimated \$40.07 per month, as currently proposed. These costs will continue to increase in following years as the program reaches full implementation. With such a significant rate increase, staff anticipates an increase in resident inquiries and complaints.

Residential rates in Los Gatos remain competitive with surrounding jurisdictions. Rates in Los Gatos are slightly below the 75th percentile compared to other jurisdictions in the county and below both Saratoga and Monte Sereno. Rates are significantly impacted by the difficulty of collections in the hillside environment in Los Gatos.

ENVIRONMENTAL ASSESSMENT:

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



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 14

DATE: April 29, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Consider Requests for Additional Funding for Special Events and Destination Marketing and Other Town Needs, and Direct Staff on Next Steps.

RECOMMENDATION:

Staff recommends that the Town Council consider requests for additional funding for special events and destination marketing and other Town needs, and direct staff on next steps.

BACKGROUND:

Prior to the COVID-19 Pandemic, the Town had allocated funds for a streetscape project in Downtown Los Gatos in the amount of approximately \$1.9 million. Once it became apparent that the pandemic would be long-term, non-profit organizations would need extra support, and businesses would need assistance to offer outdoor service options, the Town Council reallocated the streetscape fund to become the Economic Recovery Fund (ERF).

From this funding source, the Town has extended community grants to non-profits serving vulnerable community members, paid for the implementation and on-going rental of krail to form the Temporary Krail Parklet Program, provided a 50% grant match program for private business accessibility upgrades to the temporary krail parklets, funded a holiday light campaign, earmarked grant funding for a Semi-Permanent Parklet program, purchased pre-approved architecture plans and subsidized the engineering for Semi-Permanent Parklets, paid for mask and public health community awareness signage, provided 50% relief of fees for new and modified Conditional Use Permits (CUP), and offered rent forgiveness to tenants in Town owned properties.

PREPARED BY: Monica Renn
Economic Vitality Manager

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Community Development Director, Parks and Public Works Director, Police Chief, and Finance Director

SUBJECT: Consider Funding Requests and Other Town Needs

DATE: April 29, 2021

BACKGROUND (continued):

Additional funds from the Federal Government, known as the American Rescue Act Plan Act (ARPA), became available in March of 2021 and at its April 6, 2021 meeting, the Town Council allocated a portion of these dollars to additional economic recovery initiatives, non-profit grants assistance, and rent forgiveness. The chart below offers a snapshot of the allocated funds from both the ERF and the ARPA to date.

Expenditure Category	FY 2020/21	FY 2021/22
Economic Recovery Fund (ERF)		
Economic & Community Vitality		
Temporary Krail Parklets: Krail install/deinstall and rental	\$171,528	\$50,000
CUP- 50% fee subsidy	\$50,000	
Temporary Krail Parklets: platform 50% grant match	\$25,000	
Holiday Light Display	\$185,000	
BL waiver for Personal Service	\$40,000	
Semi-Permanent Parklet: construction grants, architecture & engineering subsidy, and application/permit fee subsidy	\$100,000	\$911,500
Non-Profit Assistance		
Rent Forgiveness	\$338,002	
Public Health		
Mask Signage	\$2,500	
Total allocated ERF	\$912,030	\$961,500
Starting ERF	\$1,972,394	
Total allocated funds - FY 2020/21 and 2021/22	\$1,873,530	
Prior Expenditures	\$48,332	
Total remaining/unallocated ERF	\$50,532	
American Rescue Plan Act (ARPA)		
Lost Revenue Replacement	\$1,362,910	\$1,562,536
Economic & Community Vitality		
Semi-Permanent Parklet: construction grants, architecture & engineering subsidy, and application/permit fee subsidy		\$250,000
CUP- 50% fee subsidy		\$50,000
Non-Profit Assistance		
Rent Forgiveness		\$341,452
Direct Grants	\$60,000	
Total allocated ARPA Funds	\$1,422,910	\$2,203,988
Starting ARPA Funds	\$2,844,315	\$2,844,315
Total allocated ARPA Funds	\$2,785,820	\$2,203,988
Total Remaining	\$1,421,405	\$640,327

BACKGROUND (continued):

Aside from the direct funding of programs, the Town Council adopted an Economic Recovery Resolution in June of 2020 with the most recent modifications being approved at the April 20, 2021 Council meeting. This resolution provides support and streamlining for several sectors of the Town's business community, encourages businesses attraction and retention, reduces CUP fees by 50%, reduces parking requirements in private commercial parking lots to support private parklets and outdoor service areas, and provides flexibility for personal services, markets and other non-restaurant conditional uses. Through this resolution and the dedicated funding to the economic recovery initiatives outlined previously, the Town Council continues to demonstrate its commitment to economic recovery in Los Gatos by remaining nimble and adaptive to the dynamic economic environment.

At recent Town Council meetings, including April 6 and April 20, 2021, the Chamber of Commerce and other Los Gatos business stakeholders provided input advocating for and supporting many of the economic recovery initiatives outlined above and have requested additional funds be allocated for expanded economic recovery and community vitality initiatives including Town-wide special events, a weekly closure of N. Santa Cruz Avenue in downtown, and a destination marketing campaign to draw visitors from across the region to Los Gatos. Thus, this discussion is being brought forward for the Town Council's consideration and direction.

DISCUSSION:

Outlined in this report are economic recovery initiatives and other related requests that have come forward from the Chamber of Commerce and business stakeholders over the last several weeks. The Council may wish to consider these suggestions, as well as others that may be presented during the conversation and provide direction as to how to evaluate and consider these requests in light of pending Fiscal Year 2021/22 Budget considerations and the Town's annual community grant program. The Council may identify principles to guide its future decision-making on such requests. Alternatively, the Council may choose to fund one or more of the requests, specifying either the ERF or ARPA funds. Money from the ERF may be allocated at the Council's discretion; however, eligibility parameters exist for the appropriate use of ARPA funds. From staff's perspective, ARPA funds would not currently qualify for use in special event subsidies.

Destination Marketing

The Chamber of Commerce has requested funds to coordinate a destination marketing campaign for Los Gatos. The scope of this proposed campaign remains unclear including how broad of a reach is intended, what marketing channels are being targeted, how marketing of all Town businesses beyond Chamber members would be executed, or how much funding is needed. Through conversations with industry professionals and at the recent joint study session of the Town Council and Planning Commission on February 23, 2021, it was shared that

DISCUSSION (continued):

economic recovery broadly is expected to take a hometown approach initially, and that consumers are demonstrating the desire to patronize local businesses more than ever, opting to remain close to home and support their local business community.

If the Council is in favor of a marketing campaign, one strategy may be to start more locally to promote Los Gatos businesses Town-wide as safe, open, and welcoming to the community on a smaller scale, then expand the regional reach as restrictions are lifted and consumer behavior supports it. While the State of California has declared it hopes to reopen the economy on June 15, 2021 if specific metrics are met, the County of Santa Clara has not yet confirmed that the County will see a full re-opening nor defined the scope of a full re-opening of the economy.

The Town and Chamber have an annual agreement for services in effect through June 30, 2021 with plans to present the Town Council with a status quo renewal for FY 2021/22 at a Town Council meeting in June. This agreement provides the Chamber with \$55,000 in funding to support Visitor Information and Attraction Services. It is required that these funds benefit the Los Gatos business and tourism community as a whole and not solely those members of the Chamber of Commerce. It is unclear how a destination marketing campaign may differ from the attraction services currently taking place as a part of the agreement for services.

Prior to 2020, the annual contract for services with the Chamber required annual reports with measurable deliverables outlined for the Town Council and included the Chamber's assistance in coordinating Leadership Los Gatos; however, given the uncertain environment of the pandemic the Town removed the requirement for specific deliverables, did not facilitate a Leadership Los Gatos class, and still provided the full amount of funding in the form of a subsidy to the Chamber under the following Scope of Services for FY 2020/21:

Scope of Services. Chamber shall provide Visitor Information and Attraction Services in appropriate formats including web, social media, print maps and via in person or phone conversations that promote the Town of Los Gatos as a premier visitor's destination. All services rendered under this agreement shall promote all businesses located within Town boundaries, regardless of their Chamber membership.

If additional marketing beyond what is currently being performed by the Chamber as a part of the agreement for services is desired by the Council, such an endeavor would need to be distinctly different from the Chamber's current efforts or reorganized to avoid duplicated efforts, and reflective of the Town's goals and initiatives. Thus, if the Council does wish to embark on a marketing campaign to engage the community locally and/or regionally, this may be best done with a project managed by Town staff utilizing third party marketing professionals selected and managed by the Town.

DISCUSSION (continued):

Special Events

The Chamber of Commerce and other community stakeholders have inquired about the ability to host community special events that offer the opportunity for residents and visitors to engage in safe, in-person celebrations. Beyond this request, the Chamber has requested that the Town waive all Special Event Permit fees, Park Use fees, and provide a subsidy for event costs including street closures.

The Town has been accepting Special Event Permit applications throughout the various stages of the pandemic within the parameters outlined in the Town Code Section 14.100.010 – 14.100.065, and remaining flexible with applicants should an event be unable to take place due to COVID restrictions. It has been the responsibility of the applicant to ensure that their event is in compliance with State and County regulations and provide this information during the application process. The event organizers have been given the opportunity to change the date of the event or place the application on hold with the Town for future consideration should Health Orders or other conditions of the pandemic prevent the event from taking place. These allowances save applicants money because they do not need to file a new special event permit in these instances.

Special Event Permit applications must be filed at least 60 days prior to an event, and no more than a year before. For multi-day, or series events, such as the same weekly event for the duration of a couple of months, one Special Event Permit application may suffice if the full scope of the event series is presented with the original submittal. Application fees are dependent upon the applicant's organizational structure (non-profit versus for-profit), and if the event is new or re-occurring. The non-refundable application fee is due at the time of filing; however, may be reapplied to an event with a change of date, or change of scope necessary to abide by Health Orders in effect.

Currently, the County of Santa Clara Health Orders follow those set forth by the State within the Blueprint for a Safer Economy, which currently has Santa Clara County placed in the Orange Tier. Attachment 1 provides the State's full Guidance for Gatherings, updated on April 15, 2021. Event allowances and capacities vary based on the type of event, venue, and other considerations; however, remain quite restrictive as they pertain to large public events.

Given this guidance, the Town made the decision to cancel its annual 4th of July event for 2021. Residents and visitors are still invited to organically gather in the parks and other public spaces throughout the summer in a fashion that is within the current Health Orders and supports their own comfort level for gatherings; however, the Town is opting out of formally planning or promoting large Town-sponsored and coordinated events at this time.

DISCUSSION (continued):

As the Town Council considers stakeholder requests for funding for other special events or large gatherings, it may be important to consider the structure and intent of the events and how components such as food/drink booths and entertainment may create environments that are difficult to meet Public Health Orders, lending themselves to an environment that may be perceived as less than COVID safe such as:

- Organized events that promote eating and drinking outside of the confines of a seated restaurant setting may create a situation where it is difficult to maintain social distancing and mask requirements; and
- Events with live entertainment with or without a stage typically encourage guests to gather close to the entertainment source, making it difficult to social distance.

Road Closure Events

The Chamber has requested an event that regularly closes N. Santa Cruz Avenue every Thursday from late spring to early fall. While this could create more space for residents and visitors to stroll through and experience downtown, frequent closures of the road could create concerns for nearby residents and traffic flow. Additionally, adding elements similar to those listed above could change that intent and create less space per person as crowd size increases.

When N. Santa Cruz Avenue was part of the one-way pilot program in 2019, the traffic unable to use N. Santa Cruz Avenue ended up on University Avenue and in the surrounding neighborhoods, creating concerns for those residents and backed up traffic on the surrounding streets. Historically, this has been tolerated by the community for one-off special events, however a closure occurring once a week may not be as welcomed.

In 2018, the Town of Los Gatos created a pre-approved traffic plan for a road closure of N. Santa Cruz Avenue between Main Street and Bachman Avenue. Creating this standard closure plan allowed for a consistent approved traffic plan that could be provided at no cost to event organizers and reduce the amount of staff time spent reviewing the engineering and safety measures of each event. From this point, event organizers must contract with a third-party traffic control vendor to provide the actual road closure services including set-up, breakdown, equipment rental and other associated costs. The estimated cost of a street closure is between \$2,500 to \$3,500 for a single day closure. The amount of work that is necessary to close and reopen the street is the same regardless of the amount of time the street is closed. Expenses associated with the length of the closure include paying for attendants to monitor the entrance and exit points of the closure in case emergency vehicles need access beyond the barriers, and this personnel time is not included in the cost estimate listed above.

DISCUSSION (continued):

The closure of N. Santa Cruz Avenue may now be accomplished with a high degree of public safety by utilizing the Town's recently acquired portable anti-vehicle barrier system. However, deployment of the two anti-vehicle barricades and eight bollards will require trained staff from both Parks and Public Works and the Police Department. It is estimated that three to four Parks and Public Works personnel and two Police Officers will be necessary to deploy the barriers and bollards and will require four to five hours of staff time in addition to a large truck and a forklift.

If the Council is interested in subsidizing a road closure event or series of events, the Council should specify a maximum dollar amount. Town staff resources are not available to do the closure and reopening as an in-kind donation due to the programmed work and priorities of the Town Council.

Events that entail a closure of N. Santa Cruz Avenue are usually grand in scale, attracting large crowds, multiple vendors, and typically include the sales and service of alcoholic beverages, which then require approved security personnel or Los Gatos-Monte Sereno Police Officers to be on-site during the event. The cost of security or Town personnel is the responsibility of the event organizer. Consideration of utilizing Police personnel to staff the actual event is currently not a feasible option due to staffing constraints.

Simply closing the road as a large pedestrian thoroughfare was briefly experienced on the first day of the temporary rail parklet installation when N. Santa Cruz Avenue remained closed for a short period of time with no attractions or vendors. Many residents enjoyed the opportunity of simply having more space to spread out, stroll, and experience downtown.

Other Town Needs

As the Council deliberates on these requests, it should consider other Town needs. In recent conversations with local non-profits, most of the residents' emergency needs for housing, food, rent, and other assistance was met with the resources provided by the Town to date and other funding sources. As the pandemic eases, it is uncertain what the future needs might be and how the Town might continue to partner with the service providers serving these needs. The Town may wish to hold back on allocating all of the remaining ERF or ARPA dollars to remain flexible to meet this uncertain future. The Council could identify and maintain a minimum balance to address these other Town needs.

CONCLUSION:

Staff is seeking Town Council's direction on the requests made by the Chamber of Commerce and other stakeholders regarding funding for events and destination marketing as follows:

- What principles would the Council like to use to evaluate and consider these and potential future requests?

CONCLUSION (continued):

- To what extent should these requests go through the Town's annual community grant process? Would the Town Council wish to dedicate additional funding to the Community Grant process, specifically to support safe and Health Order compliant events that encourage economic and community vitality or other recovery initiatives? This option would enable other organizations to compete for funds for their events.
- Would the Town Council like to allocate funds beyond the existing Chamber of Commerce contract for services for destination marketing? If so, what is the scope of the destination marketing being directed, how much funds shall be allocated, and from which funding source?
- Would the Town Council like to dedicate funding to support special events coordinated by the Chamber of Commerce? If so, what is the scope of the events being supported, how much shall be allocated and from which funding source? ERF or other Town resources may be discussed; however, ARPA funds do not qualify for this expenditure.
- Does the Town Council support a road closure of N. Santa Cruz Avenue solely to achieve more outdoor space for visitors to stroll through and experience downtown? If yes, how often and to what extent does the Town Council wish to dedicate funding to support such closures? From which funding source shall Town resources be supported for such closures?
- Does the Town Council support a road closure of N. Santa Cruz Avenue one day a week for the duration of the summer, through Labor Day for special events? If yes, does the Town Council wish to provide parameters around the scope of the special event related to COVID, and to what extent does the Town Council wish to dedicate funding to support such closures? From which funding source shall Town resources be supported for such closures?

COORDINATION:

This report has been prepared in coordination with the Town Manager's Office and the Police, Community Development, Parks and Public Works, and Finance Departments.

FISCAL IMPACT:

The fiscal impact is dependent upon the actions taken by the Town Council. As outlined in the background of this report, \$1,873,530 has been dedicated out of the ERF, leaving \$50,532 remaining for use; and, \$3,626,898 has been dedicated out of the ARPA funds leaving \$2,061,732 available for specific economic recovery initiatives and pandemic related deficits.

PAGE 9 OF 9

SUBJECT: Consider Funding Requests and Other Town Needs

DATE: April 29, 2021

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. State of California Blueprint for Recovery Guidelines related to Gatherings



TOMÁS J. ARAGÓN, M.D., Dr.P.H.
State Public Health Officer & Director

State of California—Health and Human
Services Agency
**California Department of
Public Health**



GAVIN NEWSOM
Governor

April 15, 2021

TO: All Californians

SUBJECT: Updated Guidance for Gatherings

Summary

This guidance is effective April 15, 2021, and provides an updated plan for Californians to gather outside their households and replaces all prior gatherings guidance. It applies to private gatherings. All other gatherings not covered by existing sector guidance are prohibited.[1]

Gatherings are defined as social situations that bring together people from different households at the same time in a single space or place. As defined by this guidance, they do not require a pre-ordained guest list, and the guidance assumes that not all guests are fully vaccinated.

- For guidance relating to events with a defined guest list, see Guidance for Private Events.
- For guidance relating to fully vaccinated persons, see CDPH Guidance on COVID-19 Public Health Recommendations for Fully Vaccinated People

Context

COVID-19 continues to pose a severe risk to communities and requires all people in California to follow necessary precautions until enough people in the state have been vaccinated or achieve immunity. Until then, the safest way to gather continues to be limiting mixing among different households and, if gathering occurs, spending time outdoors. When people from different households mix, the risk of COVID-19 transmission increases, including highly contagious variants that have been identified in California.

In general, the more people from different households a person interacts with at a gathering, the closer the physical interaction is, and the longer the interaction lasts, the higher the risk that a person with a COVID-19 infection, symptomatic or asymptomatic, may spread it to others. Public health studies have also shown that the risk of transmission is increased in indoor spaces, particularly in the absence of appropriate ventilation.[2] Unlike indoor spaces, wind and air in outdoor spaces can help reduce spread of the virus from one person to another.

All gatherings pose a higher risk of transmission and spread of COVID-19 when people mix from different households and communities. The likelihood of transmission and spread increases with laughing, singing, loud talking and difficulty maintaining physical distance. Limiting attendance at gatherings is a way to reduce the risk of spread as it lowers the number of different people who are interacting.

Fully Vaccinated People

On April 2, 2021, the Centers for Disease Control and Prevention (CDC) updated its Interim Public Health Recommendations for Fully Vaccinated People. Vaccines are effective at protecting people from getting sick, and as such, people who have been fully vaccinated can begin doing certain activities that previously posed greater risk. However, fully vaccinated people should continue to maintain and follow all necessary precautions in this Guidance, including wearing of masks, maintaining physical distance and avoiding crowds indoors, especially when mixing with others who are not fully vaccinated. Refer to CDPH Guidance for Fully Vaccinated Persons for definitions and other recommendations, including what to do when experiencing COVID-19 symptoms.

Recommendations & Mandatory Requirements for All Gatherings

All persons planning to host or participate in a gathering, as defined above, must comply with the requirements identified below and are strongly encouraged to follow the recommendations as well. Activities protected by the First Amendment may proceed under this guidance notwithstanding any guidance, orders, or directives to the contrary.

Keep the households that you interact with stable over time. By spending time with the same people, risk of transmission is reduced. Participating in multiple gatherings with different households or groups is strongly discouraged.

Local health jurisdictions may be more restrictive than this guidance. Refer to your local guidance for what is allowed in your area.

Across all Tiers:

- Refer to CDPH Guidance for Fully Vaccinated Persons for restrictions on gatherings involving fully vaccinated persons.
- For gatherings that may involve performances, refer to CDPH Guidance for Indoor and Outdoor Live Events and Performances.

1. Attendance

Attendance at all gatherings shall be limited according to the County Risk Level. For the most updated information on county status, visit Blueprint for a Safer Economy.

Please note that local health departments can be more restrictive.

Purple – Widespread – Tier 1:

- Only outdoor gatherings are permitted. The gathering shall be limited to no more than 3 households. This includes everyone present, including host(s) and guests.

Red – Substantial – Tier 2:

- Outdoor gatherings:

- Maximum of 25 people
- Indoor gatherings are strongly discouraged
 - Maximum 25% capacity where capacity limits exist and up to 3 households or 10 people.

Orange – Moderate – Tier 3:

- Outdoor gatherings:
 - Maximum of 50 people
- Indoor gatherings are strongly discouraged
 - Maximum 25% capacity where capacity limits exist or 25 people, whichever is fewer.

Yellow – Minimal – Tier 4 :

- Outdoor gatherings:
 - Maximum of 100 people
- Indoor gatherings are strongly discouraged
 - Maximum 50% capacity where capacity limits exist or 50 people, whichever is fewer.

2. Location:

- Gatherings that occur outdoors are significantly safer than indoor gatherings. All gatherings must be held outside in the Purple Tier. Indoor gatherings are strongly discouraged but may occur according to the limits defined above.
- If gathering indoors, increase fresh air circulation by opening windows or doors, as much as possible, especially in the rooms where people are gathering.
- If multiple gatherings are occurring, mixing between groups gathering is not allowed. Additionally, multiple unique gatherings cannot be jointly organized or coordinated to occur in the same public park or other outdoor space at the same time, as this would constitute a gathering exceeding the permitted limits.

3. Food and Drink

- Because a mask must be lowered or removed, eating or drinking increases the risk of COVID-19 spread, especially when gatherings include people that are not fully vaccinated.
- Food and drink should be limited to outdoors.
- Food and drink indoors is strongly discouraged.
- While face coverings are removed for eating or drinking, individuals must stay at least 6 feet away from everyone outside their own household, and put their face covering back on as soon as they are done with the activity.
- Food and beverages should be served by a person who washes or sanitizes their hands frequently, and who must wear a face covering.
- Remind all persons to sanitize hands before eating or drinking, and after touching shared items if shared items are unavoidable.

- When persons are not able to consume food and drink outdoors, windows and doors should remain open as much as possible to provide good air circulation and ventilation

4. Don't Attend Gatherings If You Feel Sick

- Anyone with any COVID-19-like symptoms (fever, cough, shortness of breath, chills, night sweats, sore throat, nausea, vomiting, diarrhea, tiredness, muscle or body aches, headaches, confusion, or loss of sense of taste/smell), must stay home and avoid contact with anyone outside their household.
- Anyone who develops COVID-19 within 48 hours after attending a gathering should notify the organizer of the gathering and/or other attendees as soon as possible.

5. Individuals in a High-Risk Group are Discouraged from Attending any Gatherings

- People at higher risk of severe illness or death from COVID-19 (such as older adults and people with chronic medical conditions) are strongly urged not to attend any gatherings, especially indoor gatherings.
- If higher-risk individuals do attend any gatherings, they should do the following to decrease the risk for exposure:
 - Spend as much time outside, or near outside air flow such as open windows or doors, as possible.
 - Wear a respirator or surgical mask, or a cloth mask with multiple layers, and minimize any time at the event with the mask off.
 - Remain at least six feet, or ideally even farther away, from others outside their household as much as possible, especially when people are eating or drinking without face coverings.
 - Spend a shorter time at the gathering than others to reduce potential exposure.

6. Practice Physical Distancing and Hand Hygiene at Gatherings

- For any gatherings permitted under this guidance that include households with people who are not fully vaccinated, the space must be large enough so that everyone at a gathering can maintain at least 6-feet of physical distance from others (not including their own household) at all times.
- Seating must provide at least 6 feet of distance (in all directions—front-to-back and side-to-side) between different households, if not all households are fully vaccinated.
- Everyone at a gathering should frequently wash their hands with soap and water, or use hand sanitizer if soap and water are not available.
- Shared items should be minimized during a gathering.

7. Wear a Face Covering to Keep COVID-19 from Spreading

- When gathering, **face coverings must be worn** in accordance with the CDPH Guidance on the Use of Face Coverings, unless an exemption is applicable.
- People at gatherings are advised to limit removal of their face coverings to when they are actively eating or drinking.

- Face coverings can also be removed to meet urgent medical needs (for example, to use an asthma inhaler, take medication, or if feeling light-headed).

8. Keep it short

- Gatherings should be two hours or less. The longer the duration, the risk of transmission increases.

9. Singing, Chanting, Shouting, Cheering and Similar Activities Are Strongly Discouraged

- Singing, chanting, shouting, cheering, physical exertion, and similar activities significantly increase the risk of COVID-19 transmission because these activities increase the release of respiratory droplets and fine aerosols into the air. Because of this, singing, chanting, shouting, cheering, and similar activities are strongly discouraged in all settings, but if they occur, the following rules and recommendations apply:
 - All people who are singing, chanting, shouting, cheering, or engaging in similar activities should wear a face covering at all times while engaging in those activities, including anyone who is leading a song, chant, or cheer. Because these activities pose a very high risk of COVID-19 transmission, face coverings are essential to reduce the spread of respiratory droplets and fine aerosols;
 - People who are singing, shouting, chanting, cheering, or exercising are strongly encouraged to maintain physical distancing of more than 6 feet from others to further reduce risk.
 - People who are singing or chanting are strongly encouraged to do so quietly (at or below the volume of a normal speaking voice).
 - Playing of wind instruments (any instrument played by the mouth, such as a trumpet or clarinet) is strongly discouraged, and if played should use protective or tightly woven cloth barriers on the instrument bells or at the end of the instrument to protect from spread of condensation droplets. If music is played, it is recommended that the volume be quiet enough that attendees can speak in a normal voice without shouting.

[1] The limits on religious gatherings enjoined by the United States Supreme Court in *Tandon v. Newsom*, 593 U.S. ____ (2021), will not be enforced.

[2] See, e.g., Hiroshi Nishiura, et al., Closed environments facilitate secondary transmission of coronavirus disease 2019 (COVID-19), available at <https://www.medrxiv.org/content/10.1101/2020.02.28.20029272v2.full.pdf>, Hu Qian, et al., "Indoor transmission of SARS-CoV-2" [pre-print] published in medRxiv on April 4, 2020, available at <https://www.medrxiv.org/content/10.1101/2020.04.04.20053058v1>.

Originally published November 13, 2020

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 Department Website (cdph.ca.gov)





**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 14

ADDENDUM

DATE: May 3, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Consider Requests for Additional Funding for Special Events and Destination Marketing and Other Town Needs, and Direct Staff on Next Steps.

REMARKS:

This Addendum contains a corrected Expenditure Spreadsheet for Economic Recovery and ARPA Funds from page 2 of the staff report (page 240 of the full Town Council Meeting packet). There was a formula entered incorrectly in one of the cells resulting in an incorrect amount listed for the total allocated ARPA funds for FY 2020/21.

Attachments received with the Staff Report:

1. State of California Blueprint for Recovery Guidelines related to Gatherings

PREPARED BY: Monica Renn
Economic Vitality Manager

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

SUBJECT: Consider Requests for Additional Funding for Special Events and Destination Marketing and Other Town Needs, and Direct Staff on Next Steps

DATE: May 3, 2021

Expenditure Category	FY 2020/21	FY 2021/22	
Economic Recovery Fund (ERF)			
Economic & Community Vitality			
Temporary Krail Parklets: Krail install/deinstall and rental	\$171,528	\$50,000	
CUP- 50% fee subsidy	\$50,000		
Temporary Krail Parklets: platform 50% grant match	\$25,000		
Holiday Light Display	\$185,000		
BL waiver for Personal Service	\$40,000		
Semi-Permanent Parklet: construction grants, architecture & engineering subsidy, and application/permit fee subsidy	\$100,000	\$911,500	
Non-Profit Assistance			
Rent Forgiveness	\$338,002		
Public Health			
Mask Signage	\$2,500		
Total allocated ERF	\$912,030	\$961,500	ERF Totals
Starting ERF			\$1,972,394
Total allocated funds			\$1,873,530
Prior Expenditures			\$48,332
Total remaining/unallocated ERF			\$50,532
American Rescue Plan Act (ARPA)			
Lost Revenue Replacement	\$1,362,910	\$1,562,536	
Economic & Community Vitality			
Semi-Permanent Parklet: construction grants, architecture & engineering subsidy, and application/permit fee subsidy		\$250,000	
CUP- 50% fee subsidy		\$50,000	
Non-Profit Assistance			
Rent Forgiveness		\$341,452	
Direct Grants	\$60,000		
Total allocated ARPA Funds	\$1,422,910	\$2,203,988	ARPA Totals
Starting ARPA Funds	\$2,844,315	\$2,844,315	\$5,688,630
Total allocated ARPA Funds	\$1,422,910	\$2,203,988	\$3,626,898
Total Remaining	\$1,421,405	\$640,327	\$2,061,732



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/04/2021

ITEM NO: 14

DESK ITEM

DATE: May 3, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Consider Requests for Additional Funding for Special Events and Destination Marketing and Other Town Needs, and Direct Staff on Next Steps.

REMARKS:

Attachment 2 contains public comment from the Chamber of Commerce received after 11:00 a.m. on Monday, May 3, 2021 and before 11:00 a.m. on Tuesday, May 4, 2021. Additionally, Attachment 3 contains the current Agreement for Services with the Chamber of Commerce for FY 2020/21. The Scope of Services provided by the Chamber of Commerce in their public comment in Attachment 2 references a prior year's Scope of Services.

Attachments received with the Staff Report:

1. State of California Blueprint for Recovery Guidelines related to Gatherings

Attachments received with this Desk Item:

2. Public Comment received from the Chamber of Commerce after 11:00 a.m. on May 3, 2021 and before 11:00 a.m. on May 4, 2021
3. Agreement for Services with the Chamber of Commerce for FY 2020/21

PREPARED BY: Monica Renn
Economic Vitality Manager

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



Date: May 3, 2021
To: Los Gatos Town Mayor and Council
From: Los Gatos Chamber of Commerce
Subject: Explanation of Chamber & Visitor Information Center

The Town's Visitor and Information Center – Explanation

- The Town's Visitor and Information Center and the Chamber of Commerce are located in the same office at 10 Station Way.
- The Chamber of Commerce oversees and manages the Visitor and Information Center. It is fairly common for Chamber of Commerces and Visitor Information Centers to operate this way. Some towns host their own Visitor Centers, while others have two completely separate entities.
- The majority of Visitor Centers in California are funded by the TOT collected by the town or city. Typically, a percentage or an exact amount is appropriated to the Visitor Center each year to cover the expenses of all destination marketing, programs and projects and to pay for staff and property rental and maintenance costs. Los Gatos does not operate this way. Our TOT tax goes directly into our General Fund.
- The Town of Los Gatos has an agreement with the Chamber to operate the Visitor and Information Center. As of 2019, the Town gives the Chamber \$55K to cover all expenses incurred by the Visitor Center. See Exhibit A for Scope of Services and Budget.
- The Town's grant of \$55K barely covers the cost of rent, staff, public restroom, maintenance and supplies.
- 2020 -2021 was obviously different from the previous years. Because of the pandemic we became more of an information center for our own residents.
 - We were able to open safely as an essential business 5-6 days per week. In fact, we never closed. We staffed our phones from 9 a.m. to 5 p.m. everyday and were available to all people needing assistance on any business or health and wellness related issue. We also maintain the one public restroom in Town.
 - As we head into post-Covid Recovery, the Visitor and Information Center staff plans to once again focus on attracting tourists to Town. Currently we are working on a few programs with our local hotels and with Visit California.
- The Town's Visitor and Information Center is responsible for all destination marketing to attract tourists to town. Over the past 2 years we have utilized the Experience Los Gatos media accounts to enhance Destination Marketig.
- We have recommended more funding specifically for Destination Marketing for the last few years, however we have never received funding for this endeavor. The Chamber fills in where it can and generously utilizes a portion of membership and special event revenue for destination marketing efforts.

EXHIBIT A

LOS GATOS VISITOR INFORMATION CENTER: \$55,000

All services rendered as 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 (Chamber) as a part of the operations of the Los Gatos Information Center:

- Offer Los Gatos Information Center services from the Chamber of Commerce offices 40 hours a week, 52 weeks a year except for scheduled holiday closures.
- Respond to Los Gatos visitor and resident inquiries regarding shopping, dining, lodging, events, relocation, general commerce, and other related visitor information topics.
- Coordinate and distribute various Los Gatos marketing materials such as maps, guides, and wayfinding collateral that is open to and inclusive of all applicable businesses and business districts, and not exclusive to Chamber of Commerce membership. Marketing materials are not required to be printed and may be formatted as the market demands including social media, online, electronic notifications, email, etc.
- Assist with the assembly and distribution of Los Gatos relocation packets in coordination with the Town.
- Promote Town events in Chamber marketing materials including email notifications and newsletters.
- Maintain a dedicated “Experience Los Gatos” webpage within the Chamber’s website in which visitors to the Town’s website will be redirected and be able to access information relating to Los Gatos merchants, restaurants, lodging, entertainment, and parking guides, inclusive of both Chamber and non-Chamber member businesses.
- Allow Town meetings with the business community to be conducted at the Chamber offices during mutually agreed upon times and days.
- Provide an annual reports in May that accounts for services rendered under this agreement.
- Invoice the Town for payment of services as described in the attached agreement.

Updated Budget as of May 3, 2021:

Rent (1/3 of rent)	19,200
Staff (40 per week at \$13.00 min. wage)	27,040
Mailing visitor info	500
Dining Guide	1,000
Lodging & Event Guide	1,000
Discover Lost Gatos	500
Summer Event Guide	1,000
Town Maps	2,000
Banner Hanging	6,000
Holiday Decorations	4,000
Restroom maintenance, supplies	1,200
TOTAL	\$61,200
Social Media Marketing- 1 year (unfunded, but the Chamber paid from its own budget)	\$36,000



Date: May 3, 2021

To: Los Gatos Mayor and Town Council

From: Los Gatos Chamber of Commerce

Subject: Consideration of Chamber's Request that a portion of the ARPA Funds immediately be used for Funding for Special Events and Destination Marketing and Why an Emergency Destination Marketing Plan is important and why Special Events this Summer are critical to the survival of our entire business community.

Introduction: Outlined below are our positions on our requests for funds for Special Events and Destination Marketing, in response to the issues raised by Town Staff in their staff report for Item #14 on the scheduled May 4 Agenda. We will attempt to explain why we believe additional funding for Special Events and Destination Marketing is more essential than ever before. Our local economy is fragile right now. The ARPA funding is intended to provide immediate funding for recovery such as this. It is the Town Council's responsibility to allocate and use those funds in accordance with the directives within the ARPA.

The staff report raised a number of other issues as well, including the Town's Annual Agreement with the Chamber of Commerce to operate the Town Visitor and Information Center. Understanding that there are three new Council members, as well as the five newly appointed finance commissioners, we will be providing an outline of that relationship, the associated scope of services, and the actual agreement for reference under separate cover.

Additionally, the Chamber will submit a statement outlining our overall position on the sources and uses of the ARPA Funds, other recovery funds the Town has received, and the Town Budget again under separate cover.

Emergency Destination Marketing

- The Town's Visitor and Information Center is responsible for all destination marketing to attract tourists to Town.
- The Town's grant of \$55K barely covers the cost of rent, staff, public restroom, maintenance and supplies.
- A robust Destination Marketing program would require funds above and beyond that \$55K.
- We have recommended more funding specifically for Destination Marketing for the last 4 years. We believe there is a huge need, as well as a tremendous benefit. However, we have never received funding for this endeavor.
- The Chamber fills in where it can and generously utilizes a portion of membership and special event revenue for destination marketing efforts. For example, the Chamber solely funded the Experience Los Gatos social media platforms for more than 2 years. In January we had to put that effort on hold as there was not enough funding available.
- The Town typically collects approx. \$2.7 million in TOT revenue.
- Our 20/21 Budget show a loss of almost \$2million and estimates that the 21/22 budget will be down almost that much again.

- Business Travel has declined significantly and according to industry experts is not expected to rebound until Fall of 2022.
- Our local hoteliers believe that if we **invest** some of the ARPA funding into a Destination Marketing plan focused more on leisure travel, we can make up for some of that loss. This investment would include funding for:

- Website/app
- Search engine investment
- Advertising dollars
- Staff time
- Relaunch of the Experience Los Gatos social media platforms
- Brand consulting

- The Chamber is in the best position to take on this responsibility. We already house and manage the Visitor and Information Center and we already work with all of the stakeholders – the hotels, the restaurants, and the business community at large, both members and non-members.
- With an immediate use of the ARPA money, the Chamber can quickly implement an Emergency Destination Marketing Campaign.
- This effort alone will bolster the economy but is more than that. We will be building the foundation on which we can market and brand Los Gatos and create an identity that will last for the future. The Chamber and Town Staff have discussed a destination marketing effort at length on several occasions, however the plans have never come to fruition despite numerous attempts. The result has always been a lack of funds or labor adequate to take on the task.
- The Town’s Economic Development department has other priorities and does not have the capability nor the bandwidth to develop a worthwhile marketing program. The Town Staff has a giant list of priorities to get to that take precedent over a destination marketing program, whereas the Chamber of Commerce identifies this effort as a top priority and can manage the effort with ease.
- Because of the lack of success, the Chamber attempted to form a PBID (Property Business Improvement District), which if successful would have garnered enough money to develop its own destination marketing plan. Due to the Pandemic, plans to formalize a PBID were put on hold.
- **The Chamber believes \$150K set aside for destination marketing will jumpstart this Recovery Effort.**

SUMMER 2021 SPECIAL EVENTS

Please review the attached budget for the proposed special events for summer and fall of 2021. We believe that the events we are suggesting do not pose any threat to the safety and well-being of our Town’s residents and visitors.

- The CDC, the State, and thus far the County, have stated publicly that we are moving in the right direction and that outdoor gatherings are safe. California has the lowest COVID-19 rate in the entire country. On June 15th the governor’s office plans to lift all restrictions.

- While the Staff refers to Council’s decision made in February about marketing and preparing to have events for our own residents, 4 months have passed. The Summer is almost here and increased foot traffic is imperative if our business community is going to survive.
- After polling many residents in Town, The Thursday Promenade with a North Santa Cruz Ave. closure is by far the best idea to get people back into the downtown. Our small businesses and restaurants are relying on us to create a reason for people to come. Our residents alone cannot sustain our fragile economy’s infrastructure.
- By closing North Santa Cruz Avenue, people will be able to safely distance.
- We will modify programming to align with the County guidance as it continues to relax.
- We hand-delivered letters to all University Ave. residents and only two have said they did not support this economic recovery effort while many more were in support.
- Closing North Santa Cruz Ave. on Thursday nights does not require policing.
- The Chamber will facilitate the closing of N. Santa Cruz with an approved traffic control company, thus freeing the Town from the burden. The logistics of the closure will become easier with each passing week.
- All merchant and restaurants with whom we have spoken are in favor of this proposal.
- We are asking Council to waive the Special Event permit 60-day minimum lead time between applications and events, in order to give us the flexibility to implement plans as soon as state and county guidelines allow, which as we know is a continually moving target.

Please note – The Chamber is not asking for funds for our regular Chamber events, such as the Wine Walk or Carriage Rides which we will still host. These are community events, the Chamber will not make any money. In addition, the Chamber is willing to organize and staff these events, without any reimbursement.

Contrary to the Town staff, we believe ARPA funds can be used for events as they are a vital component in drawing people back into these small towns. People will stay, shop, and dine. This spending will directly result in more sales tax revenue and TOT revenue. This investment will provide immediate economic aid for our business community. This is exactly what the ARPA funds are meant to do.

Lastly, events are the one tried and true way to open our doors and show that we are a diverse, welcoming, and inclusive community and that we celebrate all cultures and all people.

In Conclusion, on behalf of the Los Gatos Business Community, we encourage the Council to:

1. Invest at least \$150K of the ARPA Funds into Emergency Destination Marketing plan managed by the Chamber of Commerce.
2. Make a commitment to the Chamber to subsidize the cost of proposed summer 2021 special events in the amount of \$250K.
3. Waive the 60-day special event application rule – understanding that we are coming out of a pandemic and doing what we can when we can.
4. Recognize the need for “safe” special events this summer and support our proposal in closing North Santa Cruz at least on Thursday nights throughout the summer.

While we understand that ARPA Funding can be used to balance the Town’s budget and backfill line-items where we may have experience revenue shortfalls, The Chamber advocates that the Town use other revenue sources for that balancing and use the ARPA funds for the two ideas proposed above.



The remainder of the funds should be then set aside for necessary infrastructure projects. When we look back in 5-10 years, let's be confident in knowing that we did our best in using the ARPA funds wisely. The Chamber will be submitting another communication on ARPA funds under separate cover.

Upcoming events to promote Economic Recovery and DEI objectives

Thursday Promenades - N. Santa Cruz Avenue			
	cost	14 times	total
bands	\$ 2,000.00	14	\$ 28,000.00
Sound	\$ 1,540.00	14	\$ 21,560.00
traffic control company - for street closure	\$ 3,000.00	14	\$ 42,000.00
Chamber to put up no parking signs & maintain all summer	\$ 500.00	1	\$ 500.00
special event permit fee	\$ 227.00	1	\$ 227.00
banner permit fee	\$ 112.86	4	\$ 451.44
Portapotties	\$ 15,000.00	1	\$ 15,000.00
Street Cleaning & Garbage pickup	\$14,000	1	\$ 14,000.00
Neighbor Notification	\$500	1	\$ 500.00
Publicity	\$750	1	\$ 750.00
Stage/truck	\$500	14	\$ 7,000.00
Extra Chamber event staffing	\$300	14	\$ 4,200.00
Extra entertainment/ decoration on July 4th	\$2,000	1	\$ 2,000.00
Picnic tables	\$250	10	\$ 2,500.00
			\$ 138,688.44
Picnic in the Parks			
Music/ Performances	\$ 750.00	5	\$ 3,750.00
Additional PPW costs for clean-up	\$ 1,000.00	5	\$ 5,000.00
Portapotties (1 stall, 1 ADA stall, 1 handwashing station)	\$ 400.00	5	\$ 2,000.00
Neighbor notification	\$ 200.00		\$ 200.00
			\$ 10,950.00
Town-wide Celebration- September 4			
House Rockers/Sound/Stage	\$ 12,000.00		\$ 12,000.00
special event permit fee	\$ 227.00		\$ 227.00
banner permit fee	\$ 112.86		\$ 112.86
Portapotties	\$ 1,000.00		\$ 1,000.00
Neighbor Notification	\$250		\$250
Publicity	\$750		\$750
			\$ 14,339.86



Street Pole Banners			
PPW cost for putting banners up (April 2021)	\$ 4,000.00		
New banners - Spring 2022	\$ 6,500.00		
PPW cost for putting banners up (April 2022)	\$ 4,000.00		
			\$ 14,500.00
Cultural Event -Spring 2022 (Town Plaza)			
Music (includes sound)	\$ 3,000.00		\$ 3,000.00
Cultural performances	\$ 2,000.00		\$ 2,000.00
Town permits & fees	\$ 500.00		\$ 500.00
Stage	\$ 1,000.00		\$ 1,000.00
Portapotties (2 stalls, 1 ADA stall, 1 handwashing station)	\$ 600.00		\$ 600.00
Publicity	\$ 1,000.00		\$ 1,000.00
Neighbor notification	\$ 300.00		\$ 300.00
	\$ 8,400.00		\$ 8,400.00
Los Gatos in Lights - Holiday Decorations			
More Pole Décor	\$ 20,000.00		\$ 20,000.00
Installation - additional help for PPW	\$ 20,000.00		\$ 20,000.00
One more large light sculpture	\$ 25,000.00		\$ 25,000.00
	\$ 65,000.00		\$ 65,000.00
GRAND TOTAL			\$ 251,878.30

AGREEMENT FOR SUBSIDY BY THE TOWN OF LOS GATOS TO
THE LOS GATOS CHAMBER OF COMMERCE FOR FISCAL YEAR 2020/2021

THIS AGREEMENT is made and entered into on July 1, 2020, 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 and Chamber have executed an Agreement since Fiscal Year 2001, and;

WHEREAS, Town appropriated funds in its Fiscal Year 2020/2021 Budget for allocation of funds to Chamber for this Fiscal Year to support the Chamber financially to provide visitor information and attraction services, and;

WHEREAS, Chamber warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to perform visitor information and attraction services, and;

WHEREAS, Chamber acknowledges Town has relied upon these warranties to retain Chamber, and;

WHEREAS, Chamber represents and affirms that it is willing to perform the desired work pursuant to this Agreement.

II. AGREEMENTS

- 1.1 Scope of Services. Chamber shall provide Visitor Information and Attraction Services in appropriate formats including web, social media, print maps and via in person or phone conversations that promote the Town of Los Gatos as a premier visitor’s destination. All services rendered under this agreement shall promote all businesses located within Town boundaries, regardless of their Chamber membership.
- 1.2 Term and Time of Performance. This contract will remain in effect from July 1, 2020, to June 30, 2021.
- 1.3 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.

- 1.4 Sole Responsibility. Chamber shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 1.5 Information/Report Handling. All documents furnished to Chamber by the Town and all reports and supportive data prepared by the Chamber under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Chamber'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.
- 1.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$55,000** for Town Visitor's Information Center, inclusive of all costs.
- 1.7 Subsidy Allocation. Allocation of the subsidy funds shall be monthly by invoice.

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

- 1.8 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. Chamber shall make these records available to authorized personnel of the Town at the Chamber's offices during business hours upon written request of the Town.
- 1.0 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.
- 2.10- 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.

- 1.11 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.
- 1.12 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.
- 1.13 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

- 2.1 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.

2.2 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.

2.3 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.

2.4 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

3.1 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.

3.2 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.

3.3 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.

3.4 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.

3.5 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.

3.6 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.

