

**TOWN OF LOS GATOS**  
**COUNCIL MEETING AGENDA \*AMENDED**  
**APRIL 16, 2024**  
**110 EAST MAIN STREET AND TELECONFERENCE**  
**TOWN COUNCIL CHAMBERS**  
**7:00 PM**

*Mary Badame, Mayor*  
*Matthew Hudes, Vice Mayor*  
*Rob Moore, Council Member*  
*Rob Rennie, Council Member*  
*Maria Ristow, Council Member*

**IMPORTANT NOTICE**

This is a hybrid meeting and will be held in-person at the Town Council Chambers at 110 E. Main Street and virtually through Zoom Webinar (log-in information provided below). Members of the public may provide public comments for agenda items in-person or virtually through the Zoom Webinar by following the instructions listed below. The live stream of the meeting may be viewed on television and/or online at [www.LosGatosCA.gov/TownYouTube](http://www.LosGatosCA.gov/TownYouTube).

This meeting will be teleconferenced pursuant to Government Code Section 54953(b)(3). Council Member Maria Ristow will be participating from a teleconference location at SACO Bristol – West India House, 2-4 Welsh Back, Bristol ENGLAND BS1-4SS. The teleconference location shall be accessible to the public and the agenda will be posted at the teleconference location 72 hours before the meeting.

**HOW TO PARTICIPATE**

The public is welcome to provide oral comments in real-time during the meeting in three ways:  
**Zoom Webinar (Online):** Join from a PC, Mac, iPad, iPhone or Android device. Please use this URL to join: [https://losgatosca.gov.zoom.us/j/82232739012?pwd=1zlbRu029\\_33oyBb9l3AyTZQ7D2MEQ.kN8FbuOkINsmz-Ji](https://losgatosca.gov.zoom.us/j/82232739012?pwd=1zlbRu029_33oyBb9l3AyTZQ7D2MEQ.kN8FbuOkINsmz-Ji)  
Passcode: 793054 You can also type in 822 3273 9012 in the “Join a Meeting” page on the Zoom website at and use passcode 793054.

When the Mayor announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press \*9 on your telephone keypad to raise your hand.

**Telephone:** Please dial (877) 336-1839 for US Toll-free or (636) 651-0008 for US Toll. (Conference code: 1052180)

If you are participating by calling in, press #2 on your telephone keypad to raise your hand.

**In-Person:** Please complete a “speaker’s card” located on the back of the chamber benches and return it to the Town Clerk before the meeting or when the Mayor announces the item for which you wish to speak.

**NOTES:** (1) Comments will be limited to three (3) minutes or less at the Mayor’s discretion.  
(2) If you are unable to participate in real-time, you may email to [Clerk@losgatosca.gov](mailto:Clerk@losgatosca.gov) the subject line “Public Comment Item #\_\_” (insert the item number relevant to your comment). All comments received will become part of the record.

(3) Deadlines to submit written comments are:

11:00 a.m. the Thursday before the Council meeting for inclusion in the agenda packet.

11:00 a.m. the Monday before the Council meeting for inclusion in an addendum.

11:00 a.m. on the day of the Council meeting for inclusion in a desk item.

(4) Persons wishing to make an audio/visual presentation must submit the presentation electronically to [Clerk@losgatosca.gov](mailto:Clerk@losgatosca.gov) no later than 3:00 p.m. on the day of the Council meeting.

## CALL MEETING TO ORDER

## ROLL CALL

**APPROVE REMOTE PARTICIPATION** *(This item is listed on the agenda in the event there is an emergency circumstance requiring a Council Member to participate remotely under AB 2449 (Government Code 54953)).*

## PLEDGE OF ALLEGIANCE

## PRESENTATIONS

- i. Arbor Day Proclamation
- ii. Keep Los Gatos Beautiful Month Proclamation
- iii. National Public Safety Telecommunications Week

**CONSENT ITEMS** *(Items appearing on the Consent Items are considered routine Town business and may be approved by one motion. Any member of the Council may request to have an item removed from the Consent Items for comment and action. Members of the public may provide input on any or multiple Consent Item(s) when the Mayor asks for public comments on the Consent Items. If you wish to comment, please follow the Participation Instructions contained on Page 1 of this agenda. If an item is removed, the Mayor has the sole discretion to determine when the item will be heard.)*

1. Approve Minutes of the April 2, 2024 Closed Session Town Council Meeting.
2. Approve Minutes of the April 2, 2024 Town Council Meeting.
3. Approve Minutes of the April 8, 2024 Special Town Council Meeting.
4. Authorize the Town Manager to Execute a First Amendment to the Agreement for Services with Brightview Tree Care Services, Inc. to Increase Compensation for Fiscal Year 2023/24 in an Amount of \$100,000 for a Total Annual Amount Not to Exceed \$300,000 and a Total Agreement Amount Not to Exceed \$1,100,000; and Authorize a Revenue and Expenditure Budget Adjustment in the Amount of \$100,000 from the Available Tree Replacement Deposit Account.
5. Authorize a Budget Transfer of Previously Allocated Measure B Funds in the Amount of \$1,734,250 from the Winchester Boulevard Complete Streets Project (CIP No. 813-0238) to the Kennedy Road Sidewalk – Los Gatos Boulevard Project (CIP No. 813-0241).
6. Receive the Monthly Financial and Investment Report for February 2024.
7. Adopt a Resolution Describing Improvements and Directing the Preparation of the Town Engineer’s Report for Fiscal Year 2024/25 for Landscape and Lighting Assessment Districts No. 1 and 2.
8. Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$15,615.98 to Recognize Excess Insurance Reimbursement for Damage to Howes Play Lot Structure.
9. Approve the Following Action for the Shannon Road Pedestrian and Bikeway Improvement Project (CIP No. 813-0218):
  - a. Authorize the Town Manager to execute Program Supplement No. F0104 to the Administering Agency-State Agreement for Federal-Aid Project No. 04-5067F15 in the Amount of \$940,100 from the State of California Department of Transportation (Caltrans).
10. Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for Construction of the Corporation Yard Building Replacement Completed by S&H Construction, Inc., and Authorize the Town Clerk to File for Recordation.



- [11.](#) Approve and Authorize the Town Manager to Execute a Memorandum of Understanding Between the Town of Los Gatos and the Police Officers' Association, and Authorize an Expenditure Budget Adjustment in the Amount of \$154,376 from the Available General Fund Capital/Special Projects Reserve.
- [12.](#) Adopt a Resolution Rescinding the Land Use and Community Design Elements of the 2040 General Plan.
- [13.](#) Adopt a Resolution Rescinding Resolution Nos. 2024-003, 2024-004, and 2024-005 Regarding the Transportation Impact Fee.
- [14.](#) Authorize the Town Manager to Execute the First Amendment to the Contract with DKS Associates to Modify the Scope of Services and Increase Compensation from \$160,505 to \$166,647.

**VERBAL COMMUNICATIONS** *(Members of the public are welcome to address the Town Council on any matter that is not listed on the agenda and is within the subject matter jurisdiction of the Town Council. The law generally prohibits the Town Council from discussing or taking action on such items. However, the Council may instruct staff accordingly. To ensure all agenda items are heard, this portion of the agenda is limited to 30 minutes. 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. Each speaker is limited to no more than three (3) minutes or such time as authorized by the Mayor.)*

**PUBLIC HEARINGS** *(Applicants/Appellants and their representatives may be allotted up to a total of five minutes maximum for opening statements. Members of the public may be allotted up to three minutes to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of three minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.)*

- [15.](#) Open the Public Hearing for an Appeal of a Planning Commission Decision to Deny a Request to Eliminate a Housing Unit from the Town's Housing Inventory on Property Zoned R-1D, Located at **501 Monterey Avenue**, and Continue the Matter to May 7, 2024. APN 410-15-052. Categorically Exempt Pursuant to CEQA Guidelines Section 15301: Existing Facilities. Architecture and Site Application S-23-038. Property Owner/Applicant/Appellant: Katrina and Carlos Azucena. Project Planner: Sean Mullin

**OTHER BUSINESS** *(Up to three minutes may be allotted to each speaker on any of the following items.)*

- [16.](#) Establish a Town Council Policy Governing Town Board, Commission, and Committee Budgets.
- [17.](#) Discuss Future Adoption Development Agreement Procedures and Provide Direction to Staff.
- [18.](#) Adopt a Resolution, Based on Planning Commission Recommendations, Modifying the Height Pole and Netting Policy for Additions and New Construction. The Proposed Modifications to Town Policy are Not Considered a Project Under the California Environmental Quality Act. Project Location: Town Wide. Applicant: Town of Los Gatos.
- [19.](#) Discuss and Provide Direction Regarding the Finance Commission Recommendation to Issue a Request for Qualification (RFQ) for the Preparation of the Annual Comprehensive Financial Report (ACFR).

20. Authorize the Town Manager to Negotiate an Animal Services Agreement between the Town of Los Gatos and the Silicon Valley Animal Control Authority (SVACA), and Direct Staff to Bring Back an Agreement for the Town to Become a Member of the SVACA.

## **COUNCIL / MANAGER MATTERS**

### **CLOSED SESSION REPORT**

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

**ADA NOTICE** In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk's Office at (408) 354- 6834. Notification at least two (2) business days prior to the meeting date will enable the Town to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR §35.102-35.104]

**\*The title of item #14 has been amended.**



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 1.

MEETING DATE: 04/16/2024

**DRAFT  
Minutes of the Town Council Special Meeting – Closed Session  
Tuesday, April 2, 2024**

The Town Council of the Town of Los Gatos conducted a Special Meeting in-person and utilizing teleconferencing means on Tuesday, April 2, 2024, at 5:45 p.m. to hold a Closed Session to discuss anticipated litigation.

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

**ROLL CALL**

Present: Mayor Mary Badame, Vice Mayor Matthew Hudes, Council Member Rob Moore, Council Member Rob Rennie, and Council Member Maria Ristow.

Absent: None

**VERBAL COMMUNICATIONS (ONLY ON ITEMS ON THE AGENDA)**

None.

**THE TOWN MOVED TO CLOSED SESSION ON THE FOLLOWING ITEM:**

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to subdivision (d) of Government Code Section 54956.9: 1 case (1/16/24 Desk Item with email regarding adequacy of transportation impact fee nexus study).

Also attended:

Nicolle Burnham, Parks and Public Works Director  
Rick Jarvis, Esq., Jarvis Fay  
Erin Vaca, DKS Consulting  
Kuda Wekwete, David Taussig and Associates.

The Town Council reconvened in open session. The Town Attorney stated there was no reportable action.

**ADJOURNMENT**

The meeting adjourned at 6:51 p.m.

Attest:

Submitted by:

\_\_\_\_\_  
Wendy Wood, Town Clerk

\_\_\_\_\_  
Laurel Prevetti, Town Manager



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 2.

MEETING DATE: 04/16/2024

---

**DRAFT  
Minutes of the Town Council Meeting  
Tuesday, April 2, 2024**

The Town Council of the Town of Los Gatos conducted a regular meeting in-person and utilizing teleconferencing means on Tuesday, April 2, 2024, at 7:00 p.m.

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

**ROLL CALL**

Present: Mayor Mary Badame, Vice Mayor Matthew Hudes, Council Member Rob Moore, Council Member Rob Rennie, Council Member Maria Ristow.

Absent: None

**PLEDGE OF ALLEGIANCE**

Council Member Ristow led the Pledge of Allegiance. The audience was invited to participate.

**PRESENTATIONS**

- i. The Los Gatos Foundation for Older Adults to Thrive gave a presentation on the status of its work.
- ii. Mayor Badame issued a Poetry Month Proclamation and Town Poet Laureate William Ward Butler read one of his poems.

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

1. Approve Minutes of the March 15, 2024 Special Town Council Meeting.
2. Approve Minutes of the March 19, 2024 Closed Session Town Council Meeting.
3. Approve Minutes of the March 19, 2024 Special Town Council Meeting - Commissioner Interviews.
4. Approve Minutes of the March 19, 2024 Town Council Meeting.
5. Approve Minutes of the March 26, 2024 Closed Session Town Council Meeting.
6. Authorize the Town Manager to Execute an Agreement with Peckham & McKenney for Town Manager Recruitment Services in an Amount not to Exceed \$32,000.
7. Adopt an Ordinance Titled "An Ordinance of the Town Council of the Town of Los Gatos Amending the Zoning from C-1 (Neighborhood Commercial) to RD (Residential Duplex) for Properties Located at 15025, 15026, 15039, 15040, 15053, 15054, 15066, 15067, 15080, and 15081 Downing Oak Court." APNs 523-41-024, -033, -025, -032, -026, -031, -030, -027, -029, and -028. Exempt pursuant to CEQA Guidelines 15061 (b)(3): Review for Exemption. Zoning Amendment Application Z-24-002. Applicant: Town of Los Gatos. Project Planner: Sean Mullin. **ORDINANCE 2357**

SUBJECT: Draft Minutes of the Town Council Meeting of April 2, 2024

DATE: April 2, 2024

8. Adopt an Ordinance Titled “An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, ‘Zoning Regulations,’ of the Town Code Regarding Appeals from the Decision by the Planning Director, Appeals from the Decision of the Historic Preservation Committee, Assignment of Duties to the Planning Director, Assignment of Duties to the Planning Commission, Powers and Duties of Planning Commission, Powers and Duties of the Planning Director, and Powers and Duties of the Historic Preservation Committee” and Adopt a Resolution Titled “Resolution of the Town Council of the Town of Los Gatos Amending the Enabling Resolution of the Historic Preservation Committee and Rescinding Resolution 2021-043.” The Proposed Amendments to the Town Code are Not Considered a Project Under Section 15378 of the California Environmental Quality Act. Town Code Amendment Application A-24-001. Applicant: Town of Los Gatos. Project Planner: Sean Mullin. **ORDINANCE 2355**
9. Adopt an Ordinance Titled, “An Ordinance of the Town Council of the Town Los Gatos Amending Chapter 1 Article III, ‘Administrative Citations,’ Chapter 11, ‘Garbage, Refuse, and Weeds,’ and Chapter 16, ‘Noise’ of the Town Code.” **ORDINANCE 2356**
10. Modify the Town of Los Gatos Donation Opportunities FY 2023/24 List of Town Needs, Accept the Donation of Automated External Defibrillators and Outdoor SaveStation® Cabinets from the Kyle J. Taylor Foundation, and Authorize the Town Manager to Sign the Acknowledgement Form Provided by the Donor.
11. Approve a Novation Replacing Columbia Telecommunications Corporation with Imperial County Office of Education for the State Negotiated Contract for the Library’s Corporation for Educational Network Initiatives in California Broadband Connection and Servicing.
12. Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$65,000 to Recognize Receipt of State Homeland Security Grant Program (SHSGP) funds and Authorize the Town Manager to Execute the Required Agreement and Grant Documents to Receive Reimbursement Funds in Accordance with SHSGP Requirements.
13. Authorize the Town Manager to Execute a Third Amendment with HdL Companies for Business License Consulting and Reviewing Services to Review Draft Procedures for the Apportionment of Business License Taxes with Netflix Inc. Not to Exceed \$40,000 with a Total Contract Not to Exceed \$273,000.
14. Chavan & Associates Agreement:
  - a. Authorize the Town Manager to Execute a First Amendment with Chavan & Associates, LLP. for Auditing Services Adding Transportation Development Act Audit Services and Increasing the Compensation by \$15,500 for a Total Agreement Not to Exceed \$132,500; and
  - b. Authorize an Expenditure Budget Adjustment in the Amount of \$10,500 from the Available General Fund Capital/Special Projects Reserve.
15. Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Fiscal Year 2022/23 Annual Street Repair and Resurfacing Project (CIP No. 811-9901), Completed by Pavement Coatings, and Authorize the Town Clerk to File for Recordation.

SUBJECT: Draft Minutes of the Town Council Meeting of April 2, 2024

DATE: April 2, 2024

16. Reschedule to April 16, 2024, the Consideration of the Adoption of a Resolution Modifying the Height Pole and Netting Policy for Additions and New Construction. The Proposed Modifications to Town Policy are Not Considered a Project Under the California Environmental Quality Act. Project Location: Town Wide. Applicant: Town of Los Gatos.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

**MOTION: Motion by Council Member Ristow to approve consent items 1-16. Seconded by Council Member Moore.**

**VOTE: Motion passed unanimously.**

### VERBAL COMMUNICATIONS

Joesph Enz

- Commented on the status of the unhoused individuals and thanked Town Manager Prevetti for her service.

John Shepardson

- Commented on the Union School district's sale of the Mirassou Elementary School open space, stated concerns, and requested Council protect the open space.

### OTHER BUSINESS

17. Receive a Report on the Transportation Impact Fee and Provide Direction.

Nicolle Burnham, Parks and Public Works Director, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item and had a consensus that additional analysis to explore several options and return to Town Council with the results.

**MOTION: Motion by Vice Mayor Hudes to continue this item with the Council's verbal comments that were made as input to staff and ask that in the follow-up to this, Council be presented with no more than three options with a staff recommendation. Seconded by Mayor Badame.**

**VOTE: Motion passed unanimously.**



PAGE 4 OF 8

SUBJECT: Draft Minutes of the Town Council Meeting of April 2, 2024

DATE: April 2, 2024

18. Discuss Potential Next Steps with Regard to the Referendum of Land Use and Community Design Elements of 2040 General Plan and Provide Direction to Staff.

Gabreille Whelan, Town Attorney, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

**MOTION: Motion by Council Member Ristow** to rescind the 2040 Community Design and Land Use Elements. **Seconded by Council Member Rennie.**

**SUBSTITUTE MOTION: Motion by Vice Mayor Hudes** to continue this item until May 21, which is four days after [the Town is] due to receive comments from HCD. **Seconded by Mayor Badame.**

**SUBSTITUTE VOTE: Motion failed 2-3. Council Members Moore, Rennie, and Ristow voted no.**

**VOTE: Motion passed 3-2. Vice Mayor Hudes and Mayor Badame voted no.**

**MOTION: Motion by Council Member Rennie** to bring this discussion back after the Housing Element is certified. **Seconded by Council Member Moore.**

**VOTE: Motion passed unanimously.**

Mayor Badame recessed the meeting at 9:01 p.m.

Mayor Badame reconvened the meeting at 9:10 p.m.

### **PUBLIC HEARINGS**

19. Adopt a Resolution Approving the Comprehensive Fee Schedule for Fiscal Year 2024/25 to Continue Certain Department Fees, Rates, and Charges, and Amending Certain Fees, Rates, and Charges for Fiscal Year 2024/25. **RESOLUTION 2024-013**

Gitta Ungvari, Finance Director, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

PAGE 5 OF 8

SUBJECT: Draft Minutes of the Town Council Meeting of April 2, 2024

DATE: April 2, 2024

Mayor Badame closed public comment.

Council discussed the item.

**MOTION: Motion by Vice Mayor Hudes** to adopt the resolution approving the Comprehensive Fee Schedule for Fiscal Year 24/25 contained in Attachment 1. **Seconded by Council Member Moore.**

**VOTE: Motion passed unanimously.**

20. Introduce an Ordinance Titled, “An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, ‘Zoning Regulations,’ Article I, ‘In General,’ Division 3 ‘Signs,’ of the Town Code Regarding Sign Regulations” as Recommended by the Planning Commission. The proposed amendments to the Town Code are not a project subject to CEQA [CEQA Guidelines Section 15061(b)(3)]. Town Code Amendment Application A-24-002. Project Location: Town Wide. Applicant: Town of Los Gatos.

Gabreille Whelan, Town Attorney, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

**MOTION: Motion by Vice Mayor Hudes** to adopt the [staff] recommendations with the exception of political signs and direct the Town Attorney to come back with a proposal that more closely matches current political sign policy. **Seconded by Mayor Badame.**

Town Attorney Whelan recommended the ordinance as a whole return to Council.

**Vice Mayor Hudes withdrew the motion.**

**MOTION: Motion by Vice Mayor Hudes** to continue this item with a modification [to political signs] and consider it at a future date. **Seconded by Mayor Badame.**

**VOTE: Motion passed 4-1. Council Member Ristow voted no.**

SUBJECT: Draft Minutes of the Town Council Meeting of April 2, 2024

DATE: April 2, 2024

**OTHER BUSINESS**

21. Discuss the Code of Conduct Policy Sections V. and XI. Pertaining to Councilmember Communications.

Gabreille Whelan, Town Attorney, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

**MOTION: Motion by Vice Mayor Hudes** to adopt item 1, option 3 (language listed for in the PowerPoint presentation for Section V. Subsection C. of the Code of Conduct, which states “provide that, in Mayor’s absence or unavailability, Vice Mayor is responsible”), and item 2 (language listed for in the PowerPoint presentation for Section V. Subsection C. of the Code of Conduct, listed in the PowerPoint presentation which states “clarify that the Mayor’s communication with the Town Council will conform with the Brown Act”). **Seconded by Council Member Ristow.**

Council Member Hudes withdrew the motion.

**MOTION: Motion by Vice Mayor Hudes** to adopt item 2 (language listed for in the PowerPoint presentation for Section V. Subsection C. of the Code of Conduct, listed in the PowerPoint presentation which states “clarify that the Mayor’s communication with the Town Council will conform with the Brown Act”), and change the wording under Vice Mayor, Subsection A. to “In the Mayor’s absence, the Vice Mayor shall perform the duties of the Mayor,” striking the word “formal.” **Seconded by Council Member Ristow.**

**VOTE: Motion passed unanimously.**

**MOTION: Motion by Vice Mayor Hudes** to add item 1 about the Brown Act [as listed in the PowerPoint presentation for Section XI. of the Code of Conduct (add ‘where not prohibited by the Brown Act’ to sentence referencing Mayor’s communication with Town Councilmembers)] and directed the Town Attorney to work on item 2 & 3 [(2) explain the difference between a policy matter pending before the Town Council and a future quasi-adjudicatory project; and (3) separate out discussion of quasi-adjudicatory decisions and address participation in community meetings] to make changes to separate policy from quasi-adjudicatory; adopt item 4 (change references

SUBJECT: Draft Minutes of the Town Council Meeting of April 2, 2024

DATE: April 2, 2024

to “full” Town Council to a “majority” of the Town Council); add item 5 “No Councilmember shall communicate in a manner that appears to come from the Town or Town staff or the Town Council.” Move forward with item 6 (provide examples of how to indicate to the press that a Councilmember is speaking on his or her own behalf and not on behalf of the Council); and change the last sentence of Section XI to such statements are permissible if clearly characterized as personal opinion or policy change objectives including those made on behalf of another elected official, or on behalf of a public or state agency or political subdivision, rather than the opinion of the majority of the Town Council. **Seconded by Council Member Ristow.**

**VOTE: Motion passed unanimously.**

**COUNCIL/TOWN MANAGER REPORTS**

**Council Matters**

- Council Member Ristow stated she participated in the Council Policy Committee; attended the annual update for the Lehigh Cement Plant and Quarry closing, and the Kiwanis Club 100<sup>th</sup> Anniversary Gala.
- Council Member Moore stated he will hold his Council Member Happy Hour and Community Coffee; met with business owners to discuss SB 330 applications; and commented on the Chamber of Commerce’s “You Belong in Los Gatos” street pole banner contest.
- Vice Mayor Badame stated she participated in a Democracy Tent meeting; met with Don Capobres regarding N40 Phase II; attended the Policy Committee as an observer, Mayor and Managers meeting, and the Kiwanis Club 100<sup>th</sup> Anniversary Gala.
- Council Member Rennie stated he had nothing of significance to report.
- Vice Mayor Hudes stated he met with Los Gatos Foundation for Older Adults to Thrive; participated in the Policy Committee; met with the Community Center Committee of the Foundation; listened a portion of Silicon Valley Regional Interoperability Authority meeting and a portion of the Community Health and Senior Services Commission (CHSSC) meeting; participated in the Kiwanis Club 100<sup>th</sup> Anniversary Gala and the Sourcewise Advisory Committee meeting.

**Manager Matters**

- Announced the Youth Commission recruitment is open. Applications are due on May 1 and all information is on the website.
- Spring into Green will be held on April 21, at 10 a.m. in Town Plaza Park and invited all to attend.

**CLOSED SESSION REPORT**

Gabrielle Whelan, Town Attorney, stated the Town Council met in closed session pursuant to Government Code §54956.9 to discuss anticipated litigation and stated there was no reportable action.

PAGE 8 OF 8

SUBJECT: Draft Minutes of the Town Council Meeting of April 2, 2024

DATE: April 2, 2024

**ADJOURNMENT**

The meeting adjourned at 11:08 p.m.

Respectfully Submitted:

---

Jenna De Long, Deputy Town Clerk



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 3.

MEETING DATE: 04/16/2024

---

**DRAFT  
Minutes of the Town Council Special Meeting  
Monday, April 8, 2024**

The Town Council of the Town of Los Gatos conducted a special meeting in-person and utilizing teleconferencing means on Monday, April 8, 2024, at 11:30 a.m. to provide direction on the Town Manager recruitment.

**MEETING CALLED TO ORDER AT 11:32 A.M.**

**ROLL CALL**

Present: Mayor Mary Badame, Vice Mayor Matthew Hudes, Council Member Rob Moore, Council Member Rob Rennie, Council Member Maria Ristow.

Absent: None

**VERBAL COMMUNICATIONS**

None.

**OTHER BUSINESS**

1. Provide Direction on the Town Manager Recruitment.

Town Manager Laurel Prevetti made a brief presentation and introduced Executive Recruiter Anton Dahlerbruch (Peckham & McKenney).

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Town Council discussed the item and provided direction on the Town Manager recruitment.

**ADJOURNMENT**

The meeting adjourned at 12:21 p.m.

Attest:

Submitted by:

\_\_\_\_\_  
Jenna De Long, Deputy Town Clerk

\_\_\_\_\_  
Laurel Prevetti, Town Manager





**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 4.

MEETING DATE: 04/16/2024

---

**DATE:** March 29, 2024  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Authorize the Town Manager to Execute a First Amendment to the Agreement for Services with Brightview Tree Care Services, Inc. to Increase Compensation for Fiscal Year 2023/24 in an Amount of \$100,000 for a Total Annual Amount Not to Exceed \$300,000 and a Total Agreement Amount Not to Exceed \$1,100,000; and Authorize a Revenue and Expenditure Budget Adjustment in the Amount of \$100,000 from the Available Tree Replacement Deposit Account

**RECOMMENDATION:**

Authorize the Town Manager to execute a first amendment to the agreement for services with Brightview Tree Care Services, Inc. to increase compensation for Fiscal Year 2023/24 in an amount of \$100,000 for a total annual amount not to exceed \$300,000 and a total agreement amount not to exceed \$1,100,000 (Attachment 1); and authorize a revenue and expenditure budget adjustment in the amount of \$100,000 from the available tree replacement deposit account.

**BACKGROUND:**

The Town of Los Gatos contracts tree trimming and removal services to maintain the Town's trees in streets and parks. On June 20, 2023, the Town Council authorized the Town Manager to execute a five-year Agreement for Services with Brightview Tree Care Services, Inc. for tree trimming and maintenance services. The original agreement included \$200,000 for year one of the agreement and \$200,000 annually thereafter.

**PREPARED BY:** Jim Harbin  
Superintendent

---

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

---

PAGE 2 OF 2

SUBJECT: Authorize the Town Manager to Execute a First Amendment to the Agreement and a Budget Adjustment in the Amount of \$100,000.

DATE: March 29, 2024

DISCUSSION:

On June 6, 2023, Town Council approved the FY 2023/24 Operating and Capital Budget. Base funding for tree trimming and maintenance services were allocated in the Streets and Signal Program in the amount of \$200,000. With the continued damage and threat response resulting from the last two storm seasons, staff has had little opportunity to perform preventive block pruning, fire fuel reduction efforts, and tree replacements with the budget generally being consumed by emergency work. This amendment increases the Brightview Tree Service contract by \$100,000 to allow priority and emergency work to continue through the remainder of Fiscal Year 2023/24.

CONCLUSION:

With the recommended action, Town Council would authorize the Town Manager to execute an amendment to the agreement for services with Brightview Tree Care Services to continue essential tree services vital to the health of the Town's trees through the end of Fiscal Year 2023/24.

FISCAL IMPACT:

The Adopted FY 2023/24 Operating Budget includes funding within the Streets and Signals Program Budget in the amount of \$200,000 for tree services. The additional \$100,000 will be funded by the Town Tree Replacement Deposit Account.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. First Amendment to the Agreement for Services
2. Original Agreement for Services

## FIRST AMENDMENT TO AGREEMENT FOR SERVICES

This FIRST AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 16 day of April 2024 and amends that certain Agreement for Services dated June 20, 2023, made by and between the Town of Los Gatos, ("Town,") and the Brightview Tree Care Services, Inc. ("Service Provider") identified as a C Corporation and whose address is P.O. Box 31001-2643, Pasadena, CA 91110-2463

### RECITALS

- A. Town and Service Provider entered into an Agreement for Services on June 20, 2023, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement to increase the compensation.

### AMENDMENT

1. Section 2.6 Compensation is amended to read as follows:

Additional compensation for Service Providers professional services shall be increased for Fiscal Year 2023/24 in an amount of \$100,000 for a total annual amount not to exceed \$300,000 and a total agreement amount not to exceed \$ 1,100,000.

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

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

Town of Los Gatos:

Approved as to Consent:

\_\_\_\_\_  
Laurel Prevetti, Town Manager

\_\_\_\_\_  
Fred Freund, Division President

Department Approval:

\_\_\_\_\_  
Nicolle Burnham  
Director of Parks and Public Works

Approved as to Form:

Attest:

\_\_\_\_\_  
Gabrielle Whelan, Town Attorney

\_\_\_\_\_  
Wendy Wood, CMC, Town Clerk

## AGREEMENT FOR SERVICES

THIS AGREEMENT is dated for identification this 20<sup>th</sup> day of June 2023 and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town"), and Brightview Tree Care Services, Inc. ("Service Provider"), identified as a C Corporation and whose address is P.O. Box 31001-2643, Pasadena, CA 91110-2463. This Agreement is made with reference to the following facts.

### I. RECITALS

- 1.1 Town sought proposals for the services described in this Agreement, and Service Provider was found to be the lowest responsible supplier for this purchase.
- 1.2 Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Town desires to engage Service Provider to provide tree trimming maintenance services.
- 1.4 Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

### II. AGREEMENT

- 2.1 Scope of Services. Service Provider shall provide services as described in that certain Proposal sent to the Town on May 8, 2023, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. The effective date of this Agreement shall begin July 1, 2023 and will continue through June 30, 2028 subject to appropriation of funds, notwithstanding any other provision in this agreement.
- 2.3 Compliance with Laws. The Service Provider shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Service Provider represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Service Provider to practice its profession. Service Provider shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Service Provider shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

- 2.5 Information/Report Handling. All documents furnished to Service Provider by the Town and all reports and supportive data prepared by the Service Provider under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Service Provider in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Service Provider shall not make any of these documents or information available to any individual or organization not employed by the Service Provider or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Service Provider pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Service Provider in connection with other projects shall be solely at Town's risk, unless Service Provider expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Service Provider which is and has been confirmed in writing by Service Provider to be a trade secret of Service Provider.
- 2.6 Compensation: Base compensation for services shall not exceed \$200,000 in Fiscal Year 2023/24, and one million dollars over the five year agreement period. Compensation will be subject to Operating Budget Appropriations. Charges as defined in Exhibit A may be increased annually based on the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year. If the CPI indicates a downward adjustment, compensation would remain at the base amount. Payment shall be based upon Town approval of each task.
- 2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

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

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 2.8 Availability of Records. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider offices during business hours upon written request of the Town.



- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Service Provider. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Service Provider, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Service Provider may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Service Provider warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Service Provider shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement Service Provider shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

### III. INSURANCE AND INDEMNIFICATION

#### 3.1 Minimum Scope of Insurance:

- i. Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Service Provider agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Service Provider shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Service Provider agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

#### General Liability:

- i. The Town, its elected and appointed officials, employees, and agents are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Service Provider; products and completed operations of Service Provider, premises owned or used by the Service Provider.
- ii. The Service Provider's insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees, and agents. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Service Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has

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

- 3.3 Workers' Compensation. In addition to these policies, Service Provider shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Service Provider shall save, keep, hold harmless and indemnify and defend the Town its elected and appointed officials, agents, employees, and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Service Provider, or any of the Service Provider's officers, employees, or agents or any subcontractor.

#### IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Service Provider shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Service Provider shall deliver to the Town all plans, files, documents, reports, performed to date by the Service Provider. In the event of such termination, Town shall pay Service Provider an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Prevailing Wages. This project is subject to the requirements of Section 1720 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Contractors and all subcontractors who perform work on the project are required to comply with these requirements. Prevailing wages apply to all projects over \$1,000 which are defined as a "public work" by the State of California. This includes: construction, demolition,

repair, alteration, maintenance and the installation of photovoltaic systems under a Power Purchase Agreement when certain conditions are met under Labor Code Section 1720.6. This include service and warranty work on public buildings and structures.

- 4.4.1 The applicable California prevailing wage rate can be found at [www.dir.ca.gov](http://www.dir.ca.gov) and are on file with the Town of Los Gatos Parks and Public Works Department, which shall be available to any interested party upon request. The contractor is also required to have a copy of the applicable wage determination posted and/or available at each jobsite.
- 4.4.2 Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime, weekend and holiday pay, and shift pay must be paid pursuant to applicable Labor Code section.
- 4.4.3 The public entity for which work is being performed or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violations identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.
- 4.4.4 As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the TOWN, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the Agency or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
- 4.4.5 In addition to submitting the certified payrolls and related documentation to the TOWN, the contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and final payment.
- 4.4.6 No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

- 4.4.7 No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered “public works contractor” with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
- 4.4.8 Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the TOWN for any fines assessed by the California Department of Industrial Relations against the TOWN for such violation, including all staff costs and attorney’s fee relating to such fine.
- 4.4.9 The TOWN shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the TOWN may continue to hold sufficient funds to cover estimated wages and penalties under the contract.

- 4.5 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Service Provider.
- 4.6 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.7 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

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

Brightview Tree Services, Inc.  
 P.O. Box 31001-2643  
 Pasadena, CA 91110-2463

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

- 4.8 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.9 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Service Provider. No terms,

conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

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

Town of Los Gatos by:

Brightview Tree Services, Inc., by:

DocuSigned by:  
*Laurel Prevetti*  
853FEEA2EB39470...  
Laurel Prevetti, Town Manager

DocuSigned by:  
*[Signature]*  
79FD8BA33082440...  
Fred Freund, Division President

Recommended by:

DocuSigned by:  
*Jim Harbin*  
E7195960535444C...  
Jim Harbin  
Acting Director of Parks and Public Works

Approved as to Form:

DocuSigned by:  
*Gabrielle Whelan*  
EFD6738A5534428...  
Gabrielle Whelan, Town Attorney

Attest:

DocuSigned by:  
*Wendy Wood*  
BF6EBCBE2C214F8...  
Wendy Wood, CMC, Town Clerk



ITEM NO. 4.



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 5.

MEETING DATE: 04/16/2024

---

**DATE:** April 4, 2024  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Authorize a Budget Transfer of Previously Allocated Measure B Funds in the Amount of \$1,734,250 from the Winchester Boulevard Complete Streets Project (CIP No. 813-0238) to the Kennedy Road Sidewalk – Los Gatos Boulevard Project (CIP No. 813-0241)

**RECOMMENDATION:**

Authorize a budget transfer of previously allocated Measure B Funds in the amount of \$1,734,250 from the Winchester Boulevard Complete Streets Project (CIP No. 813-0238) to the Kennedy Road Sidewalk – Los Gatos Boulevard Project (CIP No. 813-0241).

**BACKGROUND:**

In June 2020, the Town of Los Gatos was awarded a Measure B grant from the Valley Transit Authority (VTA) in the amount of \$1,734,250 for the design and construction of the Winchester Boulevard Complete Streets Project.

During development of the Capital Improvement Program (CIP) budget for Fiscal Year (FY) 2023/24 – 2027/28, staff suggested that design and construction of the Winchester Boulevard Complete Streets Project not be pursued at this time due to the estimated \$72 million design and construction cost. Staff recommended that the existing funds be reallocated to other projects that are in process but not fully funded and Town Council agreed.

On June 6, 2023, staff presented Council with a report on the existing project inventory and the potential uses for the Measure B and GFAR Funding. Measure B funding can only be allocated to projects that were submitted by the Town during the call for projects. The three projects eligible for the Measure B funding were identified as:

**PREPARED BY:** Stefanie Hockemeyer  
Sr. Administrative Analyst

---

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

---

PAGE 2 OF 3

SUBJECT: Authorize a Budget Transfer of Previously Allocated Measure B Funds in the Amount of \$1,734,250 from the Winchester Boulevard Complete Streets Project (CIP No. 813-0238) to the Kennedy Road Sidewalk – Los Gatos Boulevard Project (CIP No. 813-0241)

DATE: April 4, 2024

BACKGROUND (continued):

1. Los Gatos Creek Trail Connector at Highway 9 (CIP No. 832-4505)
2. Kennedy Road Sidewalks Los Gatos Boulevard to Englewood (CIP No. 813-0241)
3. Highway 17 Bicycle and Pedestrian Overcrossing (CIP No. 818-0803)

Staff recommended that the Town request that VTA Board of Directors approve reallocation of all Winchester Boulevard Complete Streets Measure B funds to the Kennedy Road Sidewalks project based on the schedules and funding portfolios of the three eligible projects.

At its December 7, 2023 meeting, the VTA Board of Directors approved the reallocation of the previously awarded amount of \$1,734,250 in 2016 Measure B Bicycle & Pedestrian Capital Projects funds from the design phase of the Winchester Boulevard Complete Streets project to the construction phase of the Kennedy Road Sidewalk and Class II Bike Lanes project (Attachment 1).

CONCLUSION:

If approved, this Council action would transfer funds and allow the close out of the Winchester Boulevard Complete Streets project as part of the Proposed FY 2024/25 through 2028/29 Capital Improvement Budget.

FISCAL IMPACT:

<b>Kennedy Road Sidewalk - Los Gatos Boulevard Project CIP No. 813-0241</b>		
	<b>Budget</b>	<b>Costs</b>
GFAR	\$ 492,386	
Grant Funding - 2016 Measure B Bicycle & Pedestrian Funds	\$ 138,740	
Grant - 2016 Measure B Bicycle & Pedestrian Funds <i>(Requested with this Staff Report)</i>	\$ 1,734,250	
<b>Total Budget</b>	<b>\$ 2,365,376</b>	
		<b>Costs</b>
		\$ -
<b>Total Costs</b>		
		\$ -
<b>Available Balance</b>		<b>\$ 2,365,376</b>

SUBJECT: Authorize a Budget Transfer of Previously Allocated Measure B Funds in the Amount of \$1,734,250 from the Winchester Boulevard Complete Streets Project (CIP No. 813-0238) to the Kennedy Road Sidewalk – Los Gatos Boulevard Project (CIP No. 813-0241)

DATE: April 4, 2024

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Board Memorandum of the December 7, 2023 VTA Board of Directors Meeting approving the shift of \$1,734,250 in 2016 Measure B Bicycle & Pedestrian Capital Project funds.



APPROVED ACCEPTED ADOPTED AMENDED DEFERRED REVIEWED  
 Santa Clara Valley Transportation Authority  
 Board of Directors  
 Elaine F. Baltao, Board Secretary  
 BY: Thalia Young  
 DATE: 12/17/23

ITEM NO. 5.

Date: December 1, 2023  
 Current Meeting: December 7, 2023  
 Board Meeting: December 7, 2023

**BOARD MEMORANDUM**

**TO:** Santa Clara Valley Transportation Authority  
 Board of Directors

**THROUGH:** General Manager/CEO, Carolyn M. Gonot

**FROM:** Chief Planning and Programming Officer, Deborah Dagang

**SUBJECT:** 2016 Measure B Bicycle & Pedestrian Capital Project Funding - Winchester Boulevard Complete Streets Project to Kennedy Road Sidewalk and Class II Bike Lanes project

**Policy-Related Action:** No **Government Code Section 84308 Applies:** No

**ACTION ITEM**

**RECOMMENDATION:**

Shift the previously awarded amount of \$1,734,250 in 2016 Measure B Bicycle & Pedestrian Capital Project funds from the design phase of the Winchester Boulevard Complete Streets project to the construction phase of the Kennedy Road Sidewalk and Class II Bike Lanes project, both in the Town of Los Gatos.

**SUMMARY:**

- The Board of Directors approved funding 19 projects from the first 2016 Measure B Bicycle & Pedestrian Capital Projects 10-year Priority list at their June 2020 meeting. The top 14 projects were awarded their full funding request. The 15<sup>th</sup> ranked project was awarded partial funding, and the remaining four projects were funded based on their rank and ability to be fully funded. These 19 projects comprise the fiscally constrained portion of the 10-year Priority list.
- Three of five applications submitted by the Town of Los Gatos scored high enough to be awarded funding. The Town’s second ranking project, the Winchester Road Complete Streets Project was awarded funding for final design, and the third ranking project, the Kennedy Road Sidewalk and Class II Bike Lanes Project was awarded funding for design and construction.
- The Town of Los Gatos’ Council closed the Winchester Road Complete Streets Project and reprogrammed remaining Town funds to the Kennedy Road Sidewalk and Class II Bike Lanes project due to estimated costs of more than \$72 million for completion of the Winchester Road Complete Streets Project.

- Shifting \$1,734,250 in 2016 Measure B Bicycle & Pedestrian Capital Project funds from the final design phase of the Winchester Boulevard Complete Streets project to the construction phase of the Kennedy Road Sidewalk & Class II Bike Lanes project will allow it to move forward and leverage the 2016 Measure B funds for external grant opportunities.

**STRATEGIC PLAN/GOALS:**

The 2016 Measure B Program aligns directly with the goals of VTA's Strategic Plan Business Line 2: Delivering Projects and Programs. The 2016 Measure B Bicycle & Pedestrian program provides more choices and funding support to promote cycling and walking and addresses "the current and evolving multimodal needs of Silicon Valley" as stated in the Strategic Plan.

**FISCAL IMPACT:**

There is no financial impact with this action. Funding for the project was included in the 2016 Measure B Program FY2024/FY2025 Biennial Budget and approved as part of the adoption of the VTA FY2024/FY2025 Biennial Budget in June 2023.

**BACKGROUND:**

The 2016 Measure B Program office released the first Bicycle & Pedestrian Capital Projects Competitive Grant call-for-projects for the fiscal year (FY) 2020 to FY2030 funding cycle on December 3, 2019. At the time of the call for projects staff projected \$79.98 million be available to fund projects in the for the FY2020 to FY2030 funding cycle.

The scoring committee reviewed and scored 39 applications requesting approximately \$163 million. The result of the scoring process is the FY2020 to FY2030 2016 Measure B Bicycle & Pedestrian Capital Project 10-year Priority list. This list ranks the 39 projects in score order and is separated into fiscally constrained and unconstrained portions of the 10-year Priority list. The fiscally constrained portion of the list identifies the 19 projects that were awarded funding up to the available \$79.98 million. The Board of Directors approved the 10-year Priority list and fiscally constrained portion of the list - identifying what projects will receive funding, at their June 2020 meeting. The approved FY2020 to FY2030 10-year Priority list is shown on Attachment A.

The top 14 projects were fully funded and awarded \$67.08 million of the available \$79.98 million, leaving a balance of \$12.9 million. The 15<sup>th</sup> ranked project requested over \$24 million, with the majority of the request being for construction. As there was not enough available to fully fund the request, project number 15 was awarded partial funding (\$3.5 million of \$24.10 million) for their Environmental and Design phases. The remaining \$9.4 million was then awarded to projects in rank order and ability to be fully funded.

This methodology resulted in 18 fully funded projects and one partially funded project for the FY2020 to FY2030 grant cycle.

**DISCUSSION:**

The Town of Los Gatos (Town) submitted five applications to the Bicycle & Pedestrian Capital Projects Competitive Grant call-for-projects and was awarded funding for three projects. These three projects, their fund request, and their ranking are as follows:

- #7: Bicycle and Pedestrian Overcrossing over Highway 17 - \$2.75 million
- #12: Winchester Boulevard Complete Streets Final Design - \$1.74 million
- #16: Kennedy Road Sidewalk and Class II Bike Lanes - \$0.83 million

The final two Town projects, their grant requests, and their ranking on the unconstrained portion of the list are as follows:

- #18: Los Gatos Creek Trail Connector to Highway 9 - \$2.99 million
- #39: Highway 9/Massol Avenue Intersection Safety Improvements - \$0.36 million

In September 2022, the Board approved the Town’s request to shift \$693,560 in construction funding from the Kennedy Road Sidewalk and Class II Bike Lanes Project (Kennedy Road project) to the Los Gatos Creek Trail Connector to Highway 9 project (Trail Connector project) to leverage over \$4 million in external grant funds to construct the Trail Connector project. The Board’s action moved the (Trail Connector project) to the fiscally constrained portion of the FY2020 to FY2030 10-year Priority list and defunded the construction phase of the Kennedy Road project.

On June 6, 2023, the Town’s Council approved the closure of the Winchester Boulevard Complete Streets project (Winchester project), citing the estimated cost of over \$72 million to design and construct the project. The Council reprogrammed the remaining Town funds from the Winchester project to the Kennedy Road project. At the same meeting, the Town’s Council requested that the VTA Board consider moving the awarded 2016 Measure B Bicycle/Pedestrian Capital Project funds from the now-closed Winchester project to the Kennedy Road project to begin closing the funding gap for completion of the Kennedy Road project.

VTA and the Town have executed a funding agreement for the design phase of the Kennedy Road project, and the Town is moving forward with the design phase.

Though a funding gap remains for delivery of the Kennedy Road project, the 2016 Measure B Program Office supports the Town’s request to move the funding from the Winchester project to the Kennedy Road project for the following reasons:

- 1) Leaving the award on the closed Winchester project prevents other 2016 Measure B Bicycle/Pedestrian Capital Projects from moving forward.
- 2) The \$1,734,250 in construction funding for the Kennedy Road project can be used as leverage for external grants to close the funding gap.
- 3) Both projects are on the fiscally constrained list and within the Town of Los Gatos.

If the Board approves this request, the Kennedy Road project award will be increased to \$1.87 million (\$138,740 for design & \$1,734,250 for construction) and the Winchester project award will be decreased to \$0.

*Next Steps*

Should the Board approve the request, staff will begin development of a funding agreement for the construction phase of the Kennedy project when appropriate.

**ALTERNATIVES:**

The Board can choose not to move the award from the Winchester Boulevard Complete Streets Project to the Kennedy Road Sidewalk & Class II Bike Lanes project. This will lengthen the delivery of the Kennedy Road project, which will then increase the cost to deliver the project. In addition, the Town of Los Gatos has closed the Winchester Complete Streets Project due to design and construction costs, so not moving the award from the project prevents other 2016 Measure B Bicycle/Pedestrian Capital Projects from moving forward since the award is tied to a closed project.

**CLIMATE IMPACT:**

Improvements to bicycle and pedestrian facilities will improve multi-modal options, perhaps leading to mode shift towards active transportation resulting in potential greenhouse gas reduction.

**ADVISORY COMMITTEE DISCUSSION/RECOMMENDATIONS**

The Technical Advisory Committee received this item as part of their November 8, 2023, Consent Agenda and approved it unanimously without comment.

The Bicycle & Pedestrian Advisory Committee (BPAC) received this item at their November 8, 2023, meeting. After minimal discussion, the BPAC unanimously recommended this item to the Board of Directors for approval.

The Policy Advisory Committee (PAC) received this item at their November 9, 2023, meeting. After discussion and clarification on the Winchester Boulevard Complete Streets project limits and boundaries, the PAC recommended this item to Board of Directors for approval.

**STANDING COMMITTEE DISCUSSION/RECOMMENDATIONS**

The Congestion Management Program and Planning Committee received this item as part of their November 16, 2023, Consent Agenda and approved it unanimously without comment.

Prepared by: Jane Shinn  
Memo No. 8761

**ATTACHMENTS:**

- MT8761\_AttachmentA\_Appved\_2016MB\_BikePed\_CapProj\_PriorityList (PDF)
- MT8761\_AttachmentB\_ProjectDescriptions (PDF)
- Public Comment (PDF)



## Adopted by the VTA Board of Directors on June 4, 2020

## ATTACHMENT C: 10-Year Priority Project List

## FISCALLY CONSTRAINED LIST

Rank	Score	Primary Project Sponsor	Project Name	Fund Request (\$ M)	Fund Recommended (\$M)	Cumulative Fund Recommended (\$M)	Remaining Funds Available (\$M)	
1	104.7	Mountain View	El Camino Real Pedestrian & Bicycle Improvements in City of Mountain View	\$ 4.00	\$ 4.00	\$ 4.0	\$ 76.0	Fully Funded
2	103.1	Santa Clara	Lafayette Street Class IV Bikeway	\$ 1.20	\$ 1.20	\$ 5.2	\$ 74.8	Fully Funded
3	102.5	San Jose	Guadalupe River Trail Extension to Almaden	\$ 5.40	\$ 5.40	\$ 10.6	\$ 69.4	Fully Funded
4	99.7	San Jose	Thompson Creek Trail	\$ 2.41	\$ 2.41	\$ 13.0	\$ 67.0	Fully Funded
5	98.6	VTA	Bernardo Avenue Undercrossing	\$ 18.00	\$ 18.00	\$ 31.0	\$ 49.0	Fully Funded
6	98.4	Los Gatos	Bicycle and Pedestrian Overcrossing over Highway 17	\$ 2.75	\$ 2.75	\$ 33.8	\$ 46.2	Fully Funded
7	98.0	San Jose	Five Wounds Trail from Story Road to Mabury Road	\$ 4.14	\$ 4.14	\$ 37.9	\$ 42.1	Fully Funded
8	95.9	Cupertino	Junipero Serra Trail, Central Segment	\$ 4.19	\$ 4.19	\$ 42.1	\$ 37.9	Fully Funded
9	94.7	San Jose	Coyote Creek Trail Completion	\$ 6.88	\$ 6.88	\$ 49.0	\$ 31.0	Fully Funded
10	94.5	San Jose	Willow-Keyes (Lelong St - 3rd St) Complete Streets Project	\$ 7.05	\$ 7.05	\$ 56.0	\$ 24.0	Fully Funded
11	94.4	Cupertino	Junipero Serra Trail, East Segment	\$ 1.94	\$ 1.94	\$ 57.9	\$ 22.0	Fully Funded
12	93.7	Los Gatos	Winchester Boulevard Complete Streets Final Design	\$ 1.74	\$ 1.74	\$ 59.7	\$ 20.3	Fully Funded
13	93.4	Mountain View	Stevens Creek Trail Extension to W. Remington Drive and MVHS	\$ 4.80	\$ 4.80	\$ 64.5	\$ 15.5	Fully Funded
14	91.5	San Jose	Los Gatos Creek Trail Gap Closure	\$ 2.59	\$ 2.59	\$ 67.1	\$ 12.9	Fully Funded
15	91.3	Sunnyvale	Stevens Creek Trail Extension (W Remington Dr to W Fremont Ave) <sup>(1)</sup>	\$ 24.10	\$ 3.50	\$ 70.6	\$ 9.4	Partially Funded
16	90.7	Los Gatos	Kennedy Road Sidewalk and Class II Bike Lanes	\$ 0.83	\$ 0.83	\$ 71.4	\$ 8.6	Fully Funded
17	90.3	VTA	Bascom Complete Street Improvements (Hamilton to I-880)	\$ 6.84	\$ 6.84	\$ 78.3	\$ 1.7	Fully Funded
18	89.1	Los Gatos	Los Gatos Creek Trail Connector to Highway 9 <sup>(2)</sup>	\$ 2.99	\$ -	\$ 78.3		
19	88.4	Santa Clara	Saratoga Creek Trail (Homeridge Park to Central Park) Project <sup>(2)</sup>	\$ 2.65	\$ -	\$ 78.3		
20	88.3	Cupertino	Carmen Road Pedestrian/Bicycle Bridge <sup>(2)</sup>	\$ 2.84	\$ -	\$ 78.3		
21	87.8	San Jose	King Road Complete Streets Project <sup>(2)</sup>	\$ 3.30	\$ -	\$ 78.3		
22	86.7	Santa Clara	Kifer/Walsh Class IV Bikeway <sup>(2)</sup>	\$ 2.70	\$ -	\$ 78.3		
23	85.7	Morgan Hill	Madrone Channel Trail Improvements - Phase 2	\$ 0.34	\$ 0.34	\$ 78.6	\$ 1.4	Fully Funded
24	85.3	San Jose	Lower Guadalupe River Access Ramps <sup>(2)</sup>	\$ 2.47	\$ -	\$ 78.6		
25	85.1	Cupertino	Stevens Creek Blvd Class IV Separated Bikeway <sup>(2)</sup>	\$ 3.16	\$ -	\$ 78.6		
26	84.5	VTA	Homestead Road Safe Routes to School Improvements	\$ 1.17	\$ 1.17	\$ 79.8	\$ 0.2	Fully Funded
<b>Fiscally Constrained List - Total Funds Recommended</b>					<b>\$ 79.8</b>			

## Notes:

1. Project will be partially funded for Environmental Clearance and Design phases.
2. Projects cannot be fully funded due to limited available funds.

## Adopted by the VTA Board of Directors on June 4, 2020

## ATTACHMENT C: 10-Year Priority Project List

## UNCONSTRAINED LIST

Rank	Score	Primary Project Sponsor	Project Name	Fund Request (\$ M)	Fund Recommended (\$M)	Cumulative Fund Recommended (\$M)	Remaining Funds Available (\$M)
27	83.3	Saratoga	Blue Hills Elementary Pedestrian Safety Crossing at UPRR	\$ 1.11			
28	82.7	San Jose	Keyes/Story Complete Streets Project	\$ 5.64			
29	82.0	Santa Clara	Monroe Street Class II Buffered Bikeway	\$ 0.81			
30	78.7	Santa Clara County	Alum Rock Avenue Trail Improvement Project	\$ 5.68			
31	78.2	Saratoga	Saratoga Village to Quarry Park Walkway - Phase I	\$ 1.00			
32	77.7	Santa Clara	El Camino Real Class IV Bikeway & Pedestrian Improvements	\$ 10.35			
33	75.3	Mountain View	Evelyn Avenue Bikeway	\$ 1.16			
34	73.6	VTA	Tasman Drive Complete Streets Improvements (Milpitas BART to Guadalupe River Trail)	\$ 7.40			
35	71.0	Gilroy	Lions Creek Trail West (Day Road to Kern Avenue)	\$ 2.72			
36	70.4	Santa Clara	Benton Street Class II Buffered Bikeway	\$ 1.02			
37	65.0	Santa Clara	Pruneridge Avenue Class II Buffered Bikeway & Pedestrian Improvements	\$ 2.86			
38	63.3	Los Altos	Homestead Road Safe Routes to School and Community Connector Project: Grant Road and Vineyard Drive	\$ 2.32			
39	59.9	Los Gatos	Highway 9/ Massol Avenue Intersection Safety Improvements	\$ 0.36			
<b>All Eligible Projects - Total Funds Request</b>				<b>\$ 162.88</b>			

## Attachment B – Town of Los Gatos Bicycle & Pedestrian Projects Descriptions

### **Kennedy Road Sidewalk and Class II Bike Lanes**

The project will design and construct new sidewalks and Class II bike lanes on Kennedy Road between Los Gatos Boulevard and Englewood Avenue, all located within the Town of Los Gatos. The project improvements include approximately 2,100 feet of new sidewalks, new Class II bike lanes on both sides for approximately 2,020 feet, upgrade of ADA curb ramps, and intersection improvements for better biking and walking.

### **Winchester Boulevard Complete Streets Final Design**

This project will fund the final design for Complete Streets improvements, including removal of an automobile lane, separated bike lanes, new or upgraded pedestrian crossings, new sidewalks to fill the gaps, sidewalk improvements, pedestrian refuge islands, ADA upgrade to all bus stops, landscaped median islands, and intersection modifications for safer biking and walking. The deliverable of this phase of the project is the bid-ready document for construction.

**From:** Betsy Megas  
**Sent:** Monday, November 6, 2023 2:04 PM  
**To:** Ledbetter, Lauren; VTA Board Secretary; Banerjee, Stacy  
**Subject:** [EXTERNAL] BPAC 11/8/23 - Item 9 - Winchester to Kennedy

**CAUTION: This Message originated from outside VTA. Do not click links or open attachments unless you recognize the sender and know the content is safe!**

---

Hi Lauren,  
Here are my questions for item 9.

What was driving the high cost of the Winchester improvements?  
Why was the price not originally anticipated? What is changing to make better cost estimates and avoid false starts in the future?  
Will there ever be an opportunity to try again for the improvements on Winchester?

Thanks,

Betsy Megas

Public Comment



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 6.

MEETING DATE: 04/16/2024

---

DATE: April 9, 2024  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Receive the Monthly Financial and Investment Report for February 2024

**RECOMMENDATION:**

Receive the Monthly Financial and Investment Report for February 2024.

**BACKGROUND:**

California Government Code Section 41004 requires that the Town Treasurer submit to the Town Clerk and the legislative body a written report and accounting of all receipts, disbursements, and fund balances. The Finance Director assumes the Town Treasurer role.

Attachment 1 contains the February 2024 Monthly Financial and Investment Report which fulfills this requirement. The February 2024 Monthly Financial and Investment Report was received by the Finance Commission on April 8, 2024.

**DISCUSSION:**

The February 2024 Monthly Financial and Investment Report includes a Fund Balance Schedule, representing estimated funding available for all funds at the end of the respective month. The fund balances were estimated at a point in time and will be finalized at the final close of the fiscal year.

Please note that the amount in the Fund Schedule differs from the Portfolio Allocation and Treasurer's Cash Fund Balances Summary schedule because assets and liabilities are components of the fund balance.

**PREPARED BY:** Eric Lemon  
Finance and Accounting Manager

---

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

---

SUBJECT: Monthly Financial and Investment Report for February 2024

DATE: April 9, 2024

DISCUSSION (continued):

As illustrated in the summary below, Total Cash is adjusted by the addition of Total Assets less the amount of Total Liabilities to arrive at the Ending Fund Balance – which represents the actual amount of funds available.

<b>Reconciling Cash to Fund Balance - February 29, 2024</b>		
Total Cash	\$	71,152,030
Plus: Assets	\$	13,917,589
Less: Liabilities	\$	(27,512,065)
<b>Estimated Fund Balance</b>	<b>\$</b>	<b>57,557,554</b>

As of February 29, 2024, the Town's financial position (Assets \$85.07M, Liabilities \$27.51M, and Fund Equity \$57.56M) remains strong and there are no issues meeting financial obligations in the near future.

As of February 29, 2024, the Town's weighted portfolio yield for investments under management was 4.32% which was 20 basis points above the Local Agency Investment Fund (LAIF) yield of 4.12% for the same reporting period. Currently, the LAIF portfolio's weighted average maturity (WAM) is 218 days versus the Town's longer WAM of 682 days. The longer maturity (WAM) for Town assets under management reflects the Town's strategy to take advantage of higher yields associated with longer maturities balanced with shorter term yields available on investments held with the State's LAIF. The Town's weighted average rate of return on investments under management of 4.32% at the close of February was 9 basis points higher when compared to the prior month's return of 4.23% reported as of January 31, 2024.

Since February 2023, LAIF yields had climbed from 262 basis points (2.62%) to 412 basis points (4.12%) through the end of February 2024.

Staff, in coordination with the Town's investment advisor, primarily replaced maturing investments with long term maturities in the two-to-four-year maturity range. These investments capture current yields that exceed the rates expected to be earned in the LAIF pool during that same time period. The State LAIF pool typically lags the market when current market yields are either increasing or decreasing.

On March 22, 2023, the Federal Reserve voted to approve a ¼ percentage basis point increase from 4.75% to 5.00%. This action was followed with additional hikes in May 2023 from 5.00% to 5.25% and July from 5.25% to 5.5%. Through these actions over time, the Federal Open Market Committee's (FOMC) goal is to bring year to year inflation to its targeted level of 2%.

PAGE 3 OF 3

SUBJECT: Monthly Financial and Investment Report for February 2024

DATE: April 9, 2024

DISCUSSION (continued):

The labor market data was strong. Employment rose by 353,000 jobs in January, exceeding the consensus estimate for 185,000, albeit the data may have reflected some seasonal adjustment complications. Wage growth was surprisingly strong at 0.6% month-on-month, up 4.5% year-on-year from 4.3%. The unemployment rate was unchanged at 3.7%, partly due to the participation rate remaining at 62.5%.

The Town's investments are in compliance with the Town's Investment Policy dated February 21, 2023, and also in compliance with the requirements of Section 53600 at seq. of the California State Code. Based on the information available, the Town has sufficient funds to meet the cash demands for the next six months.

CONCLUSION:

Receive Monthly Financial and Investment Report for February 2024.

Attachment:

1. Financial and Investment Report (February 2024)

**Town of Los Gatos  
Summary Investment Information  
February 29, 2024**

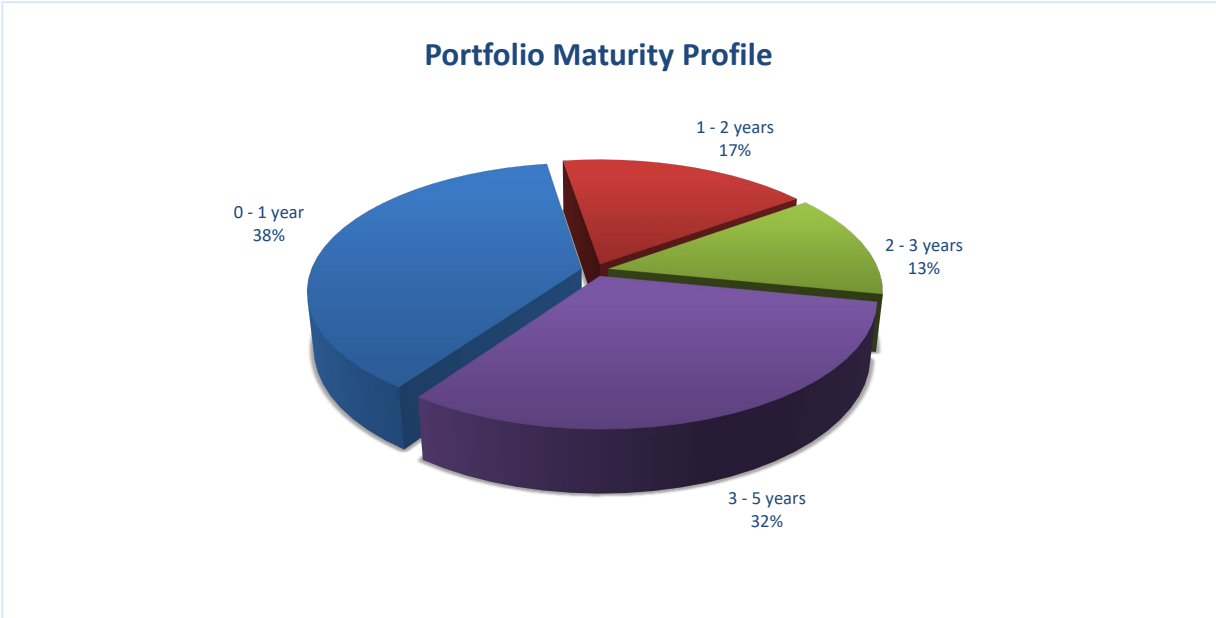
**Weighted Average YTM Portfolio Yield on Investments under Management** **4.32%**

**Weighted Average Maturity (days)** **682**

	This Month	Last Month	One year ago
<b>Portfolio Allocation &amp; Treasurer's Cash Balances</b>	\$71,152,030	\$72,393,065	\$69,108,644
<b>Cert. of Participation 2002 Lease Payment Fund</b>			
Managed Investments	\$49,463,891		
Local Agency Investment Fund	\$11,391,357		
Reconciled Demand Deposit Balances	\$10,296,783		
Portfolio Allocation & Treasurer's Cash Balances	\$71,152,030		

**Benchmarks/ References:**

Town's Average Yield	4.32%	4.23%	2.66%
LAIF Yield for month	4.12%	4.01%	2.62%
3 mo. Treasury	5.39%	5.38%	4.85%
6 mo. Treasury	5.32%	5.20%	5.18%
2 yr. Treasury	4.62%	4.21%	4.82%
5 yr. Treasury (most recent)	4.25%	3.84%	4.19%
10 Yr. Treasury	4.25%	3.91%	3.93%



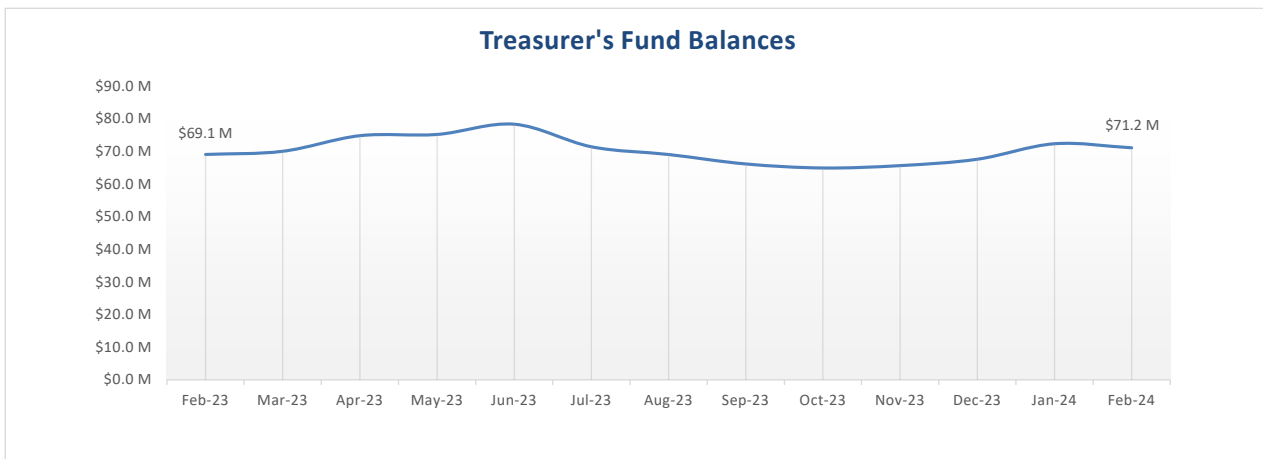
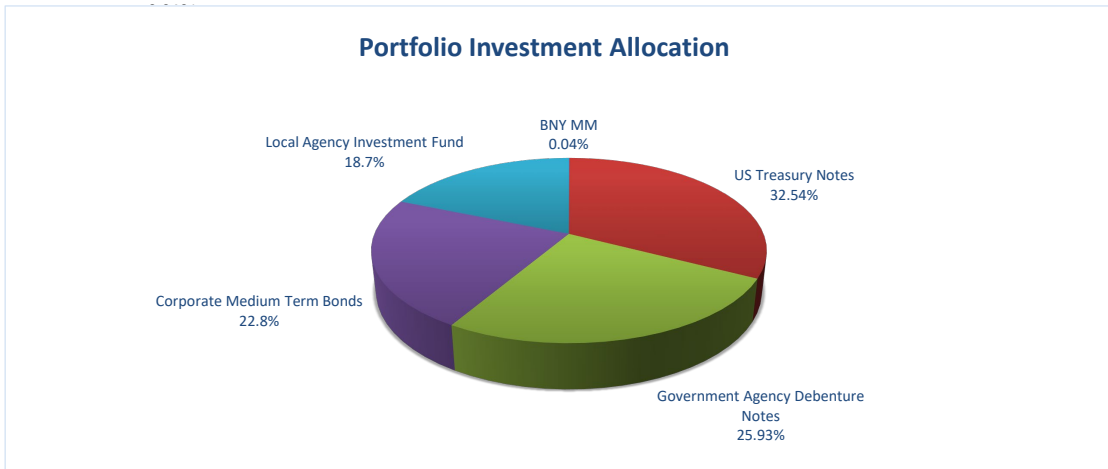
**Compliance:** The Town's investments are in compliance with the Town's investment policy dated February 21, 2023 and also in compliance with the requirements of Section 53600 at seq. of the California State Code. Based on the information available, the Town has sufficient funds to meet the cash demands for the next six months.



**Town of Los Gatos  
Portfolio Allocation & Treasurer's Cash Balances  
February 29, 2024**

	Month	YTD
Cash & Investment Balances - Beginning of Month/Period	\$ 72,393,064.72	\$ 78,384,947.79
Receipts	3,732,973.50	44,733,074.15
Disbursements	(4,974,007.87)	(51,965,991.59)
Cash & Investment Balances - End of Month/Period	<u>\$71,152,030.35</u>	<u>\$71,152,030.35</u>

Portfolio Allocation	Amount	% of Portfolio	Max. % or \$ Allowed per State Law or Policy
BNY MM	\$27,261.53	0.04%	20% of Town Portfolio
US Treasury Notes	\$19,802,509.31	32.54%	No Max. on US Treasuries
Government Agency Debenture Notes	\$15,777,961.90	25.93%	No Max. on Non-Mortgage Backed
Corporate Medium Term Bonds	\$13,856,158.01	22.77%	30% of Town Portfolio
Local Agency Investment Fund	\$11,391,356.50	18.72%	\$75 M per State Law
Subtotal - Ir Subtotal - Investments	60,855,247.25	100.00%	
Reconciled Demand Deposit Balances	<u>10,296,783.10</u>		
Total Portfolio Allocation & Treasurer's Cash Balances	<u>\$71,152,030.35</u>		



**Town of Los Gatos  
Non-Treasury Restricted Fund Balances  
February 29, 2024**

	Beginning Balance	February 2024 Deposits Realized Gain/Adj.	February 2024 Interest/ Earnings	February 2024 Withdrawals	Ending Balance	
Non-Treasury Funds:						
Cert. of Participation 2002 Series A Reserve Fund	\$ 715,454.34	\$ -	\$ 2,927.32	\$ 29,203.34	\$ 689,178.32	Note 1
Cert. Of Participation 2010 Ser A Lease Pymt Fund	114,162.50	-	100.71	114,162.50	100.71	Note 1
Cert. of Participation 2002 Lease Payment Fund	110,501.86	29,203.34	89.05	110,500.00	29,294.25	Note 1
Cert. of Participation 2010 Series Reserve Fund	1,359,255.83		6,024.99		1,365,280.82	Note 2
Total Restricted Funds:	<u>\$ 2,299,374.53</u>	<u>\$ 29,203.34</u>	<u>\$ 9,142.07</u>	<u>\$ 253,865.84</u>	<u>\$ 2,083,854.10</u>	
CEPPT IRS Section 115 Trust	1,456,631.96	690,000.00	544.16		\$ 2,147,176.12	Note 3
Grand Total COP's and CEPPT Trust	<u>\$ 3,756,006.49</u>	<u>\$ 719,203.34</u>	<u>\$ 9,686.23</u>	<u>\$ 253,865.84</u>	<u>\$ 4,231,030.22</u>	

*These accounts are not part of the Treasurer's fund balances reported elsewhere in this report, as they are for separate and distinct entities.*

**Note 1:** The three original funds for the Certificates of Participation 2002 Series A consist of construction funds which will be expended over the next few years, reserve funds which will guarantee the payment of lease payments, and a third fund for the disbursement of lease payments and initial delivery costs.

**Note 2:** The 2010 COP Funds are all for the Library construction, reserves to guarantee lease payments, and a lease payment fund for the life of the COP issue. The COI fund was closed in September 2010.

**Note 3:** The CEPPT Section IRS Section 115 Trust was established as an irrevocable trust dedicated to accumulate resources to fund the Town's unfunded liabilities related to pension and other post employment benefits.

**Town of Los Gatos**  
**Statement of Interest Earned**  
**February 29, 2024**

---

July 2023	\$	133,845.42
August 2023	\$	131,615.82
September 2023	\$	158,361.71
October 2023	\$	149,112.14
November 2023	\$	163,137.22
December 2023	\$	177,498.26
January 2024	\$	183,950.61
February 2024	\$	183,453.40
March 2024		-
April 2024		-
May 2024		-
June 2024		-
	\$	<u>1,280,974.58</u>

Town of Los Gatos  
Investment Schedule  
February 29, 2024

Institution	CUSIP #	Security	Coupon	Deposit Date	Par	Original Cost	Original Issue (Discount Premium)	Market Value	Market Value Above (Under) Cost	Purchased Interest	Maturity Date or Call	Yield to Maturity or Call	Interest Received to Date	Interest Earned Prior to FY	Interest Earned Current FY	Days to Maturity
FFCB	3133EMBE1	Gov. Agency Debenture	0.30%	10/8/2020	1,600,000.00	1,598,000.00	(2,000.00)	1,593,632.00	(4,368.00)		2/28/2024	0.34%	\$ 1,253.34	\$ 14,655.57	\$ 1,593.93	28
Apple	037833D83	Corporate Bond	2.90%	12/20/2022	1,300,000.00	1,228,591.00	(71,409.00)	1,206,095.00	(2,496.00)		6/21/2027	4.19%	\$ 27,437.22	\$ 28,170.97	\$ 35,800.61	1208
Home Depot	437076M3	Corporate Bond	3.00%	8/4/2022	1,000,000.00	991,960.00	(8,040.00)	962,830.00	(29,130.00)		1/1/2026	3.04%	\$ 34,750.00	\$ 29,252.66	\$ 21,629.24	672
US Treasury	912828ZW3	US Treasury Note	0.25%	8/9/2022	350,000.00	322,966.88	(27,033.12)	329,343.00	7,246.12		6/30/2025	3.16%	\$ 1,217.39	\$ 3,366.72	\$ 7,023.24	487
IBM	459200Y8	Corporate Bond	3.00%	3/25/2021	1,000,000.00	1,071,040.00	71,040.00	994,940.00	(76,100.00)		5/15/2024	0.71%	\$ 97,166.67	\$ 16,751.96	\$ 4,942.54	76
FFCB	3133ENSV8	Gov. Agency Debenture	4.13%	1/17/2023	236,000.00	239,174.20	3,174.20	233,654.16	(5,520.04)		1/11/2027	3.76%	\$ 5,972.75	\$ 4,061.30	\$ 5,972.48	1047
US Treasury	91282CB7	US Treasury Note	0.75%	9/30/2022	900,000.00	712,565.18	(87,434.82)	739,472.00	26,906.82		3/31/2026	4.14%	\$ 6,000.00	\$ 23,165.06	\$ 20,704.30	761
FFCB	3133ENP83	Gov. Agency Debenture	4.25%	9/30/2022	900,000.00	900,939.60	939.60	892,017.00	(8,922.60)		9/30/2025	4.14%	\$ 38,250.00	\$ 28,374.86	\$ 25,360.68	579
American Honda	02665WC22	Corporate Bond	2.40%	11/27/2019	1,000,000.00	1,012,410.00	12,410.00	989,950.00	(22,460.00)		6/27/2024	2.12%	\$ 108,733.34	\$ 76,483.79	\$ 14,239.17	119
JP Morgan Chase	46625HRS1	Corporate Bond	3.20%	9/23/2022	500,000.00	474,660.00	(25,340.00)	481,270.00	6,610.00		3/15/2026	4.70%	\$ 19,644.44	\$ 17,865.15	\$ 15,568.20	745
Honeywell Int'l.	438516BW5	Corporate Bond	2.30%	11/20/2019	1,000,000.00	1,014,660.00	14,660.00	986,160.00	(28,500.00)		7/15/2024	1.64%	\$ 96,983.33	\$ 71,679.55	\$ 13,269.96	137
Caterpillar Financial Serv	14913QZV0	Corporate Bond	2.85%	2/23/2021	1,000,000.00	1,077,370.00	77,370.00	993,910.00	(83,460.00)		5/17/2024	0.44%	\$ 77,900.00	\$ 10,677.18	\$ 3,039.94	78
FNMA	3135G0V75	Gov. Agency Debenture	1.75%	10/17/2019	1,100,000.00	1,105,833.30	5,833.30	1,086,646.00	(19,187.30)		7/2/2024	1.63%	\$ 81,331.25	\$ 66,718.86	\$ 12,040.98	124
FFCB	3133EQQA7	Gov. Agency Debenture	2.08%	10/21/2019	1,000,000.00	1,019,780.00	19,780.00	983,520.00	(36,260.00)		9/10/2024	1.66%	\$ 80,831.11	\$ 61,888.40	\$ 11,202.35	194
FHLB	3135G05X7	Gov. Agency Debenture	0.38%	6/10/2022	1,200,000.00	1,102,952.40	(97,047.60)	1,124,076.00	21,123.60		8/25/2025	3.04%	\$ 7,687.50	\$ 36,626.55	\$ 23,212.67	543
US Treasury	912828ZL7	US Treasury Note	0.38%	4/12/2022	1,700,000.00	1,583,927.57	(116,072.43)	1,612,739.00	28,811.43		4/30/2025	2.72%	\$ 9,879.49	\$ 54,017.06	\$ 29,685.05	426
FHLB	3130AQF65	Gov. Agency Debenture	1.25%	11/30/2022	1,300,000.00	1,160,559.40	(139,440.60)	1,189,760.00	29,200.60		12/21/2026	4.15%	\$ 17,197.92	\$ 29,385.32	\$ 33,820.85	1026
US Treasury	912828X70	US Treasury Note	2.00%	12/30/2019	1,000,000.00	1,010,589.29	10,589.29	994,570.00	(16,019.29)		4/30/2024	1.75%	\$ 76,703.30	\$ 61,478.37	\$ 11,737.65	61
US Treasury	912828XT2	US Treasury Note	2.00%	10/31/2019	1,000,000.00	1,015,667.41	15,667.41	991,760.00	(23,907.41)		5/31/2024	1.64%	\$ 81,639.34	\$ 60,792.37	\$ 11,086.20	92
FHLB	3130APJH9	Gov. Agency Debenture	1.00%	1/17/2023	1,000,000.00	907,010.00	(92,990.00)	928,120.00	21,110.00		10/28/2026	4.17%	\$ 8,354.14	\$ 15,544.14	\$ 23,126.64	972
FFCB	3133ENS6	Gov. Agency Debenture	4.00%	2/8/2023	1,700,000.00	1,706,732.00	6,732.00	1,674,925.00	(31,807.00)		3/6/2028	3.91%	\$ 61,955.56	\$ 25,921.64	\$ 44,541.41	1407
FFCB	3133EAEX3	Gov. Agency Debenture	0.38%	5/1/2023	750,000.00	689,937.50	(60,062.50)	700,365.00	11,332.50		9/23/2025	3.97%	\$ 1,109.37	\$ 4,638.18	\$ 15,861.96	572
American Honda	02665WED9	Corporate Bond	4.70%	5/11/2023	600,000.00	608,856.00	8,856.00	597,174.00	(11,682.00)		1/12/2028	4.34%	\$ 18,878.33	\$ 3,603.61	\$ 17,582.62	1413
US Treasury	91282CE4	US Treasury Note	2.50%	6/9/2023	1,500,000.00	1,416,626.12	(83,373.88)	1,417,845.00	1,218.88		3/31/2027	4.09%	\$ 11,577.87	\$ 3,416.23	\$ 39,693.39	1126
US Treasury	91282CGA3	US Treasury Note	4.00%	6/20/2023	2,100,000.00	2,080,558.59	(19,441.41)	2,073,834.00	(6,724.59)		12/15/2025	4.40%	\$ 40,852.46	\$ 2,515.25	\$ 61,372.02	655
Colgate-Palmolive	194162AR4	Corporate Bond	4.60%	7/14/2023	500,000.00	504,655.00	4,655.00	503,620.00	(1,035.00)		2/1/2028	4.37%	\$ 3,002.79	\$ -	\$ 13,849.34	1433
FannieMae	3135G06G3	Gov. Agency Debenture	0.50%	7/14/2023	500,000.00	455,157.00	(44,843.00)	466,025.00	10,868.00		11/7/2025	4.63%	\$ 784.72	\$ -	\$ 1,737.31	617
FFCB	3133EQC2	Gov. Agency Debenture	4.63%	7/17/2023	500,000.00	501,957.50	1,957.50	500,210.00	(1,747.50)		7/17/2026	4.48%	\$ 11,562.50	\$ -	\$ 13,976.42	869
FFCB	3133PBM6	Gov. Agency Debenture	4.13%	7/14/2023	500,000.00	506,220.00	(3,780.00)	503,892.00	(2,328.00)		9/23/2027	4.29%	\$ 15,056.25	\$ -	\$ 16,175.10	1271
PNC Bank	49335RF12	Corporate Bond	3.25%	7/25/2023	1,000,000.00	921,490.00	(78,510.00)	929,940.00	7,850.00		12/23/2027	5.23%	\$ 19,979.17	\$ -	\$ 30,166.06	1393
US Treasury	91282CFU0	US Treasury Note	4.13%	7/31/2023	1,300,000.00	1,290,660.60	(9,339.40)	1,288,781.00	(1,879.60)		10/31/2027	4.31%	\$ 13,406.25	\$ -	\$ 32,574.43	1340
Toyota Motor Credit	89236TKL8	Corporate Bond	5.45%	8/25/2023	1,600,000.00	1,617,168.00	17,168.00	1,631,296.00	16,128.00		11/10/2027	5.16%	\$ -	\$ -	\$ 42,815.41	1350
US Treasury	912810FE3	US Treasury Note	5.50%	10/3/2023	1,200,000.00	1,238,207.14	38,207.14	1,257,756.00	19,548.86		8/15/2028	4.76%	\$ 24,211.96	\$ -	\$ 23,740.63	1629
PepsiCo Inc	712448DF2	Corporate Bond	2.85%	10/16/2023	1,000,000.00	947,570.00	(52,430.00)	961,100.00	13,530.00		11/24/2025	5.24%	\$ -	\$ -	\$ 19,879.54	634
FFCB	3133EPUW3	Gov. Agency Debenture	4.75%	10/13/2023	1,000,000.00	994,338.00	(5,662.00)	1,004,380.00	10,042.00	5,541.67	9/1/2026	4.96%	\$ 15,561.67	\$ -	\$ 18,835.74	915
Freddie Mac	3137EAP0	Gov. Agency Debenture	1.50%	10/13/2023	1,000,000.00	951,540.00	(48,460.00)	0.00	(951,540.00)		2/12/2025	5.32%	\$ 4,958.33	\$ -	\$ 19,515.48	349
US Treasury	91282CEM7	US Treasury Note	3.25%	10/16/2023	1,000,000.00	960,354.91	(39,645.09)	964,770.00	14,739.94		6/29/2027	4.73%	\$ 6,711.96	\$ -	\$ 17,131.53	1217
US Treasury	91282CEN7	US Treasury Note	2.75%	10/31/2023	1,300,000.00	1,214,336.39	(85,663.61)	1,236,378.00	22,041.61		4/30/2027	4.82%	\$ -	\$ -	\$ 19,968.28	1156
US Treasury	912828YV6	US Treasury Note	1.50%	11/15/2023	700,000.00	673,667.97	(26,332.03)	681,107.00	7,439.03		11/30/2024	5.26%	\$ 430.33	\$ -	\$ 10,379.29	275
US Treasury	91282CAB7	US Treasury Note	0.25%	11/15/2023	675,000.00	623,900.39	(51,099.61)	632,893.50	8,993.11		7/31/2025	4.92%	\$ 353.09	\$ -	\$ 9,170.45	518
US Treasury	91282CGU9	US Treasury Note	3.8%	11/30/2023	1,000,000.00	983,515.62	(16,484.38)	988,090.00	4,574.38	6,458.33	3/31/2025	5.17%	\$ (6,458.33)	\$ -	\$ 12,741.20	396
US Treasury	91282CCH2	US Treasury Note	1.25%	12/21/2023	900,000.00	798,647.55	(101,352.45)	791,649.00	(6,998.55)		6/30/2028	3.99%	\$ 305.71	\$ -	\$ 6,449.53	1583
FNMA	3135G0Q22	Gov. Agency Debenture	1.8%	12/12/2023	900,000.00	845,676.00	(54,324.00)	843,255.00	(2,421.00)	4,078.12	9/24/2026	4.22%	\$ (4,078.12)	\$ -	\$ 7,008.80	938
US Treasury	91282CEH4	US Treasury Note	2.75%	1/2/2024	1,000,000.00	960,354.91	(39,645.09)	948,160.00	(12,194.91)		7/31/2027	3.95%	\$ 2,167.12	\$ -	\$ 6,150.52	1248
US Treasury	91282CHE4	US Treasury Note	3.63%	1/17/2024	1,800,000.00	1,775,185.72	(24,814.28)	1,751,346.00	(23,839.72)	8,557.37	5/31/2028	3.97%	\$ (8,557.37)	\$ -	\$ 3,355.44	1553
JP Morgan Chase	46647PDG8	Corporate Bond	4.85%	2/1/2024	1,400,000.00	1,396,528.00	(3,472.00)	1,384,782.00	(11,746.00)		7/25/2027	4.93%	\$ (1,131.90)	\$ -	\$ 5,286.39	1242
US Bancorp	91159HF8	Corporate Bond	4.55%	2/5/2024	1,000,000.00	989,200.00	(10,800.00)	975,900.00	(13,300.00)		7/22/2027	4.89%	\$ (1,642.33)	\$ -	\$ 3,195.69	1239
US Treasury	91282CHB0	US Treasury Note	3.63%	2/23/2024	1,175,000.00	1,151,962.92	(23,037.08)	1,151,500.00	(462.92)		5/15/2026	4.56%	\$ (11,701.58)	\$ -	\$ 870.40	806
FHLB	3130AXB31	Gov. Agency Debenture	4.88%	2/27/2024	1,000,000.00	1,003,060.00	3,060.00	1,004,410.00	1,350.00	21,395.83	3/13/2026	4.72%	\$ (21,395.83)	\$ -	\$ 258.91	743
Subtotal					\$ 50,686,000.00	\$ 49,436,629.22	\$ (1,249,370.78)	\$ 48,289,247.66	\$ (1,147,381.56)	\$ 60,507.13			\$ 1,078,629.20	\$ 757,005.75	\$ 861,344.88	
BNV MM		Money Market				27,261.53		27,261.53	0.00			0.00%				1
LAIF		State Investment Pool				11,391,356.50		11,317,804.00	(73,552.50)			4.12%				331,373.55
						60,855,247.25		59,634,313.19	(\$1,220,934.06)	\$60,507.13			\$ 1,078,629.20	\$ 757,005.75	\$ 1,192,715.43	
<b>Matured Assets</b>																
PNC Financial	69349LAM0	Corporate Bond	3.80%	2/7/2022	1,000,000.00	1,033,470.00	33,470.00				7/25/2023	1.49%	\$ 55,733.33	\$ 20,987.56	\$ 1,032.85	
US Treasury	91282CCN9	US Treasury Note	0.13%	1/13/20												

Town of Los Gatos  
Investment Transaction Detail  
February 29, 2024

Date	Cusip/Id	Description	Transaction Type	Settlement Date	Par	Coupon	Maturity Date	Price	Principal	Interest	Transaction Total
2/1/2024	46647PDG8	JPMORGAN CHASE & CO 4.851% 25JUL2028 (CALLABLE 25JUL27)	PURCHASE	2/1/2024	1,400,000	485.100%	7/25/2028	99.75	1,396,528.00	1,131.90	1,397,659.90
2/1/2024	46625HJT8	JPMORGAN CHASE & CO 3.875% 01FEB2024	BOND INTEREST	2/1/2024	1,400,000	387.500%	2/1/2024	-	-	27,125.00	27,125.00
2/1/2024	46625HJT8	JPMORGAN CHASE & CO 3.875% 01FEB2024	REDEMPTION	2/1/2024	1,400,000	387.500%	2/1/2024	100.00	1,400,000.00	-	1,400,000.00
2/2/2024	Cash-USD	Cash-USD	SHORT TERM INVESTMENT FUND INCOME	2/2/2024	617	0.000%		100.00	-	-	617.28
2/5/2024	91159HJF8	US BANCORP 4.548% 22JUL2028 (CALLABLE 22JUL27)	PURCHASE	2/5/2024	1,000,000	454.800%	7/22/2028	98.92	989,200.00	1,642.33	990,842.33
2/5/2024	91159HHV5	US BANCORP 3.375% 05FEB2024 CALLABLE	BOND INTEREST	2/5/2024	1,000,000	337.500%	2/5/2024	-	-	16,875.00	16,875.00
2/5/2024	91159HHV5	US BANCORP 3.375% 05FEB2024 CALLABLE	REDEMPTION	2/5/2024	1,000,000	337.500%	2/5/2024	100.00	1,000,000.00	-	1,000,000.00
2/12/2024	3137EAEP0	FREDDIE MAC 1.5% 12FEB2025	BOND INTEREST	2/12/2024	1,000,000	150.000%	2/12/2025	-	-	7,500.00	7,500.00
2/15/2024	438516BW5	HONEYWELL INTERNATIONAL 2.3% 15AUG2024 (CALLABLE 15JUL24)	BOND INTEREST	2/15/2024	1,000,000	230.000%	8/15/2024	-	-	11,500.00	11,500.00
2/15/2024	912810FE3	USA TREASURY 5.5% 15AUG2028	BOND INTEREST	2/15/2024	1,200,000	550.000%	8/15/2028	-	-	33,000.00	33,000.00
2/23/2024	91282CHB0	USA TREASURY 3.625% 15MAY2026	PURCHASE	2/23/2024	1,175,000	362.500%	5/15/2026	98.04	1,151,962.92	11,701.58	1,163,664.50
2/23/2024	3133EPBM6	FEDERAL FARM CREDIT BANK 4.125% 23AUG2027	BOND INTEREST	2/23/2024	600,000	412.500%	8/23/2027	-	-	12,375.00	12,375.00
2/23/2024	3133EKMX1	FEDERAL FARM CREDIT BANK 2.23% 23FEB24	BOND INTEREST	2/23/2024	1,000,000	223.000%	2/23/2024	-	-	11,150.00	11,150.00
2/23/2024	3133EKMX1	FEDERAL FARM CREDIT BANK 2.23% 23FEB24	REDEMPTION	2/23/2024	1,000,000	223.000%	2/23/2024	100.00	1,000,000.00	-	1,000,000.00
2/26/2024	713448DF2	PEPSICO INC 2.85% 24FEB2026 (CALLABLE 24NOV25)	BOND INTEREST	2/24/2024	1,000,000	285.000%	2/24/2026	-	-	14,250.00	14,250.00
2/26/2024	3135G05X7	FANNIE MAE 0.375% 25AUG2025	BOND INTEREST	2/25/2024	1,200,000	37.500%	8/25/2025	-	-	2,250.00	2,250.00
2/26/2024	3130ALH98	FEDERAL HOME LOAN BANK 0.25% 26FEB2024 CALLABLE	BOND INTEREST	2/26/2024	1,000,000	25.000%	2/26/2024	-	-	1,250.00	1,250.00
2/26/2024	3130ALH98	FEDERAL HOME LOAN BANK 0.25% 26FEB2024 CALLABLE	REDEMPTION	2/26/2024	1,000,000	25.000%	2/26/2024	100.00	1,000,000.00	-	1,000,000.00
2/27/2024	3130AXB31	FEDERAL HOME LOAN BANK 4.875% 13MAR2026	PURCHASE	2/27/2024	1,000,000	487.500%	3/13/2026	100.31	1,003,060.00	21,395.83	1,024,455.83

Town of Los Gatos								
Insight ESG Ratings as of February 29, 2024								
Security Description	Maturity Date	Par/Shares	S&P Rating	Moody Rating	Insight ESG Rating	Environment	Social	Governance
IBM CORP 3.0% 15MAY2024	5/15/2024	\$ 1,000,000	A-	A3	2	1	2	3
CATERPILLAR FIN SERVICES 2.85% 17MAY24	5/17/2024	\$ 1,000,000	A	A2	4	4	3	4
AMERICAN HONDA FINANCE 2.4% 27JUN2024	6/27/2024	\$ 1,000,000	A-	A3	3	2	3	3
HONEYWELL INTERNATIONAL 2.3% 15AUG2024 (CALLABLE 15JUL24)	8/15/2024	\$ 1,000,000	A	A2	4	3	4	3
PEPSICO INC 2.85% 24FEB2026 (CALLABLE 24NOV25)	2/24/2026	\$ 1,000,000	A+	A1	2	2	2	2
HOME DEPOT INC. 3% 01APR2026 (CALLABLE 01JAN2026)	4/1/2026	\$ 1,000,000	A	A2	2	2	3	3
JPMORGAN CHASE & CO 3.2 15JUN2026 (CALLABLE 15MAR26)	6/15/2026	\$ 500,000	A-	A1	3	1	3	4
APPLE INC. 2.9% 12SEP2027 (CALLABLE 12JUN27)	9/12/2027	\$ 1,300,000	AA+	Aaa	5	1	4	5
TOYOTA MOTOR CREDIT CORP 5.45% 10NOV2027	11/10/2027	\$ 1,600,000	A+	A1	3	2	3	5
AMERICAN HONDA FINANCE 4.7% 12JAN2028	1/12/2028	\$ 600,000	A-	A3	3	2	3	3
PNC BANK NA 3.25% 22JAN2028 (CALLABLE 01 FEB28)	1/22/2028	\$ 1,000,000	A	A2	3	2	3	3
COLGATE-PALMOLIVE CO 4.6% 01MAR2028 (CALLABLE 01FEB28)	3/1/2028	\$ 500,000	AA-	Aa3	3	2	3	3
US BANCORP 4.548% 22JUL2028 (CALLABLE 22JUL27)	7/22/2028	\$ 1,000,000	A	A3	4	3	4	4
JPMORGAN CHASE & CO 4.851% 25JUL2028 (CALLABLE 25JUL28)	7/25/2028	\$ 1,400,000	A-	A1	3	1	3	4
<b>Total/Average</b>		<b>\$ 13,900,000</b>			<b>3.1</b>	<b>2.0</b>	<b>3.0</b>	<b>3.4</b>

\*ESG ratings are from 1 to 5, with 1 as the highest rating and 5 as the lowest. All ratings are weighted by industry rankings, based on the importance of the category within the individual industry.

## Fund Schedule

ITEM NO. 6.

Fund Number	Fund Description	Prior Year Carryforward 7/1/2023	Increase/ (Decrease) July - Jan	Feb 2024				Estimated Fund Balance 2/29/2024*
				Current Revenue	Current Expenditure	Transfer In	Transfer Out	
	<b>GENERAL FUND</b>							
	<b>Non-Spendable:</b>							
	Loans Receivable	159,000	-	-	-	-	-	159,000
	<b>Restricted Fund Balances:</b>							
	Pension	1,400,163	-	-	-	-	-	1,400,163
	Land Held for Resale	44,338	-	-	-	-	-	44,338
	<b>Committed Fund Balances:</b>							
	Budget Stabilization	6,129,774	-	-	-	-	-	6,129,774
	Catastrophic	6,129,775	-	-	-	-	-	6,129,775
	Pension/OPEB	300,000	-	-	-	-	-	300,000
	Measure G District Sales Tax	590,581	-	-	-	-	-	590,581
	<b>Assigned Fund Balances:</b>							
	Open Space	410,000	-	-	-	-	-	410,000
	Sustainability	140,553	-	-	-	-	-	140,553
	Capital/Special Projects	10,359,577	-	-	-	-	-	10,359,577
	Carryover Encumbrances	37,698	-	-	-	-	-	37,698
	Compensated Absences	1,580,623	-	-	-	-	-	1,580,623
	ERAF Risk Reserve	689,608	-	-	-	-	-	689,608
	Council Priorities - Economic Recovery	1,556,614	-	-	-	-	-	1,556,614
	<b>Unassigned Fund Balances:</b>							
111	Other Unassigned Fund Balance Reserve (Pre YE distribution)	-	(865,635)	5,193,178	(5,906,456)	-	-	(1,578,913)
	<b>General Fund Total</b>	29,528,304	(865,635)	5,193,178	(5,906,456)	-	-	27,949,391

\* Interfund transfers and ARPA funding allocation to be performed as part of the fiscal year end closing entries.

## Fund Schedule

ITEM NO. 6.

Fund Number	Fund Description	Prior Year Carryforward 7/1/2023	Increase/ (Decrease) July - Jan	Feb 2024				Estimated Fund Balance 2/29/2024*
				Current Revenue	Current Expenditure	Transfer In	Transfer Out	
<b>SPECIAL REVENUE</b>								
211/212	CDBG	166,653	-	-	-	-	-	166,653
222	Urban Runoff (NPDES)	629,843	38,366	29,996	(17,768)	-	-	680,437
231-236	Landscape & Lighting Districts	176,964	2,561	260	(257)	-	-	179,528
251	Los Gatos Theatre	74,991	33,584	9,830	(5,807)	-	-	112,598
711-716	Library Trusts	530,173	72,479	-	(1,874)	-	-	600,778
<b>Special Revenue Total</b>		<b>1,578,624</b>	<b>146,990</b>	<b>40,086</b>	<b>(25,706)</b>	<b>-</b>	<b>-</b>	<b>1,739,994</b>
<b>CAPITAL PROJECTS</b>								
411	GFAR - General Fund Appropriated Reserve	21,725,837	(1,097,732)	83,091	(424,506)	-	-	20,286,690
412	Community Center Development	-	866,281	-	-	-	-	866,281
421	Grant Funded Projects	(406,890)	98,414	-	(62,638)	-	-	(371,114)
461-463	Storm Basin Projects	3,218,331	79,996	84,660	-	-	-	3,382,987
471	Traffic Mitigation Projects	431,079	-	-	-	-	-	431,079
472	Utility Undergrounding Projects	3,438,996	12,965	-	-	-	-	3,451,961
481	Gas Tax Projects	1,671,245	(645,652)	153,906	-	-	-	1,179,499
<b>Capital Projects Total</b>		<b>30,078,598</b>	<b>(685,728)</b>	<b>321,657</b>	<b>(487,144)</b>	<b>-</b>	<b>-</b>	<b>29,227,383</b>
<b>INTERNAL SERVICE FUNDS</b>								
611	Town General Liability	212,022	3,189	-	-	-	-	215,211
612	Workers Compensation	514,813	(441,195)	37,099	(7,238)	-	-	103,479
621	Information Technology	2,474,618	(176,745)	20,383	(4,334)	-	-	2,313,922
631	Vehicle & Equipment Replacement	2,413,719	502,162	-	(35,843)	-	-	2,880,038
633	Facility Maintenance	927,700	132,136	5,933	(84,028)	-	-	981,741
<b>Internal Service Funds Total</b>		<b>6,542,872</b>	<b>19,547</b>	<b>63,415</b>	<b>(131,443)</b>	<b>-</b>	<b>-</b>	<b>6,494,391</b>
<b>Trust/Agency</b>								
942	RDA Successor Agency	(6,187,789)	(1,665,699)	1,894,550	(1,894,667)	-	-	(7,853,605)
<b>Trust/Agency Fund Total</b>		<b>(6,187,789)</b>	<b>(1,665,699)</b>	<b>1,894,550</b>	<b>(1,894,667)</b>	<b>-</b>	<b>-</b>	<b>(7,853,605)</b>
<b>Total Town</b>		<b>61,540,609</b>		<b>7,512,886</b>	<b>(8,445,416)</b>	<b>-</b>	<b>-</b>	<b>57,557,554</b>

\* Interfund transfers and ARPA funding allocation to be performed as part of the fiscal year end closing entries.

**Deposit Accounts of Interest:**

- 111-23541 General Plan Update deposit account balance \$682,423.43
- 111-23521 BMP Housing deposit account balance \$4,021,280.60





**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 7.

MEETING DATE: 04/16/2024

---

**DATE:** April 11, 2024  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Adopt a Resolution Describing Improvements and Directing the Preparation of the Town Engineer’s Report for Fiscal Year 2024/25 for Landscape and Lighting Assessment Districts No. 1 and 2

**RECOMMENDATION:**

Adopt a Resolution (Attachment 1) describing improvements and directing the preparation of the Town Engineer’s report for Fiscal Year 2024/25 for Landscape and Lighting Assessment Districts No. 1 and 2.

**BACKGROUND:**

The California Landscaping and Lighting Act of 1972 (Streets and Highways Code Section 22500-22679) allows local government agencies to form assessment districts for the purpose of financing the costs and expenses for landscaping and lighting public areas.

In the early 1990’s, the Town established two Landscape and Lighting Districts (Districts) comprised of six zones, five of which are in District No. 1 and one in District No. 2. Diagrams of the six zones are included in this report (Attachments 2.1-2.6). Property owners in each District pay an annual assessment on their property tax bill for the maintenance of common area landscaping or lighting.

The majority of the landscape and lighting services within the Districts are provided by a contractor retained and managed directly by the Town on behalf of the property owners, with some maintenance services also provided by Town staff.

**PREPARED BY:** Meredith Johnston  
Administrative Technician

---

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

---

PAGE 2 OF 3

SUBJECT: Adopt a Resolution Describing Improvements and Directing Preparation of the Town Engineer's Report for Fiscal Year 2024/25 for Landscape and Lighting Assessment Districts No. 1 and 2

DATE: April 1, 2024

BACKGROUND (continued):

Each year, the Town Council levies the assessments and reconfirms the Districts by a series of Resolutions and a Public Hearing. The process, which is set by the Landscaping and Lighting Act of 1972 (Streets and Highways Code Section 22500-22679), includes the following steps outlined below with the proposed dates when the steps are planned.

1. Council considers the adoption of a Resolution entitled Describing Improvements and Directing the Preparation of the Engineer's Report for FY 2024/25 – April 16, 2024.
2. Council considers the adoption of Resolutions Approving the 2024/25 Engineer's Report, stating the Intention to Levy and Collect Assessments, and Setting a Public Hearing to Consider the Proposed Assessments – May 7, 2024.
3. Council conducts the public hearing and then considers the adoption of a Resolution Confirming the Assessment Diagrams and Levying and Authorizing the Collection of Assessments for FY 2024/25 – June 18, 2024.

Provisions of SB 919 (the Proposition 218 Omnibus Implementation Act) adopted by the California State Legislature in 1997 (Chapter 38, Stats. 1997) are implemented during the renewal process. Proposition 218 becomes applicable only when increases in the current assessment rates are contemplated, due primarily to rising maintenance costs and increases in the costs of water and power. If that were to take place, the above noted process would be modified by introducing a mail-in balloting procedure for each zone that begins after the items in Step 2 are approved by Council and concludes at the close of the public hearing.

At the conclusion of Step 3, the staff transmits the assessment amounts to the County Assessor which appears as a separate item on the property tax bill for each parcel.

Upon fulfillment of these requirements, the Town must submit the Resolution confirming the assessments to the County of Santa Clara for inclusion on the Fiscal Year 2024/25 property tax roll.

DISCUSSION:

The first step in the statutorily prescribed process contained in the California Streets and Highways Code requires that the Town adopt a Resolution describing any proposed new improvements or any substantial changes in the existing improvements and ordering the preparation and filing of an Engineer's Report. The subject Assessment Districts are largely responsible for covering expenses related to public landscaping within the defined boundaries of the separate Assessment Districts.

PAGE 3 OF 3

SUBJECT: Adopt a Resolution Describing Improvements and Directing Preparation of the Town Engineer's Report for Fiscal Year 2024/25 for Landscape and Lighting Assessment Districts No. 1 and 2

DATE: April 1, 2024

DISCUSSION (continued):

No new improvements or substantial changes in existing are proposed for any Assessment District for Fiscal Year 2024/25.

Streets & Highways Code Section 22622 states, *"The legislative body shall adopt a resolution which shall generally describe any proposed new improvements or any substantial changes in existing improvements and order the engineer to prepare and to file a report in accordance with Article 4 (commencing with Section 22565)."* The attached Resolution describes the improvements (services) to be provided to the districts and directs the preparation of the Engineer's Report.

CONCLUSION:

Staff recommends that Town Council adopt a Resolution describing improvements and directing the preparation of the Town Engineer's report for Fiscal Year 2024/25 for Landscape and Lighting Assessment Districts No. 1 and 2 in compliance with California Streets and Highway Code, Section 22622.

FISCAL IMPACT:

The Town's Landscape and Lighting Assessment Districts do not impact the Town's General Fund. The impact of any proposed changes to District budgets on the assessments of individual property owners will be provided in the Engineer's Report.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Resolution Describing Improvements and Directing Preparation of Engineer's Report for Fiscal Year 2024/25 with Exhibit A
2. Diagrams of Benefit Zones for Landscape and Lighting Districts No. 1 and 2 (labeled as Attachments 2.1 through 2.6)

**DRAFT RESOLUTION****RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
DESCRIBING IMPROVEMENTS AND DIRECTING PREPARATION OF ENGINEER'S  
REPORT FOR FISCAL YEAR 2024/25 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 2024/25; 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 \_\_\_\_ day of \_\_\_\_\_, 2024 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

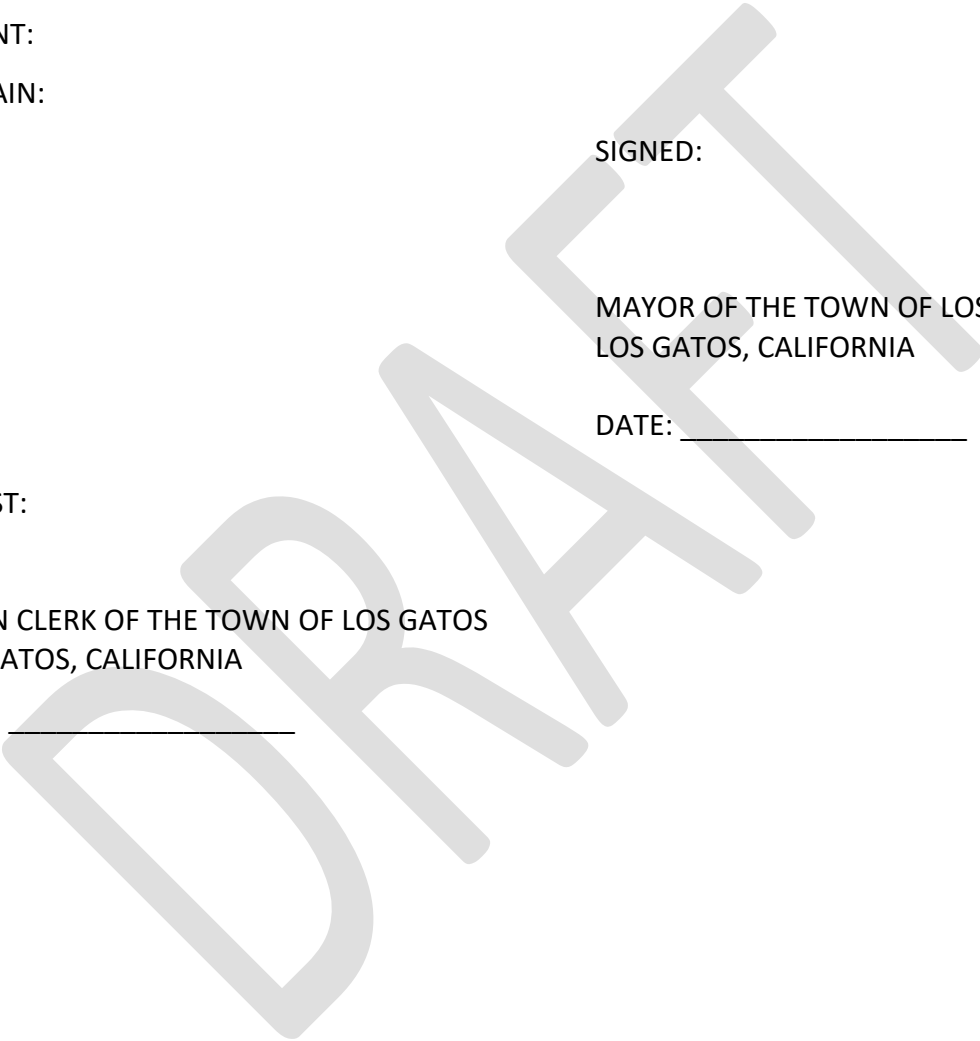
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

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

DATE: \_\_\_\_\_



**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.

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

**1. General Description of Improvements:**

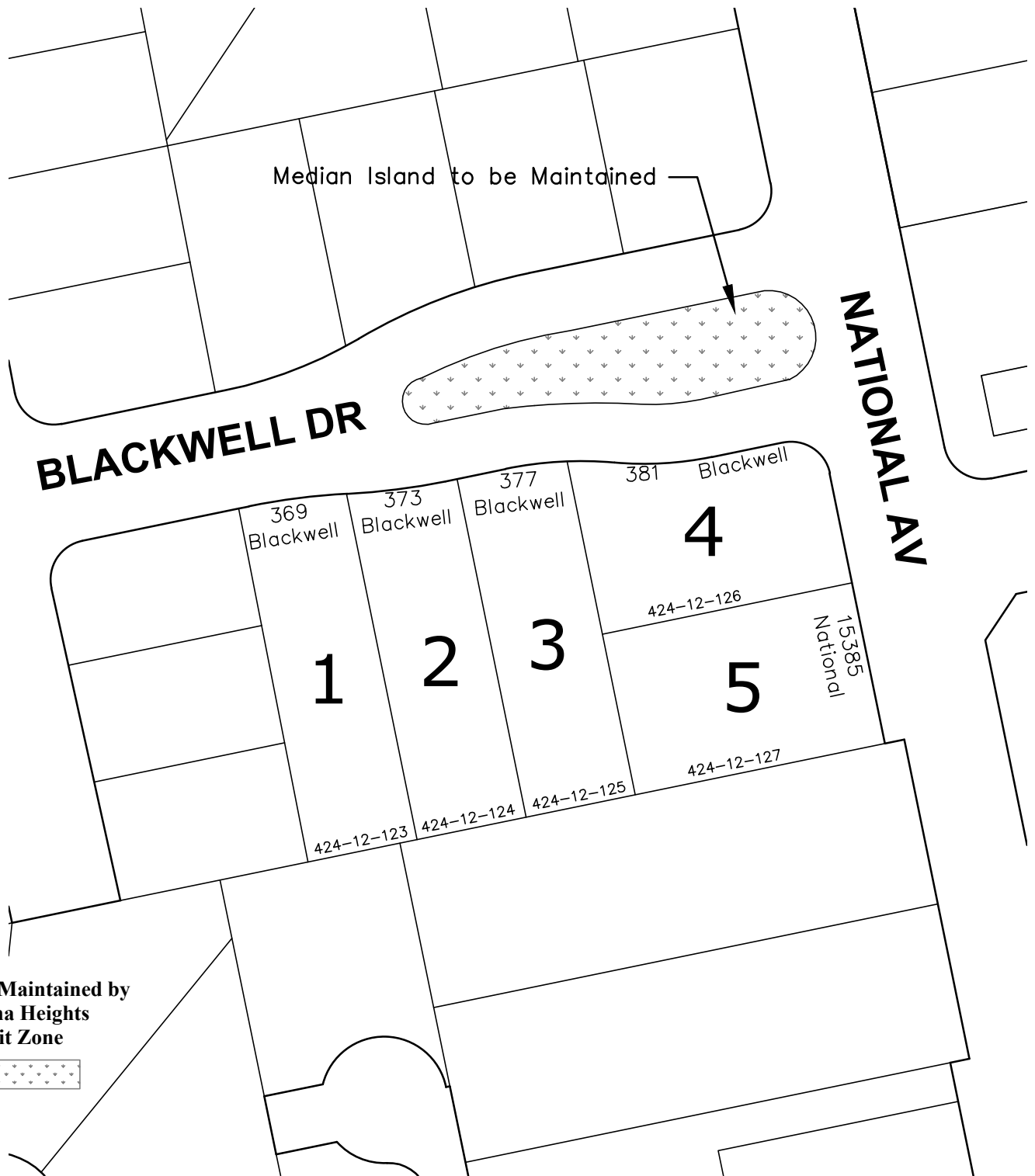
The design, construction or installation, including the maintenance or servicing, or both, thereof, of landscaping, including trees, shrubs, grass or other ornamental vegetation, statuary, fountains or other ornamental structures and facilities, and public lighting facilities for the lighting of any 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.



# PART "D" Assessment Diagram



Area Maintained by  
Vasona Heights  
Benefit Zone



Not To Scale

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

PART "A"

Existing Improvements to be Maintained

**BLOSSOM HILL RD**

HILLBROOK  
SIGN

**HILLBROOK DR**

EX.  
OAK

EX. SHRUBS

523-11-028  
LAWN

EX.  
OAK

EX. SHRUBS



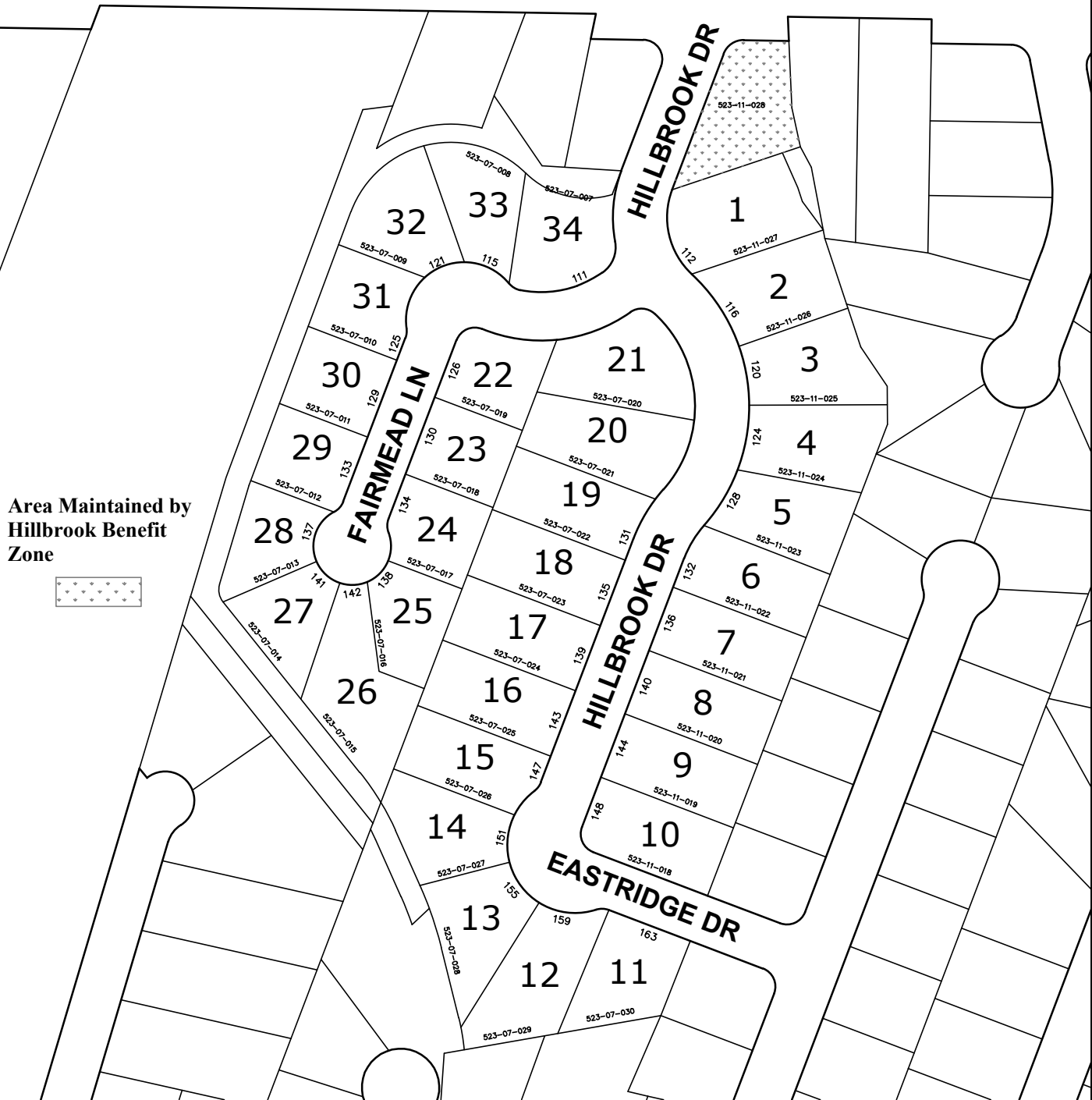
Not To Scale

**Hillbrook Benefit Zone**

**Landscaping & Lighting Assessment District No. 1**

PART "D"  
Assessment Diagram

BLOSSOM HILL RD



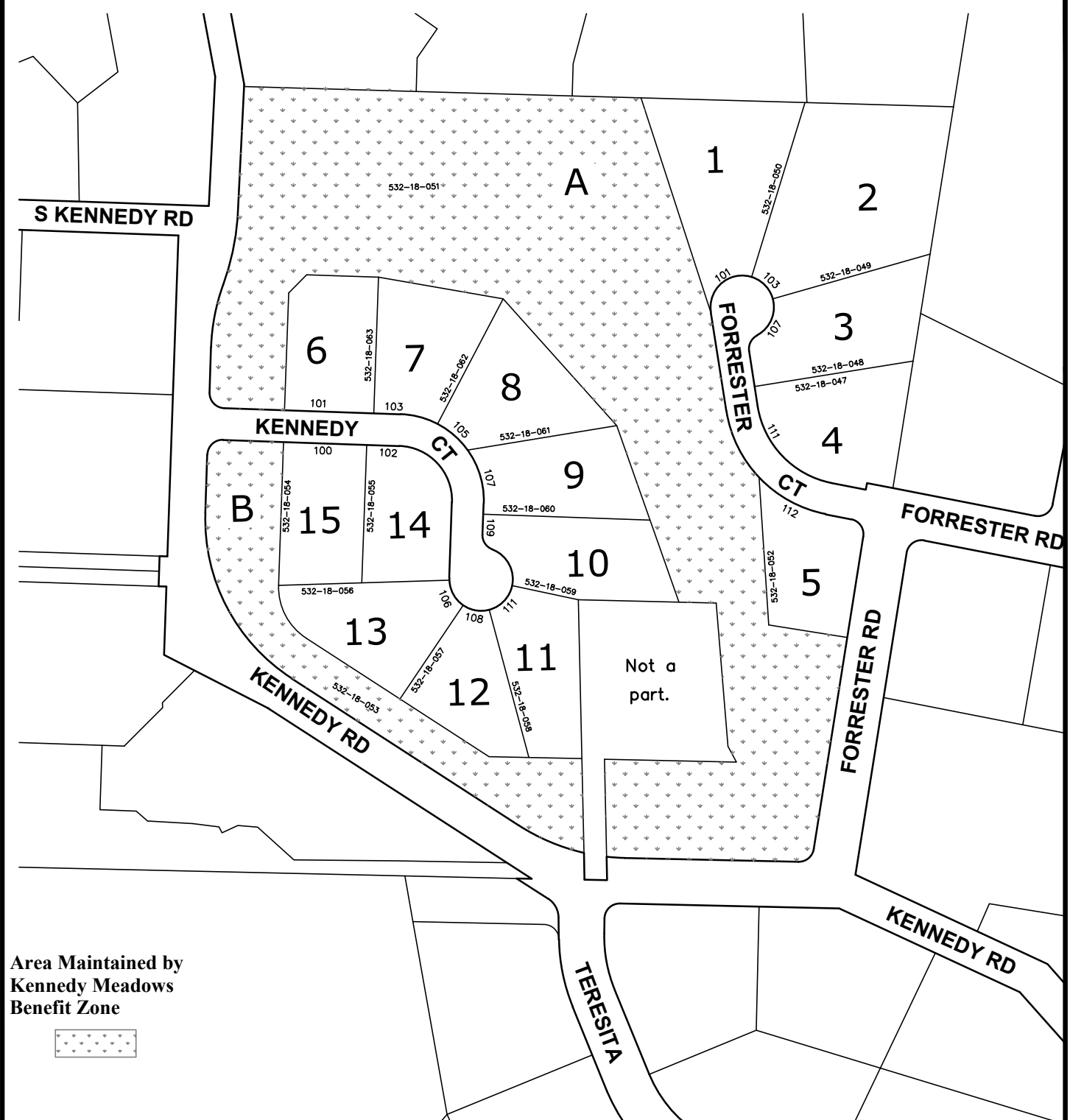
Area Maintained by  
Hillbrook Benefit  
Zone



Not To Scale

**Hillbrook Benefit Zone**  
**Landscaping & Lighting Assessment District No. 1**

# PART "D" Assessment Diagram



Area Maintained by Kennedy Meadows Benefit Zone

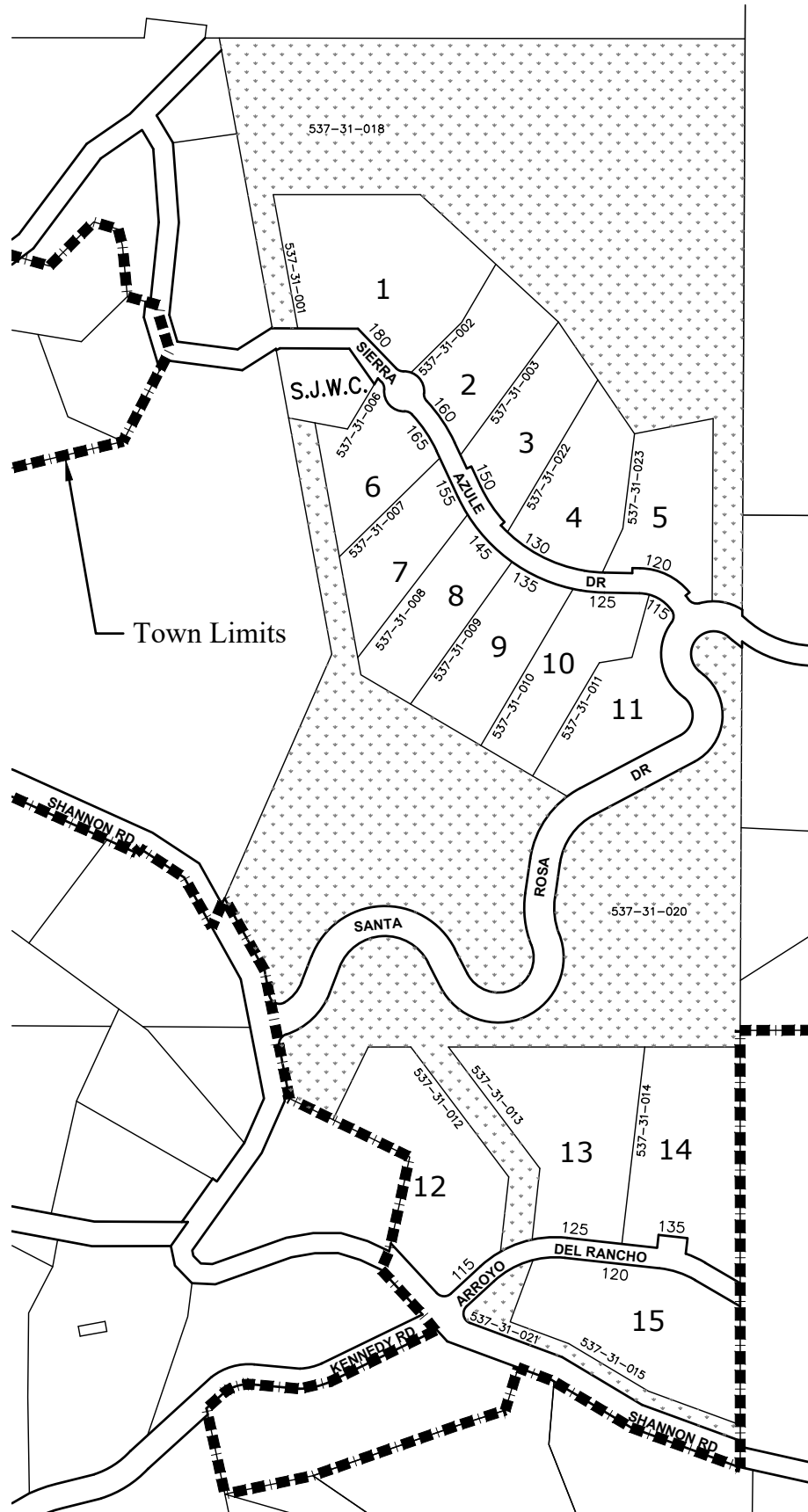


Not To Scale

## Kennedy Meadows Benefit Zone Landscaping & Lighting Assessment District No. 1

ENGINEERING\ASMT-MAPS (LID)\Assessment mcp.dwg

# PART "D" Assessment Diagram



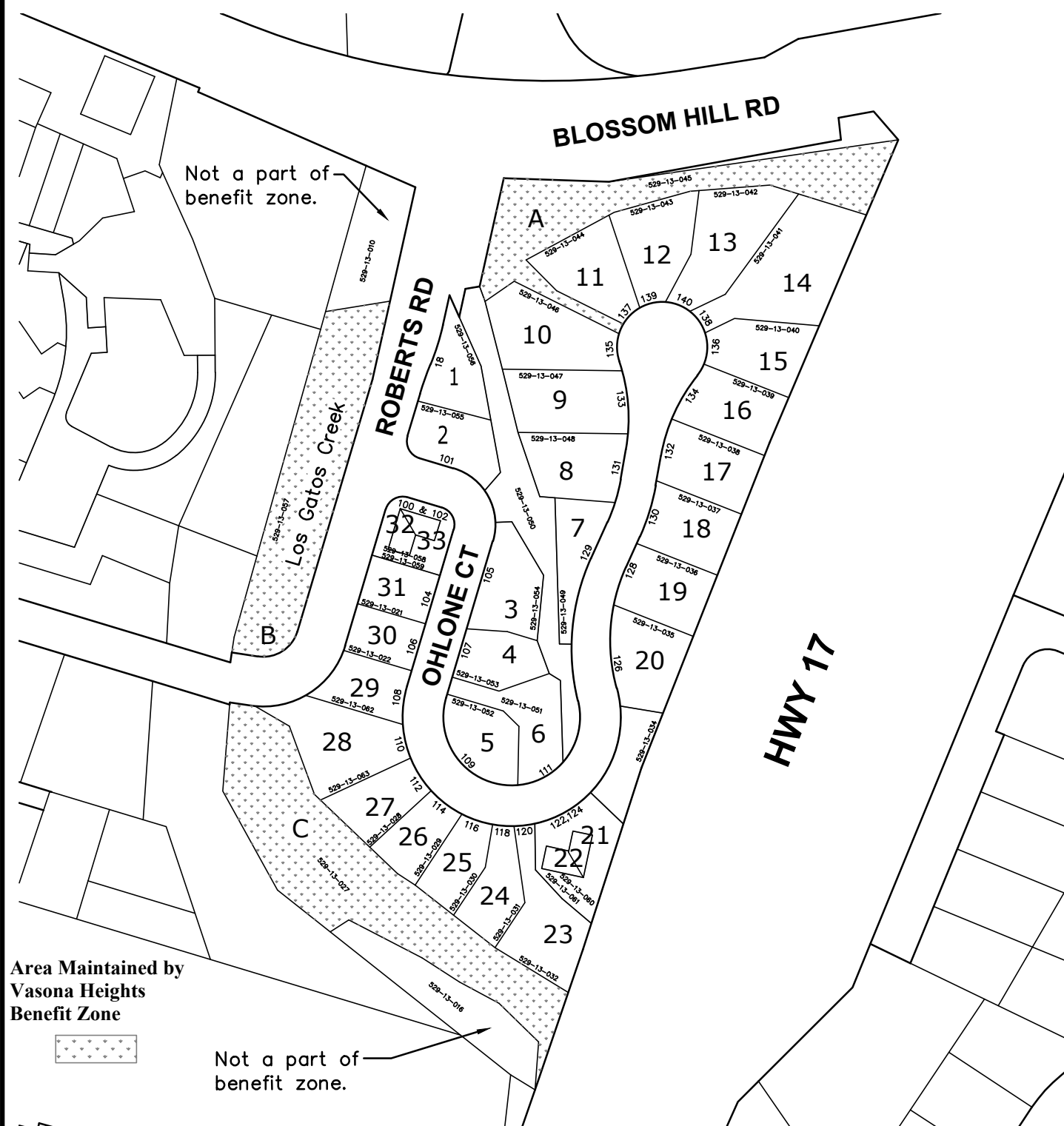
Area Maintained by  
Santa Rosa Heights  
Benefit Zone



Not To Scale

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

# PART "D" Assessment Diagram



Area Maintained by  
Vasona Heights  
Benefit Zone



Not a part of  
benefit zone.

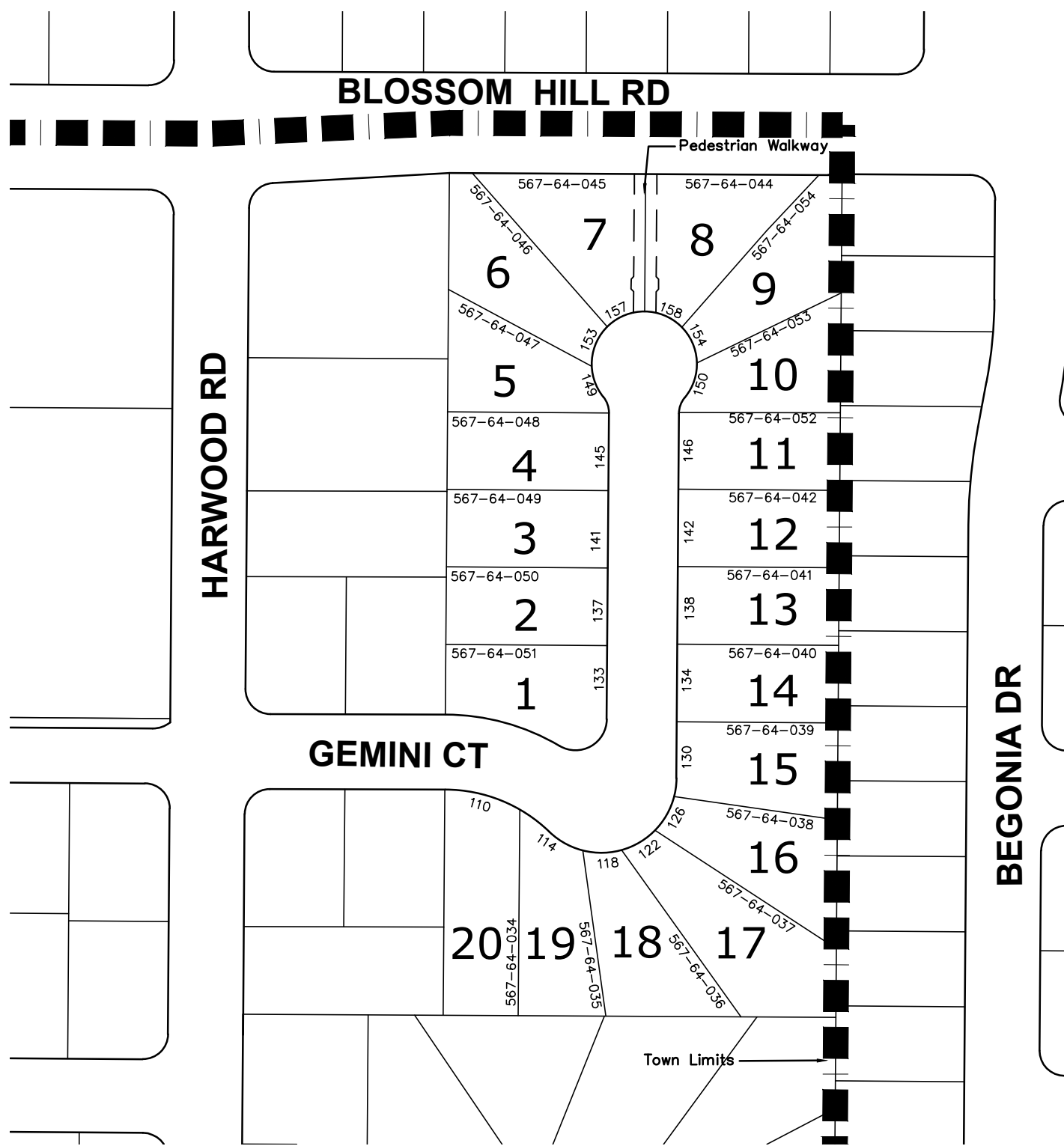


Not To Scale

## Vasona Heights Benefit Zone Landscaping & Lighting Assessment District No. 1

ENGINEERING\ASMT-MAPS (LLD)\Assessment mcp.dwg

PART "D"  
Assessment Diagram



Not To Scale

**Gemini Court Benefit Zone**  
**Landscaping & Lighting Assessment District No. 2**

ENGINEERING\ASMT-MAPS (LID)\Assessment\_map.dwg



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 8.

MEETING DATE: 04/16/2024

---

**DATE:** April 11, 2024  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$15,615.98 to Recognize Excess Insurance Reimbursement for Damage to Howes Play Lot Structure

**RECOMMENDATION:**

Authorize revenue and expenditure budget adjustments in the amount of \$15,615.98 to recognize excess insurance reimbursement for damage to Howes Play Lot structure.

**BACKGROUND:**

Howes Play Lot is a neighborhood park situated between Thomas Drive and Howes Drive. The park is highly used by neighborhood families and school children as a stopping point between school and home travels. The park is equipped with a lighted pathway, large trees, benches, and play equipment. The play equipment consists of a tot swing, a tot slide, and youth playscape (intended for ages 5 to 12).

As a result of March 2023 storms, tree damage occurred throughout the Town including two large Stone Pine trees that fell on the play structure at Howes Play Lot, destroying 70 percent of the equipment. Following the storms, Town contractors removed the fallen trees. Inspection revealed that the tot slide and swings were not damaged, but the youth play lot was a complete loss and could not be salvaged.

On June 9, 2023, staff received a quote from Ross Recreation Equipment, Inc. for the replacement of the youth lot equipment, in an amount of \$121,678. Staff then submitted a claim to the Town's insurance carrier for reimbursement of costs related to the storm damage repairs at the Play lot.

**PREPARED BY:** Stefanie Hockemeyer  
Sr. Administrative Analyst

---

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

---



PAGE 2 OF 2

SUBJECT: Authorize Revenue and Expenditure Budget Adjustments to Recognize Excess Insurance Reimbursement for Damage to Howes Play Lot Structure

DATE: April 11, 2024

BACKGROUND (continued):

At the August 15, 2023 Town Council meeting, staff received authorization to execute a Purchase and Service agreement with Ross Recreation, Inc. to replace the play structure equipment. The value of the purchase order was \$121,678 and the Town Council approval included an expenditure budget adjustment in the amount of \$121,678 to use the funds. The insurance claim was still pending at that time, but staff requested to move forward because there was an estimated 27-week lead time for delivery of the playground equipment.

The play structure was successfully installed at Howes Play Lot.

DISCUSSION:

The insurance claim that staff submitted was approved and the reimbursement amount received was \$137,293.98, which is \$15,615.98 more than the anticipated amount that staff had reported in the August 15, 2023 staff report.

Staff is requesting that Council authorize an additional revenue and expenditure budget adjustment to recognize the excess insurance reimbursement of \$15,615.98, which will allow staff to utilize those funds before the end of the fiscal year to pay for additional repairs at Howes Play Lot.

CONCLUSION:

Authorize revenue and expenditure budget adjustments in the amount of \$15,615.98 to recognize excess insurance reimbursement for damage to Howes Play Lot structure.

FISCAL IMPACT:

Approval of the revenue and expenditure budget adjustments in the amount of \$15,615.98 will be in the Operating Budget for program 5301 (Parks) for additional repairs at Howes Play Lot.

ENVIRONMENTAL ASSESSMENT:

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



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 9.

MEETING DATE: 04/16/2024

---

DATE: April 11, 2024  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Approve the Following Action for the Shannon Road Pedestrian and Bikeway Improvement Project (CIP No. 813-0218):  
a. Authorize the Town Manager to execute Program Supplement No. F0104 to the Administering Agency-State Agreement for Federal-Aid Project No. 04-5067F15 in the Amount of \$940,100 from the State of California Department of Transportation (Caltrans)

**RECOMMENDATION:**

Approve the following action for the Shannon Road Pedestrian and Bikeway Improvement project (CIP No. 813-0218):  
a. Authorize the Town Manager to execute Program Supplement No. F0104 to Administering Agency-State Agreement for Federal-Aid Project No. 04-5067F15 (Attachment 2) in the Amount of \$940,100 from the State of California Department of Transportation (Caltrans)

**BACKGROUND:**

The Shannon Road Pedestrian and Bikeway Improvements Project would provide pedestrian and bicycle safety improvements on Shannon Road between Los Gatos Boulevard and Cherry Blossom Lane. This segment of Shannon Road is a two-lane neighborhood collector street with high volumes of bicycle and pedestrian traffic when schools are in session.

The street is a popular route for students attending Blossom Hill Elementary, Louise Van Meter Elementary, and Raymond J. Fisher Middle Schools. There are intermittent sections of sidewalk on both sides of the roadway. Currently, on-street parking is not allowed on Shannon Road between 7 a.m. and 6 p.m., except on Saturdays, Sundays, and holidays.

**PREPARED BY:** Gary Heap  
Town Engineer

---

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

---

PAGE 2 OF 3

SUBJECT: Authorize the Town Manager to execute Program Supplement and Revenue and Expenditure Budget Adjustments for the Shannon Road Pedestrian and Bikeways Improvement Project

DATE: April 11, 2024

BACKGROUND (continued):

As the Congestion Management Agency (CMA) for Santa Clara County, Santa Clara Valley Transportation Authority (VTA) developed a County Safe Routes to School program called Vehicle Emissions Reductions Based at Schools (VERBS). This program is funded exclusively by federal Congestion Mitigation and Air Quality (CMAQ) funds, which focus on vehicle emission reductions. As a result, VERBS projects need to target air quality improvements as well as the health and safety of school-aged children.

On July 25, 2018, Town staff submitted a grant application to the VTA VERBS Grant Program for the Shannon Road Complete Streets Project (AKA Shannon Road Pedestrian and Bikeways Improvement Project). The Town was awarded \$940,100 of federal funds in the VTA's Fiscal Year (FY) 2018-2022 VERBS Grant Program for the Shannon Road Complete Streets project. With that award the Town entered into the Master Agreement with Caltrans for project funding (Attachment 1). With the design of the project complete, the Town has received the project's "Authorization to Proceed" (often referred to as the E-76) from Caltrans which formally obligates the funds. The Program Supplement Agreement (Attachment 2) authorizes the Town's use of these funds.

DISCUSSION:

The Shannon Road Pedestrian and Bikeway Improvement Project design is complete, and staff is scheduled to advertise the project for bid on April 19, 2024.

On February 15, 2024, Caltrans provided the Town with the Program Supplement Agreement No. F014 for Project CML-5067(024), requesting it be executed for the project. This action would obligate the \$940,100 in grant funding and make it available for project construction.

CONCLUSION:

Staff recommends the Town Council authorize the Town Manager to execute the Program Supplement Agreement.

FISCAL IMPACT:

The funding plan for this project includes several sources including GFAR, multiple grants, and funding from Storm Basin #1, Traffic Mitigation Funds, and Utility Undergrounding.

PAGE 3 OF 3

SUBJECT: Authorize the Town Manager to execute Program Supplement and Revenue and Expenditure Budget Adjustments for the Shannon Road Pedestrian and Bikeways Improvement Project

DATE: April 11, 2024

FISCAL IMPACT (continued):

<b>Shannon Road Pedestrian and Bikeway Improvements CIP No. 813-0218</b>		
	<b>Budget</b>	<b>Costs</b>
GFAR	\$ 740,296	
Grant Funding - Congestion Management Air District (CMAQ)/One Bay Area Grant Program 2 (OBAG2)	\$ 940,100	
Grant Funding - Transportation for Clean Air (TFCA)	\$ 174,250	
Storm Basin #1	\$ 200,000	
Traffic Mitigation Funds	\$ 133,380	
Utility Undergrounding	\$ 119,204	
<b>Total Budget</b>	<b>\$ 2,307,230</b>	
Temporary Staff Charges		\$ 42,985
Consultant & Engineering Services		\$ 326,336
<b>Total Expenditures</b>		<b>\$ 369,321</b>
<b>Available Balance</b>		<b>\$ 1,937,909</b>

ENVIRONMENTAL ASSESSMENT:

This project is Categorically Exempt per Section 15301, PRC 21084; 14 CCR 15300.

Attachments:

1. Master Agreement Administering Agency-State Agreement for Federal-Aid Projects.
2. Program Supplement Agreement No. F014 to Administering Agency-State Agreement for Federal-Aid Projects No. 04-5067F15.

MASTER AGREEMENT  
ADMINISTERING AGENCY-STATE AGREEMENT FOR  
FEDERAL-AID PROJECTS

ITEM NO. 9.

04 City of Los Gatos  
-----  
District Administering Agency

AGR 19.013  
IHH \_\_\_\_\_

Agreement No. 04-5067F15

This AGREEMENT, is entered into effective this 28<sup>th</sup> day of February, 2019, by and between City of Los Gatos, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE", and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Transportation Authorization Bills to fund transportation programs; and
2. WHEREAS, the Legislature of the State of California has enacted legislation by which certain federal-aid funds may be made available for use on local transportation related projects of public entities qualified to act as recipients of these federal-aid funds in accordance with the intent of federal law; and
3. WHEREAS, before federal funds will be made available for a specific program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving federal funds for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project-specific "Authorization/Agreement Summary", herein referred to as "E-76" document, is approved by STATE and the Federal Highway Administration (FHWA).
2. The term "PROJECT", as used herein, means that authorized transportation related project and related activities financed in part with federal-aid funds as more fully-described in an "Authorization/ Agreement Summary" or "Amendment/Modification Summary", herein referred to as "E-76" or "E-76 (AMOD)" document authorized by STATE and the Federal Highway Administration (FHWA).
3. The E-76/E-76 (AMOD) shall designate the party responsible for implementing PROJECT, type of work and location of PROJECT.
4. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive federal-aid funds from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these federal funds that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.
5. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may suspend future authorizations/obligations and invoice payments for any on-going or future federal-aid project performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.
6. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of federal funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.
7. Federal, state and matching funds will not participate in PROJECT work performed in advance of the approval of the E-76 or E-76 (AMOD), unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT. ADMINISTERING AGENCY agrees that it will only proceed with the work authorized for that specific phase(s) on the project-specific E-76 or E-76 (AMOD). ADMINISTERING AGENCY further agrees to not proceed with future phases of PROJECT prior to receiving an E-76 (AMOD) from STATE for that phase(s) unless no further federal funds are needed or for those future phase(s).

8. That PROJECT or portions thereof, must be included in a federally approved Federal Statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY sub "Request for Authorization".

ITEM NO. 9.

9. ADMINISTERING AGENCY shall conform to all state statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of Federal Regulation (CFR) and 2 CFR part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

10. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with LOCAL ASSISTANCE PROCEDURES that describes minimum statewide design standards for local agency streets and roads. LOCAL ASSISTANCE PROCEDURES for projects off the National Highway System (NHS) allow STATE to accept either the STATE's minimum statewide design standards or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current LOCAL ASSISTANCE PROCEDURES.

11. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and, where appropriate, an executed Cooperative Agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights of way or work which affects STATE facilities.

12. When PROJECT is not on the State Highway System but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.

13. If PROJECT is using STATE funds, the Department of General Services, Division of the State Architect, or its designee, shall review the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. ADMINISTERING AGENCY shall not award a PROJECT construction contract for these types of improvements until the State Architect has issued written approval stating that the PROJECT plans and specifications comply with the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

14. ADMINISTERING AGENCY will advertise, award and administer PROJECT in accordance with the current LOCAL ASSISTANCE PROCEDURES unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT.



15. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. While consultants may perform supervision and inspection work for with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide employee to be in responsible charge of each PROJECT who is not a consultant.

16. ADMINISTERING AGENCY shall submit PROJECT-specific contract award documents to STATE's District Local Assistance Engineer within sixty (60) days after contract award. A copy of the award documents shall also be included with the submittal of the first invoice for a construction contract by ADMINISTERING AGENCY.

17. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Report of Expenditures" within one hundred eighty (180) days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LOCAL ASSISTANCE PROCEDURES.

18. ADMINISTERING AGENCY shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

19. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of PROJECT-related work shall incorporate Exhibits A and B (with third party's name replacing ADMINISTERING AGENCY) as essential parts of such agreement to be enforced by that third party as verified by ADMINISTERING AGENCY.



## ARTICLE II - RIGHTS OF WAY

ITEM NO. 9.

1. No contract for the construction of a federal-aid PROJECT shall be awarded until all rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.
2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right of way for a PROJECT, including, but not limited to, being clear as certified or if said right of way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of relocation costs and damages to remainder real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights of way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.
3. Subject to STATE approval and such supervision as is required by LOCAL ASSISTANCE PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from federal funds for expenditures incurred in purchasing only the necessary rights of way needed for the PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.
4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with all applicable State and Federal laws and regulations, in accordance with State procedures as published in State's current LOCAL ASSISTANCE PROCEDURES and STATE's Right-of-Way Manual, subject to STATE oversight to ensure that the completed work is acceptable under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
5. Whether or not federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in 49 CFR, Part 24. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least ninety (90) days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of PROJECT-displaced persons as provided in 49 CFR, Part 24.

6. ADMINISTERING AGENCY shall, along with recording the deed or instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, also record an Declaring Restrictive Covenants (ADRC) as a separate document incorporating the a ITEM NO. 9. included within Exhibits A and B and Appendices A, B, C and D of this AGREEMENT, as appropriate.

## ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.

2. Upon ADMINISTERING AGENCY's acceptance of the completed federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and FHWA and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE and FHWA. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE and FHWA. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.

3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission (CTC).
2. STATE'S financial commitment of federal funds will occur only upon the execution of this AGREEMENT, the authorization of the project-specific E-76 or E-76 (AMOD), the execution of each project-specific PROGRAM SUPPLEMENT, and STATE's approved finance letter.
3. ADMINISTERING AGENCY may submit signed invoices in arrears for reimbursement of participating PROJECT costs on a regular basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.
4. ADMINISTERING AGENCY agrees, at a minimum, to submit invoices at least once every six (6) months commencing after the funds are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six (6) month period.
5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.
6. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursement of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.
8. Indirect Cost Allocation Plans/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.
9. Once PROJECT has been awarded, STATE reserves the right to de-obligate any excess federal funds from the construction phase of PROJECT if the contract award amount is less than the obligated amount, as shown on the PROJECT E-76 or E-76 (AMOD).
10. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.



11. The estimated total cost of PROJECT, the amount of federal funds obligated, and the matching funds may be adjusted by mutual consent of the PARTIES hereto with a finance letter, a detailed estimate, if required, and approved E-76 (AMOD). Federal-aid funding may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.

12. When additional federal-aid funds are not available, ADMINISTERING AGENCY agrees that the payment of federal funds will be limited to the amounts authorized on the PROJECT specific E-76 / E-76 (AMOD) and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.

13. ADMINISTERING AGENCY shall use its own non-federal funds to finance the local share of eligible costs and all expenditures or contract items ruled ineligible for financing with federal funds. STATE shall make the determination of ADMINISTERING AGENCY's cost eligibility for federal fund financing of PROJECT costs.

14. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.

15. Federal and state funds allocated from the State Transportation Improvement Program (STIP) are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.

16. Federal funds encumbered for PROJECT are available for liquidation for a period of six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. State funds encumbered for PROJECT are available for liquidation only for six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. Federal or state funds not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance (per Government Code section 16304). The exact date of fund reversion will be reflected in the STATE signed finance letter for PROJECT.

17. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

18. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

19. ADMINISTERING AGENCY agrees, and will ensure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

20. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

21. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

22. Should ADMINISTERING AGENCY fail to refund any moneys due upon written demand by STATE as provided hereunder or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty 30 days of demand, or within such other period as may be agreed to in writing between the PARTIES, STATE, acting through the State Controller, the State Treasurer, or any other public entity or agency, may withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may withhold approval of future ADMINISTERING AGENCY federal-aid projects.

23. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 22, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

24. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover State funds improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

ARTICLE V

AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTING

ITEM NO. 9.

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of ARTICLE V.
2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.
3. ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.
4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year. The Federal Funds received under a PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205.
5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.
6. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contract over \$10,000, or other contracts over \$25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)) on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions 5, 6, 17, 19 and 20 of ARTICLE IV, FISCAL PROVISIONS, and 1, 2, and 3 of this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING R ITEM NO. 9.  
RETENTION AND REPORTS.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner as required of all other PROJECT expenditures.

9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with the LOCAL ASSISTANCE PROCEDURES.



1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies, to the best of the signatory officer's knowledge and belief, that:

A. No federal or state appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or federal contract, including this AGREEMENT, the making of any STATE or federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any STATE or federal contract, grant, loan, or cooperative contract.

B. If any funds other than federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this AGREEMENT, grant, local, or cooperative contract, ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

C. This certification is a material representation of fact upon which reliance was placed when this AGREEMENT and each PROGRAM SUPPLEMENT was or will be made or entered into. Submission of this certification is a prerequisite for making or entering into this AGREEMENT imposed by Section 1352, Title 31, United States Code. Any party who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. ADMINISTERING AGENCY also agrees by signing this AGREEMENT that the language of this certification will be included in all lower tier sub-agreements which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

1. ADMINISTERING AGENCY agrees to use all state funds reimbursed hereunder for transportation purposes that are in conformance with Article XIX of the California State Constitution and the relevant Federal Regulations.
2. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
3. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE or the federal government.
4. Each project-specific E-76 or E-76 (AMOD), PROGRAM SUPPLEMENT and Finance Letter shall separately establish the terms and funding limits for each described PROJECT funded under the AGREEMENT. No federal or state funds are obligated against this AGREEMENT.
5. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT. ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.
6. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the work actually performed, or in STATE's discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
7. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.
8. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE, FHWA or Federal Transit Administration (FTA) that may have an impact upon the outcome of this AGREEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of this AGREEMENT.
9. ADMINISTERING AGENCY hereby certifies that it does not have nor shall it acquire any financial or business interest that would conflict with the performance of PROJECT under this AGREEMENT.

10. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to an employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the work actually performed, or to deduct from the PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

ITEM NO. 9.

11. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Officer who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Officer, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Officer.

12. Neither the pending of a dispute nor its consideration by the Contract Officer will excuse ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT.

13. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

14. Neither STATE nor any officer or employee thereof shall be responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. STATE reserves the right to terminate funding for any PROJECT upon written notice to ADMINISTERING AGENCY in the event that ADMINISTERING AGENCY fails to proceed with PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT, the bonding requirements if applicable, or otherwise violates the conditions of this AGREEMENT and/or PROGRAM SUPPLEMENT, or the funding allocation such that substantial performance is significantly endangered.

16. No termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if not susceptible of cure within said thirty (30) day period, ADMINISTERING AGENCY thereafter to complete the cure in a manner and time line acceptable to STATE. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

17. In case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT, the terms stated in that PROGRAM SUPPLEMENT shall prevail over those in this AGREEMENT.

18. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

19. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

City of Los Gatos

By [Signature]

By [Signature]

\_\_\_\_\_

Laurel Prevetti

*for*

Chief, Office of Project Implementation  
Division of Local Assistance

Town Manager

City of Los Gatos  
Representative Name & Title  
(Authorized Governing Body Representative)

Date February 28, 2019

Date 2/25/19

Approved as to form:

[Signature], Town Attorney



## FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

## NONDISCRIMINATION ASSURANCES

ADMINISTERING AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives federal financial assistance from the Federal Department of Transportation. ADMINISTERING AGENCY HEREBY GIVES ASSURANCE THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:

1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That ADMINISTERING AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where ADMINISTERING AGENCY receives federal financial assistance to construct, or part of a facility, the Assurance shall extend to the entire facility and facilities in connection therewith.

6. That where ADMINISTERING AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates ADMINISTERING AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.



11. ADMINISTERING AGENCY shall not discriminate on the basis of race, religion, age, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. ADMINISTERING AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of STATE assisted contracts. ADMINISTERING AGENCY'S DBE Implementation Agreement is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved DBE Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

## APPENDIX A TO EXHIBIT B

During the performance of this Agreement, ADMINISTERING AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agrees as follows:

(1) Compliance with Regulations: ADMINISTERING AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to ADMINISTERING AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from States.

ITEM NO. 9.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) \*

(2) that ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.\*

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.



The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.

---

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

**PROGRAM SUPPLEMENT NO.** F014  
**to**  
**ADMINISTERING AGENCY-STATE AGREEMENT**  
**FOR FEDERAL-AID PROJECTS NO** 04-5067F15

Adv. Project ID  
 0422000004

**Date:** February ITEM NO. 9.  
**Location:** 04-SCL-0-EGTS  
**Project Number:** CML-5067(024)  
**E.A. Number:**  
**Locode:** 5067

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 02/28/2019 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. \_\_\_\_\_ approved by the Administering Agency on \_\_\_\_\_ (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

**PROJECT LOCATION:** Town of Los Gatos: On the north side of Shannon Road between Los Gatos Blvd and Cherry Blossom Lane

**TYPE OF WORK:** Pedestrian and Bike Path

**LENGTH:** 0.3(MILES)

Estimated Cost	Federal Funds		Matching Funds		
			LOCAL		OTHER
\$2,080,701.86	Y003	\$940,100.00	\$1,140,601.86		\$0.00

**TOWN OF LOS GATOS**

**STATE OF CALIFORNIA**  
**Department of Transportation**

**By** \_\_\_\_\_

**By** \_\_\_\_\_

**Title** Town Manager

**Chief, Office of Project Implementation**  
**Division of Local Assistance**

**Date** \_\_\_\_\_

**Attest** Wendy Wood, Town Clerk

**Date** \_\_\_\_\_

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

**Accounting Officer**



**Date** 02/13/2024

\$940,100.00

Approved as to Form:

\_\_\_\_\_  
Gabrielle Whelan, Town Attorney

Attest:

\_\_\_\_\_  
Wendy Wood, CMC, Town Clerk



### SPECIAL COVENANTS OR REMARKS

1.
  - A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.
  - B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).
  - C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.
  - D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.6 "Award Package" of the Local Assistance Procedures Manual.

E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

### SPECIAL COVENANTS OR REMARKS

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at [www.sam.gov](http://www.sam.gov).

## SPECIAL COVENANTS OR REMARKS

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.
- B. Invoices shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.
- C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
- D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.
- E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.
- F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

## SPECIAL COVENANTS OR REMARKS

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system

### SPECIAL COVENANTS OR REMARKS

of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.

O. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contracts over \$10,000, or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.

3. Appendix E of the Title VI Assurances (US DOT Order 1050.2A)

During the performance of this agreement, the ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractor, (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

C. Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), (prohibits discrimination on the basis of sex);

D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as

### SPECIAL COVENANTS OR REMARKS

amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);

F. Airport and Airway Improvement Act of 1982, (49 U.S.C. 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);

H. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

I. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

L. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 10.

MEETING DATE: 04/16/24

---

**DATE:** April 1, 2024  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for Construction of the Corporation Yard Building Replacement Completed by S&H Construction, Inc., and Authorize the Town Clerk to File for Recordation

**RECOMMENDATION:**

Authorize the Town Manager to execute a certificate of acceptance and notice of completion for construction of the Corporation Yard Building Replacement completed by S&H Construction, Inc., and authorize the Town Clerk to file for recordation (Attachment 1).

**BACKGROUND:**

This phased project began in the summer of 2020 with phase one for the design and construction for the remodel of the engineering building and adjacent warehouse spaces at 41 Miles Avenue to accommodate engineering and maintenance staff. The project was completed in May 2021.

Phase two began in 2022 for the design and construction of a replacement building at 41 Miles Avenue to be utilized for storage for Parks and Public Works equipment and Police evidence.

At the August 2, 2022 Town Council meeting, Council authorized the Town Manager to execute a Construction Agreement with S&H Construction Inc. for the construction of the storage building for a total agreement amount not to exceed \$999,180 including 30% for unanticipated services.

**PREPARED BY:** Dan Keller  
Facilities & Environmental Services Manager

---

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

---

SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Corporation Yard Building Replacement and Authorize the Town Clerk to File for Recordation

DATE: April 1, 2024

DISCUSSION:

S&H Construction, Inc. began work in fall 2022 and has satisfactorily completed all contracted work items, for a final construction cost of \$817,468.

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

CONCLUSION:

This Council action would close the active contract period with S&H Construction, Inc. and begin the warranty period for their work.

FISCAL IMPACT:

There were sufficient funds available in the CIP Budget for the Corporation Yard Building Replacement Project as displayed in the fiscal table.

Corporation Yard Building Replacement Project CIP No. 821-2302		
	Budget	Costs
GFAR	\$ 2,651,781	
<b>Total Budget</b>	<b>\$ 2,651,781</b>	
		Costs
Construction & Consultant Expenses		\$ 1,576,281
Construction Agreement with S&H Construction, Inc. (Requested with this Staff Report)		\$ 817,468
<b>Total Costs</b>		<b>\$ 2,393,749</b>
<b>Available Balance</b>		<b>\$ 258,032</b>



SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Corporation Yard Building Replacement and Authorize the Town Clerk to File for Recordation

DATE: April 1, 2024

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and not further action was required.

Attachment:

1. Certificate of Acceptance and Notice of Completion

**Recording Requested by:**  
TOWN OF LOS GATOS

**WHEN RECORDED MAIL TO:**

TOWN CLERK  
TOWN OF LOS GATOS  
110 E MAIN ST  
LOS GATOS, CA 95030

---

(SPACE ABOVE BAR FOR RECORDER'S USE)

(RECORD WITHOUT FEE UNDER GOVERNMENT CODE SECTIONS 27383 AND 6103)

**TYPE OF RECORDING**  
**CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION**  
**PPW JOB NO. 18-821-2302 Corporation Yard Building Replacement**

TO WHOM IT MAY CONCERN:

I do hereby certify that **S&H Construction, Inc.** completed the work called for in the agreement with the Town of Los Gatos dated August 9, 2022. The work is outlined in the Town's bid process prepared by the Town of Los Gatos and generally consisted of furnishing all labor, materials, tools, equipment, and services required for completion of the PPW Job No. 18-821-2302 located in the TOWN OF LOS GATOS, County of Santa Clara, State of California and was completed, approved and accepted **April 1, 2024.**

Bond No.: 602-133948-9  
Date: August 10, 2022

TOWN OF LOS GATOS

By: \_\_\_\_\_  
Laurel Prevetti, Town Manager

*Acknowledgment Required*



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 11.

MEETING DATE: 04/16/2024

---

DATE: April 11, 2024  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Approve and Authorize the Town Manager to Execute a Memorandum of Understanding Between the Town of Los Gatos and the Police Officers' Association, and Authorize an Expenditure Budget Adjustment in the Amount of \$154,376 from the Available General Fund Capital/Special Projects Reserve

**RECOMMENDATION:**

Approve and authorize the Town Manager to Execute a Memorandum of Understanding between the Town of Los Gatos and the Police Officers' Association (POA), and authorize an expenditure budget adjustment in the amount of \$154,376 from the available General Fund Capital/Special Projects Reserve.

**BACKGROUND:**

In accordance with the Town's Employer-Employee Relations Resolution No. 1974-41, representatives of the Town and POA have met and conferred in good faith and within the scope of representation to reach agreement for a successor Memorandum of Understanding (MOU). The revised agreement showing the changes from the previous MOU is contained in Attachment 1. The MOU is a labor agreement that identifies specific terms and conditions of employment applicable to the employees represented by that agreement.

The Town has two other represented groups, the American Federation of State, County and Municipal Employees (AFSCME) and the Town Employees' Association (TEA). Negotiations with these groups are not yet completed.

**DISCUSSION:**

The Town's current agreement with POA expires on June 30, 2024. In October 2024, the Town and POA began negotiating for a successor agreement. Both parties shared a common goal to

**PREPARED BY:** Katy Nomura  
Assistant Town Manager

---

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

---

SUBJECT: Memorandum of Understanding with POA

DATE: April 11, 2024

DISCUSSION (continued):

address recruitment and retention challenges experienced by the Police Department. The Town is hopeful that the proposed MOU will support successful recruitment and retention efforts moving forward. A tentative agreement for a three-year term was reached in April 2024 and POA membership ratified on April 8, 2024. The Town is appreciative of the hard work of our Police Officers and of the collaboration of the POA negotiating team.

The following is a summary of the major provisions of the agreement:

1. **Term:** April 1, 2024 to June 30, 2027
2. **Salary:**
  - a. Effective the pay period containing April 1, 2024, the Town will provide a 6.5% salary increase.
  - b. Effective the first full pay period in July 2025, the Town will provide a 5% salary increase.
  - c. Effective the first full pay period in July 2026, the Town will provide a 4% salary increase.
3. **PORAC Retiree Medical Plan Employer Contributions:**
  - a. Effective July 2024, the Town shall contribute \$25 per month to the PORAC Retiree Medical Plan for all members hired after October 1, 2018.
  - b. Effective July 2025, the Town shall contribute \$50 per month to the PORAC Retiree Medical Plan for all members hired after October 1, 2018.
4. **Paid Parental Leave:** Upon request from POA between July and December 2024, the Town and POA shall meet to agree and implement paid parental leave benefits that are equal or greater than those provided under the California Paid Family Leave program.
5. **Therapy Canine Pay:** Effective July 2024, officers assigned to handle a canine under the Department's Therapy Canine Program shall receive one half hour of pay per day, totaling seven hours per pay period, at an hourly rate of one and one-half times the State minimum wage.
6. **Outside Employment:** Requests to work temporarily serve as a member of another law enforcement agency will automatically be denied unless the requesting employee has at least five years of experience as a sworn peace officer in a position that requires a basic POST certificate and has at least four years of service with the Town.
7. **Vacation Accrual:** Effective April 1, 2024, the individual rate of accrual for all members and future members shall be increased to account for total years of experience working in a sworn peace officer position that requires possession of a basic POST certificate.

The Town and POA have also agreed to various MOU language updates. These updates clarify existing language, delete obsolete language, and ensure compliance related to the Town's contract for retirement and medical benefits provided under the California Public Employees' Retirement System (CalPERS) and PEMHCA. The updates do not change existing benefits nor is there a related fiscal impact (see Attachment 1).

PAGE 3 OF 3

SUBJECT: Memorandum of Understanding with POA

DATE: April 11, 2024

CONCLUSION:

The POA agreement has been prepared within the parameters provided to the Town's negotiators by the Town Council and has been ratified by the POA membership. It is recommended that the Town Council approve the MOU, authorize the Town Manager to execute the MOU, and authorize an expenditure budget adjustment in the amount of \$154,376.

COORDINATION:

This report was coordinated with the Town Manager's Office, Finance Department, and outside legal counsel.

FISCAL IMPACT:

The anticipated fiscal impact for all salary and benefit adjustments in FY 2023/24 is \$154,376. The requested budget adjustment in this amount will provide the necessary funding to cover this cost.

Funding to support the FY 2024/25 costs will be incorporated into the proposed budget and the ongoing cost each year will be incorporated into the proposed future year budgets for Council approval.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Proposed POA MOU through June 30, 2027
2. Salary Schedule for POA effective pay period containing April 1, 2024
3. Salary Schedule for POA effective first full pay period July 2025
4. Salary Schedule for POA effective first full pay period in July 2026

**TOWN OF LOS GATOS**

**AND**

**LOS GATOS POLICE OFFICERS' ASSOCIATION**



**MEMORANDUM OF UNDERSTANDING**

~~October~~ April 1, 20214 – June 30, 20217

This page left intentionally blank

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE TOWN OF LOS GATOS  
AND  
THE LOS GATOS POLICE OFFICERS ASSOCIATION**

THIS AGREEMENT IS ENTERED INTO AS OF ~~October~~           1          , 20214, BETWEEN THE TOWN OF LOS GATOS, HEREINAFTER REFERRED TO AS THE "TOWN", AND THE LOS GATOS POLICE OFFICERS ASSOCIATION, HEREINAFTER REFERRED TO AS "POA".

Pursuant to Town Resolution 1974-41 of the Town of Los Gatos and Section 3500 et. seq. of the Government Code, the duly authorized representatives of the Town and POA, having met and conferred in good faith concerning the issues of wages, hours, and terms and conditions of employment, as herein set forth, declare their agreement to the provisions of this Memorandum of Understanding.

FOR THE TOWN:

FOR POA:

\_\_\_\_\_  
Laurel Prevetti, Town Manager

\_\_\_\_\_  
~~Bryan Paul~~Greg Borromeo, President

\_\_\_\_\_  
~~Arn Andrews~~Katy Nomura, Assistant Town  
Manager

\_\_\_\_\_  
~~Kevin Elliott~~Bill Hoyt, ~~Police~~-Sergeant

\_\_\_\_\_  
~~Salina Flores~~, Human Resources Director

\_\_\_\_\_  
~~Kevin Baughn~~Mike Birley, ~~Police~~  
~~Officer~~Detective

\_\_\_\_\_  
Lisa S. Charbonneau Liebert Cassidy Whitmore

\_\_\_\_\_  
~~John Alldredge~~Riley Frizzell, ~~Police~~  
~~Officer~~Detective

APPROVED AS TO FORM:

\_\_\_\_\_  
Peter Hoffmann, Rains Lucia Stern St. Phalle  
Silver, PC

\_\_\_\_\_  
Gabrielle Whelan  
Town Attorney



This page left intentionally blank

- Preamble ..... 1
- Term ..... 1
- 1. Employer-Employee Relations..... 1
- 2. Savings Clause..... 1
- 3. Payroll Deduction ..... 1
- 4. Non-Discrimination..... 2
  - 4.1 General Provisions Regarding Americans with Disabilities Act ... 2
- 5. Salary ..... 2
  - 5.1 Intent..... 2
  - 5.2 Effective Upon Approval ..... 2
  - 5.3 Effective 2022 ..... 3
  - 5.4 Effective 2023..... 3
  - 5.5 One-Time Lump Sum ..... 3
  - 5.6 Pandemic Related Bonus ..... 3
- 6. PERS Benefits ..... 3
  - 6.1 PERS 3% At 50 Retirement Option Classic Members..... 4
  - 6.2 PERS 2.7% at 57 Retirement Option New Members ..... 4
- 7. Education Incentive Pay ..... 4
  - 7.1 Four-year Degree Incentive ..... 4
  - 7.2 Two-year Degree Incentive Pay ..... 4
  - 7.3 Commencement of Educational Incentive Pay ..... 5
  - 7.4 Re-Opener..... 5
- 8. POST Certification Pay ..... 5
- 9. Special Pays..... 5
  - 9.1 Special Assignment Pay..... 5
  - 9.2 Bilingual Pay ..... 6
  - 9.3 Canine Pay..... 6
  - 9.4 FTO Training Premium ..... 7
  - 9.5 Trailing Canine Pay ..... 7
  - 9.6 Posting for Special Assignments.....7
- 10. Acting Sergeant Pay ..... 8
- 11. Reimbursement of Expenses ..... 8
- 12. Tuition Reimbursement..... 8

- 13. Health and Welfare Benefits and Rate of Town Contribution..... 8
  - 13.1 Cafeteria Plan..... 8
  - 13.2 Dental..... 8
  - 13.3 Medical ..... 9
  - 13.4 Vision..... 9
  - 13.5 Cash-In-Lieu Plan..... 9
  - 13.6 Supplemental Health and Welfare Benefits ..... 9
- 14. Retiree Health..... 10
  - 14.1 Retiree Health Benefit for Eligible Retirees Hired on or Before October 1, 2018.....10
  - 14.2 Retiree Health Benefit for Eligible Retirees Hired After October 1, 2018.....11
- 15. Uniforms ..... 12
- 16. Mileage Reimbursement ..... 12
- 17. Payroll Periods ..... 12
- 18. Paychecks..... 12
- 19. Deferred Compensation ..... 12
- 20. Overtime ..... 12
- 21. Duty Extension ..... 13
- 22. Call Back..... 13
- 23. Vacation Schedule ..... 13
- 24. Vacation and Compensatory Time Off Cash-Out.....14
- 25. Shift and Vacation Selection Procedures..... 14
- 26. Holidays and Holiday Pay..... 14
- 27. Personal Leave ..... 15
- 28. Sick Leave..... 15
- 29. Sick Leave Cash-Out Program ..... 15
  - 29.1 Annual Sick Leave Cash-Out for Employees Hired Prior to October 1, 2018.....15
  - 29.2 Sick Leave Cash-Out Upon Termination for Employees Hired Prior to October 1, 2018....15
  - 29.3 Unused Sick Leave Upon Retirement..... 15
- 30. Military Leave ..... 16
- 31. Bereavement/Compassion Leave ..... 16
- 32. Leave Without Pay..... 16

- 33. Accrual of Benefits..... 17
- 34. Workers' Compensation ..... 17
- 35. Jury Duty ..... 17
- 36. Outside Employment ..... 17
- 37. Residency Requirement..... 17
- 38. Layoff Policy ..... 17
- 39. ~~Vehicles~~ Paid Family Leave ..... 17
- 40. Promotions ..... 18
- 41. Probationary Period..... 18
- 42. Performance Evaluations..... 18
- 43. Reinstatement ..... 19
- 44. Re-employment ..... 19
- 45. Grievance Procedures..... 19
- 46. Attendance ..... 20
- 47. Completeness of MOU ..... 20
- 48. Association Notification or Communications ..... 20
- 49. Labor-Management Committee.....20
- 50. Catastrophic Time Bank..... 20
- 51. Me Too Clause ..... 21

Salary Schedule Exhibit A

**Town of Los Gatos and Los Gatos Police Officers Association  
Comprehensive Memorandum of Understanding  
On Salaries, Fringe Benefits and Working Conditions**

**Preamble**

The authorized representatives of the Town of Los Gatos, hereinafter referred to as the "Town" and the authorized representatives of the Town of Los Gatos Police Officers Association hereinafter referred to as "Association" do jointly accept and agree to all the terms and conditions of employment set forth in this comprehensive memorandum of understanding pursuant to Town Resolution 1974-41 of the Town of Los Gatos.

This understanding shall apply to represented employees assigned to those classifications listed on Exhibit A when classifications are created which fall under the representation of POA, this understanding shall also apply.

The terms and conditions of employment set forth in this understanding have been discussed in good faith by the authorized representatives of the Town and the authorized representatives of the Police Officers Association. They agree to recommend acceptance by the employees of all terms and conditions set forth herein. Following said acceptance by the Association, authorized representatives of the Town agree to recommend to the Town Council that all terms and conditions set forth herein be approved by resolution. Upon adoption of said resolution, all terms and conditions so incorporated shall become effective without further action by either party.

**Term**

The term of this Memorandum of Understanding shall be three years, commencing on ~~October-April 1, 2021~~, and terminating on June 30, ~~2024~~2027.

**Section 1. Employer-Employee Relations**

The Association recognizes the existence of Town Resolution 1974-41, and its successor if any, during the term of this MOU. Recognition of any amendments to this resolution does not imply POA has agreed to the changes.

**Section 2. Savings Clause**

If any provision or the application of any provision of this agreement as implemented should be rendered or declared invalid by any court action or decree or by reasons of any preemptive legislation, the remaining sections of this agreement shall remain in full force and effect for the duration of this agreement

**Section 3. Payroll Deduction**

Any employee may sign and deliver to the Association an authorization for payroll deduction of membership dues. The Town agrees to remit to the Association all monies deducted accompanied by a list of workers for whom such deductions have been made and indicating any changes in personnel from the list previously furnished.

The Association shall certify in writing to the Town any changes in the amount of membership dues. The Town shall not be obligated to put into effect any new, changed, or discontinued deduction until the pay period commencing thirty (30) days or longer after such submission.

The Association shall indemnify and hold harmless the Town against any and all suits, claims, demands, and liabilities that may arise out of, or by reason of, any action or omission of the Town in complying with this Section.

## Section 4. Non-Discrimination

The Town and Association agree that all provisions of this agreement shall be applied equally to all employees covered herein without favor or discrimination because of race, religious creed, color, sex (including pregnancy, childbirth, and related medical conditions), age (over 40), gender, gender identity, gender expression, sexual orientation, national origin, ancestry, political or religious affiliation, Association membership or activity on behalf of the Association, marital status, military or veteran status, or physical disability, mental disability, medical condition, or genetic information or any other basis prohibited by applicable federal, State or Town law. Association and Town support equal employment opportunity in hiring and will support all State and Federal regulations regarding equal employment opportunity.

### 4.1 General Provision regarding the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA)

- A. Because the ADA and the FEHA requires accommodations for individuals protected under the Acts, the Association recognizes the Town's obligation to comply with all provisions of the ADA and the FEHA on a case-by-case basis.
- B. The Association recognizes that the Town has the legal obligation to meet with the individual employee to be accommodated before any adjustment is made in working conditions. The Association will be notified of these proposed accommodations.
- C. Any accommodation provided to an individual protected by the ADA and the FEHA shall not establish a past practice.

## Section 5. Salary

### 5.1 Intent

It is the intent of the Town to maintain salaries and benefits at a level that attracts and retains quality employees. The parties agree that surveys of the wages and benefits of police officers performing comparable work for comparable agencies provide information useful in ensuring that the Town continues to meet this goal.

### 5.2 Effective Upon Approval

Effective April 1, 2024 ~~the first full pay period after Council approval of this MOU, or as soon as practical thereafter~~, the salary rate for all classifications shall be increased by six and one half two percent (26.5%).

### 5.3 Effective 20225

Effective the first full pay period in July 20225, the salary rate for all classifications shall be increased by five ~~and one quarter~~ percent (5~~.25~~%).

~~The parties agree that the combined 2022 increases represent a three percent (3%) cost of living adjustment, a market increase of three and fifteen hundredths' percent (3.15%), and an additional one and one tenths percent (1.1%) to address the passage of time since October 2021.~~

### 5.4 Effective 20236

Effective the first full pay period in July 20236, the salary rate for all classifications shall be increased by four three percent (34%).

### 5.5 ~~One-Time Lump Sum~~

~~Effective the first full pay period of July 2022 or the first full pay period after Council approval of the MOU, whichever is later, all employees shall receive a one-time non-pensionable lump sum payment of five thousand dollars (\$5,000).~~

## ~~5.6 Pandemic Related Bonus~~

~~Effective the first full pay period of July 2022 or the first full pay period after Council approval of the MOU, whichever is later, all employees who worked for the Town in 2021 who are employed at the Town through the last day of the pay period the bonus is paid, will receive a one-time, non-pensionable lump sum payment of \$2,500.~~

## Section 6. PERS Benefits

The Town contracts with the California Public Employees' Retirement System (CalPERS or PERS) to provide Town employees with retirement benefits.

### 6.1 PERS 3% at 50 Retirement Option Classic Members

For employees that are not "New Members" as defined under Government Code section 7522.04(f), commonly referred to as "Classic Members," the Town provides the 3% at 50 option for members of the bargaining unit.

The Town's contract with CalPERS for the 3% at 50 option also includes the following optional benefits:

- Single Highest Year
- 1959 Survivor Benefit Level 4
- Conversion of Unused Sick Leave to Service Credit

Classic Members contribute 12% towards PERS (3% more than required by statute) in accordance with Government Code section 20516(a).

### 6.3 PERS 2.7% at 57 Retirement Option for New Member Employees Hired on or After January 1, 2013

For employees hired on or after January 1, 2013, who meet the definition of New Member under Government Code 7522.04(f), the Town provides the 2.7% at 57 retirement benefit.

The Town's contract with CalPERS for the 2.7% at 57 option also includes the following optional benefits:

- 36-month final average compensation (Gov't Code 20037)
- 1959 Survivor Benefit Level 4
- Conversion of Unused Sick Leave to Service Credit

New Members contribute toward CalPERS an amount that is equal to one half (1/2) the normal cost of their CalPERS pension as determined annually by CalPERS, or the current contribution rate of similarly situated employees, whichever is greater (Government Code 7522.30(c)).

## Section 7. Education Incentive Pay

### 7.1 Four-Year Degree Incentive Pay

The Town shall pay two and one-half percent (2.5%) of base salary to any member who possesses a four-year degree that enhances their ability to do their job. Employees must submit proof of the four-year degree to Human Resources in order to be eligible for the payment.

## 7.2 Two-Year Degree Incentive Pay

For employees hired prior to June 30, 2008, the Town shall pay two and one-half percent (2.5%) of base salary to any member who possesses a two-year degree or meets the minimum requirements to obtain an Associates of Arts Degree that enhances their ability to do their job. Employees must submit proof of the two-year degree or completion of the minimum requirements to obtain an Associates of Arts Degree in a related field to Human Resources in order to be eligible for the payment. The incentive pay for a two-year degree does not stack with incentive pay for a four-year degree; the maximum education incentive pay any member may receive under this section 7 is two and one-half percent (2.5%) of base salary

## 7.3 Commencement of Educational Incentive Pay

Educational Incentive Pay is effective the first full pay period after the employee provides Human Resources with sufficient proof that the employee has obtained the requisite degree or education for Educational Incentive Pay.

## 7.4 Re-Opener

If the law changes on the education requirements for California police officers, the Town has the right to reopen this section 7.

## 7.5 CalPERS

The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such to CalPERS, pursuant to Title 2 CCR Section 571(a)(2) and 571.1(b)(2) as Education Incentive.

## Section 8. POST Certificate Pay

Qualified employees shall receive one of the following payment amounts in accordance with Exhibit A:

- A. Employees in their represented classifications who have been awarded an Intermediate POST Certificate: An additional 5% of base salary.
- B. Employees in their represented classifications who have been awarded an Advanced POST Certificate: An additional 2.5% of base salary for a total of 7.5%.
- C. The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such to CalPERS, pursuant to Title 2 CCR Section 571(a)(2) and 571.1(b)(2) as Education Incentive.
- B.—

## Section 9. Special Pays

Officers are limited to one special assignment pay or canine pay. Officers who qualify for bilingual pay may receive bilingual pay in addition to a special assignment pay or canine.

### 9.1 Special Assignment Pay

Town shall provide a 5% special assignment pay to Association represented personnel who are routinely and consistently assigned as follows:

#### 9.1.1

Motorcycle Patrol Premium- for unit members who operate and/or patrol on motorcycle.

#### 9.1.2



School Resource Officer Duty Pay – For unit members who are assigned to School Resource Officer duty.

#### 9.1.3

Detective Division Premium- for unit members who are routinely assigned to a detective or investigative division.

#### 9.1.4

Police Administrative Officer-for unit members who are assigned to police administration to provide support for the Police Chief and Command Staff in the operation of the Police Department.

Assignment for special pay purposes shall be done using Town Personnel Action Forms.

Association represented personnel removed from specialty positions on a temporary basis for departmental purposes and through no fault or request of their own shall continue to receive specialty pay for a maximum of 30 calendar days.

The parties agree that to the extent permitted by law, special assignment ~~pays premiums~~ are special compensation and shall be reported as such to pensionable as determined by CalPERS, pursuant to Title 2 CCR 571(a)(4) and 571.1(b)(3) as Special Assignment Pay.

## 9.2 Bilingual Pay

The Town will pay an additional 2.5% above base pay for employees who are routinely and consistently assigned to communicate in languages other than English. Bilingual pay will be for Spanish, Russian, Arabic, Chinese, Vietnamese and any other language designated by the Chief of Police. The Town will determine the qualifying criteria including the test and the application to the specific job assignment.

The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such to CalPERS, pursuant to Title 2 CCR Section 571(a)(4) and 571.1(b)(3) as Bilingual Premium.

## 9.3 Canine Pay

Officers who are routinely and consistently assigned to handle, train and board a canine in accordance with this section are eligible for Canine Officer/Animal Premium. Officers assigned to the canine unit are required to care for, train, groom, feed, and bathe their assigned dog. The parties agree that two hours per week is a reasonable amount of time to care for the canine. The Town compensates Canine officers a total of five (5) hours per week for additional time spent caring for the canine. Two (2) hours of this additional time is outside of the regular shift. The remaining three (3) hours is provided as release time.

Call-back as defined in the MOU shall not apply for the purposes of caring for the dog. Compensation provided during the additional paid time and release time is mutually acknowledged to compensate for additional time required to care for, train, groom, feed, and bathe the assigned canine.

### 9.3.1 Canine Pay Premium

Compensation for the 2 hours outside of the regular shift is paid as a 5% premium on all hours worked.

The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such to CalPERS, pursuant to Title 2 CCR 571(a)(4) and 571.1(b)(3) as Canine Officer / Animal Premium.

### 9.3.2 Canine Release Time

Canine Officers on a 4-10 schedule shall be released in a paid capacity for 0.75 hours prior to the "normal" conclusion of each regularly scheduled shift (4 shifts per week equaling 3 hours per week) for the normal care of the canine, including but not limited to training, grooming, feeding, bathing, and routine veterinarian care.

Canine Officers on a 12-hour schedule shall be released in a paid capacity for 1.0 hours prior to the “normal” conclusion of each regularly scheduled shift (3 shifts per week equaling 3 hours per week) for the normal care of the canine, including but not limited to training, grooming, feeding, bathing, and routine veterinarian care.

In the event that a Canine Officer is not released in sufficient time prior to the conclusion of his or her shift, the officer will be paid for additional time after the end of shift to compensate them for 0.75 or 1.0 hours of Canine care time as appropriate. The Town recognizes that this may result in overtime.

### 9.3.3 Commute Time with Canine

Commute time with the canine shall not be considered working time. If there is an event requiring emergency veterinarian care, travel to the veterinarian will be compensable work time.

### 9.4 Field Training Officer Training Premium

In addition to the above special pays, officers assigned by the Chief of Police as Field Training Officers shall also receive the 5% incentive whenever providing training to a Department member for which a training observation report is required or when completing special assignments directly related to the Field Training Officer Program with prior approval of the Chief of Police. Attendance at FTO meetings, training provided at briefings, or other training provided in conjunction with the Department’s annual Advanced Officer Training or other on-going general training to Department members does not qualify for the 5% incentive.

The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such to CalPERS, pursuant to Title 2 CCR Section 571(a)(4) and 571.1(b)(3) as Training Premium.

### 9.5 Trailing Canine Pay

Officers that personally own a certified and properly equipped Trailing Canine and have been identified as a Department Trailing Canine Handler will provide the Los Gatos-Monte Sereno Police Department with the use of the Trailing Canine when tracking, trailing and related canine services are required. Deployment of the Trailing Canine Team may be requested for location of missing persons, fugitive apprehension and evidence recovery. With the approval of the Chief of Police, the Trailing Canine Team may also be deployed to other jurisdictions. Trailing Canine Handlers are responsible for the maintenance and care of the canine, in addition to recurring in-service training, at no cost to the Town.

#### 9.5.1 Trailing Canine Premium

Officers will receive a five percent (5%) specialty pay premium only during approved deployment and use of services and will submit an approved time sheet noting the specialty pay during the pay period in which the services were rendered. The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such to CalPERS, pursuant to Title 2 CCR 571(a)(4) and 571.1(b)(3) as Canine Officer / Animal Premium.

~~Special assignment premiums are pensionable as determined by CalPERS.~~

The Town will reimburse Officers up to, but not to exceed, \$150.00 per month premium for private pet insurance. Officers will submit receipts for payment on a quarterly basis to Finance — Accounts Payable for reimbursement. The Town will also reimburse Officers for insurance deductible payments up to \$250.00 per injury/illness incurred to canine while deployed for use on Town assignments.

#### 9.5.2 Trailing Canine Training

Trailing Canine Handlers will maintain required recurring in-service training and associated records, within the scope of policies and procedures of the Los Gatos-Monte Sereno Police Department. Officers will be reimbursed for annual canine recertification course registration fees not to exceed \$800.00 per year. Officers are responsible for cost of travel, lodging, and per-diem related to the annual recertification course.

Up to 40-hours of paid release time annually will be allowed to attend re-certification course. The approved re-certification course constitutes scheduled Department training for which the release time will be honored.

### **9.6 Therapy Canine Pay**

The parties agree that one half-hour per day, outside of their regularly-scheduled work day, is a reasonable amount of time for officers assigned to handle a canine as part of the Department's Therapy Canine Program to care for their canines off duty. Therefore, effective the first full pay period after July 1, 2024, an officer assigned to handle a canine under the Department's Therapy Canine Program shall receive one half hour of pay per day, totaling seven hours per pay period, at an hourly rate of one and one half times the state minimum wage. As of January 1, 2024, the California state minimum wage is \$16.00 per hour, which would equate to a therapy canine payment of one hundred and sixty eight dollars (\$168) per pay period.

### **9.6 Posting for Special Assignments**

Any opening for a special assignment shall be posted for a minimum of two weeks, unless extraordinary circumstances warrant otherwise.

### **Section 10. Acting Sergeant Pay**

Police Officers working as acting supervisors shall be compensated at Step "4" of the Sergeant's rate of pay. Town shall periodically review the actual time use of acting supervisor designations in order to determine the necessity of additional permanent supervisory personnel.

The parties agree that to the extent permitted by law, this is special compensation for "Classics" only and shall be reported as such to CalPERS, pursuant to Title 2 CCR Section 571(a)(3) as Temporary Upgrade Pay.

### **Section 11. Reimbursement of Expenses**

The Town shall pay claims for reimbursement within 30 days following the complete and accurate submission of claims as approved by the Finance Director.

### **Section 12. Tuition Reimbursement**

Town will reimburse 100% of the cost of books, university/school fees (except parking) and tuition. Tuition and school fees shall be reimbursed up to the full-time rates of San Jose State University at applicable Undergraduate or Graduate rates per school term. The maximum reimbursement per employee per fiscal year is equivalent to two (2) semesters. The reimbursement shall be only for courses that are directly related to the employee's position as determined by the Town Manager, including general education courses that are generally related to attainment of a job-related degree or certification. General education courses not generally related to the employee's position will not be eligible for reimbursement. Reimbursement shall be taxed pursuant to the State and Federal Regulations.

Application for Tuition Reimbursement shall be made to the Town before the course begins. Prior to reimbursement of costs, all course work must be completed with a passing grade of "C" or equivalent when numerical score or pass/fail is given. Individuals requesting reimbursement must currently be employed by the Town to be eligible for reimbursement.

Any employee who terminates employment with the Town within one year from the completion of a class or classes, for which tuition reimbursement was paid, shall refund all tuition paid under this provision, unless required to attend by the appointing authority.

## Section 13. Health and Welfare Benefits and Rate of Town Contribution

The Town contracts with CalPERS for the purpose of providing employees and their eligible dependents with medical insurance benefits. The Town's maximum monthly contribution for each eligible active employee shall be equal to the minimum employer contribution required under Public Employees' Medical and Hospital Care Act (PEMHCA), currently \$149 per month, as may be adjusted by CalPERS from year to year.

### 13.1 Cafeteria Plan

During the term of the MOU, the Town agrees to maintain a Cafeteria Plan, pursuant to Section 125 of the Internal Revenue Code, for the purpose of providing eligible active employees with access to various health and welfare benefits. Benefits available through the Cafeteria Plan include medical insurance, dental insurance, vision insurance and life insurance benefits.

### 13.2 Dental

Employees choosing this option instead of Cash-in-Lieu will be provided 100% of the Delta Dental DPO Plan premium less a \$15.00 employee contribution. If the premium cost of the dental plan exceeds the Town contribution, the employee shall pay through payroll deductions the difference between the monthly premium and the amount contributed by the Town. The Town will pay 100% of the premium for employees choosing to participate in the DeltaCare USA Plan.

### 13.3 Medical

The Town will provide active employees with a medical allowance equal to 100% of the cost of the Kaiser Bay Area Medical Insurance Program premium offered by the Public Employees' Retirement System Health Benefit Medical Program at the Employee Only level of participation. For dependents, the Town will pay 90% of the difference between Kaiser Employee Only and Kaiser level of participation (Employee Plus One or Employee Family, depending on family status). If the employee chooses medical coverage under a program more expensive than Kaiser Bay Area, the employee will pay the difference between the Town-provided medical allowance and the cost of the more expensive program through payroll deduction.

The Town's contribution towards medical insurance set forth in Section 13 (the PEMHCA minimum) will be deducted from the amount of contribution provided by this Section.

### 13.4 Vision

The Town shall pay for employee-only coverage under the Town's Vision Service Plan (VSP). Employees may enroll eligible dependents at their own cost.

### 13.5 Cash-In-Lieu Plan

Employees have the option of choosing all available coverages or, upon providing proof of other medical coverage, may choose to opt out of the Town's coverage and be provided with cash-in-lieu.

Employees who choose to receive the cash-in-lieu must first show proof of alternative minimum essential medical coverage for the employee and employee's tax family (individuals for whom the employee expects to claim a personal exemption deduction). Individual coverage, and individual coverage from Covered California does not qualify as alternative minimum essential coverage under this section. Employees must provide reasonable evidence of alternative minimum essential coverage each plan year, during open enrollment. The Town will not make the cash payment if it knows or has reason to know that the employee or tax family does not have alternative minimum essential coverage. Any amount received in cash is taxable. Employees choosing to receive taxable cash will have the option of receiving it in two equal amounts in December and June, or the first two paychecks of each month (24 times a year).

- For employees hired before January 1, 2006, the Town contribution to the Cash-In-Lieu program will be equal to Nine Hundred and Twenty-two Dollars (\$922) per month.

- For employees hired after January 1, 2006, the Town contribution to the Cash-In-Lieu program will be Four Hundred Dollars (\$400) per month.

The parties agree to meet and confer at the Town's request on any changes that are within the mandatory scope of bargaining related to its Town sponsored Medical Insurance and Cash In-Lieu Plan that may be related to the compliance and implementation of the Affordable Care Act or the Fair Labor Standards Act as it relates to the regular rate of pay for overtime.

### 13.6 Supplemental Health and Welfare Benefits

- A. **Life:** Coverage of \$50,000 plus \$50,000 accidental death: Town to pay for premium. Additional life insurance may be purchased by the employee equal to once or twice the employee's base salary, not to exceed \$200,000.
- B. **Disability:** Short Term Disability Policy effective 8th calendar day; coverage of 60% of weekly earnings up to maximum of \$1,300/week for 13 weeks. Long Term Disability benefits begin on the 91st day of disability; coverage of 60% of monthly earnings up to a maximum of \$6,000/month.
- C. **Employee Assistance Program:** Premiums shall be paid by the Town.
- D. **Unemployment Insurance:** Premiums shall be paid by the Town to provide State coverage.

### Section 14. Retiree Health

The Town provides retiree health benefits in accordance with the PEMHCA for employees who qualify as eligible PERS retirees who receive a PERS retirement allowance and are PEMHCA annuitants entitled to such benefits under the PEMHCA.

The Town's maximum monthly contribution for each eligible annuitant shall be equal to the minimum employer contribution required under the PEMHCA, currently \$149 per month, as may be adjusted by CalPERS from year to year. The provisions of PEMHCA will govern medical insurance coverage for annuitants.

#### 14.1 Retiree Health Benefit for Eligible Retirees Hired on or Before October 1, 2018

An employee hired on or prior to October 1, 2018, or provided with a final offer confirmation of employment prior to October 1, 2018, is eligible for Health Reimbursement Account (HRA) retiree health benefits in accordance with this Section.

##### 14.1.1

The employee retired from the Town taking a service or disability retirement from CalPERS as a retiree receiving a PERS retirement allowance and is a PEMHCA annuitant; and,

##### 14.1.2

The employee must actually draw a CalPERS pension within ninety (90) days of separation from the Town, provided the employee remains with the Town's health plan through COBRA.

##### 14.1.3

The amount of the supplemental retiree health benefit allowance will be equal to 100% of the cost of the premium for Kaiser Bay Area Retiree Only and 90% of the difference between the Kaiser Employee Only and Kaiser level of participation (Employee Plus One or Employee Family, depending on family status). The Town will pay \$ \$1,947.16 per month towards a Retiree Plus One or More plan, as of the 2022 plan year. This amount will increase by \$100.00 each

year until it is equal to the active employee contribution.

#### **14.1.4**

The Town's contribution towards retiree health insurance set forth in Section 14 (the PEMHCA minimum) will be deducted from the amount of contribution provided by this Section (14.1).

#### **14.1.5**

Employees retiring on or after February 1, 2016 and upon becoming eligible for Medicare will cease to receive any retiree health benefit allowance under this Section (14.1) and will become eligible for Supplemental Medicare equal to the cost of Kaiser Senior Advantage Bay Area Medicare rates up to a maximum of 100% Retiree Only, 90% for Retiree Plus One or 90% for Retiree Plus One or More less the amount of the employee contribution provided under Section 14 (the PEMHCA minimum). This benefit is available to the eligible retired employee only after he or she has reached the age of 65 and is Medicare eligible or as otherwise specified by law.

#### **14.1.6**

The benefits described by this Section (14.1) will be provided to annuitants through CalPERS by means of a Health Reimbursement Account (HRA).

### **14.2 Retiree Health Benefit for Eligible Retirees Hired After October 1, 2018**

The Association will establish participation in a retiree medical plan administered by the PORAC Retiree Medical Trust (PORAC RMT). This agreement to participate will apply to every employee, represented by the Association, hired by the Town after October 1, 2018. The cost of establishing and maintaining the Trust shall be at no cost to the Town, including administrative fees. The Town is not a party to the Trust, aside from transferring funds, and has no obligations to the management, regulatory compliance or performance of the trust. In the event the Trust becomes insolvent or unable to pay, the Town has no financial obligation to the Trust or the contributing members of the Association.

The Town will transfer a monthly employee contribution of one hundred dollars (\$100.00) for each Association member deducted in fifty dollars (\$50.00) increments from the first two paychecks of each month (24 times per year). These contributions shall be on a pre-tax basis if permitted by law. As each member will contribute the same predetermined dollar amount, no member election forms designating the amount will be needed, allowed or requested; and there shall be no member election available to take the member contribution amount in cash, or to determine the member contribution amount. These contributions shall be included as salary for purpose of calculating retirement benefits as determined by the California Public Employees Retirement System (CalPERS).

Effective the first full pay period in July 2024, in addition to the employee contributions set forth above, the Town shall contribute twenty five dollars (\$25) per month to the PORAC Retiree Medical Plan for all members hired after October 1, 2018. Effective the first full pay period in July 2025, the Town contribution shall increase to fifty dollars (\$50) per month.

The Town will comply with reasonable procedures set by the Trust Office with regard to reporting and depositing the required contributions set forth above, typically involving providing the Trust Office with the name, social security number and amount paid for each Association member. In the event that the reporting requirement of the Trust requires reporting beyond that which the Town typically provides, the Town may require the Association to pay for any costs related to programing or producing such reports. Prior to engaging in any activity that could result in such an expense, the Town will secure the Association's authorization

The Association agrees to defend, indemnify, and hold the Town harmless from any liabilities of any nature which may arise as a result of the operating of the PORAC RMT, except for the obligation of the Town to make and report the non-

elective transfer of Association member contributions as described above.

The monies contributed to the Trust fund shall only be used for retiree health insurance premiums or health care expenses, as allowed by law. There shall be no Association member election/option available to take such amount in unrestricted cash.

The purpose of this Trust shall be to provide for retiree health care expense reimbursement benefits. The Trust shall be and remain separate and apart from any Town health insurance funding program, unless changed by mutual written agreement of the parties. The contributions set forth above, unless otherwise dictated by law or rules set forth by CalPERS, shall be included as salary for purpose of calculating pension benefits.

The Town hereby acknowledges receipt of the Trust Agreement governing the Trust. The Town will cooperate with the Trust in allowing a payroll audit only for the purpose of ascertaining if the proper number of contributions have been made.

### **Section 15. Uniforms**

The Town will provide a full set of uniforms and equipment (per Department Uniform Policy) to each new employee. Employees are expected to maintain fitting uniforms, including a maintained, fitting Class A uniform. The Town will replace authorized uniform items damaged in the performance of duty as approved by the Chief of Police.

The Town will pay bargaining unit employees a uniform allowance of One Hundred Fifteen Dollars (\$115) per month (paid the first two pay periods of each month) for the repair, maintenance, and replacement of uniforms.

The parties agree that to the extent permitted by law, this is special compensation for "Classic Members" only and shall be reported as such to CalPERS, pursuant to Title 2 CCR Section 571(a)(5) as Uniform Allowance.

### **Section 16. Mileage Reimbursement**

If no Town vehicle is available, ~~E~~employees may use ~~using~~ personal vehicles on official Town business with the prior written or electronic approval of their supervisor. In the event an employee is approved to use their personal vehicle on official Town business, the employee shall be reimbursed at the mileage rate established by the I.R.S. Private vehicles used for Town business shall comply with the California Vehicle Code.

Mileage reimbursement requests must be submitted within 30 days of the date accrued.

### **Section 17. Payroll Periods**

The Town and Association agree to the continuation of a biweekly payroll period. The following conditions are in effect:

- A. Employee pay shall not be withheld more than seven (7) calendar days from the end of the payroll period, however, a maximum of two days overtime may appear on the next payroll period if it is worked following the submittal of time sheets, or during a pay period with a Town holiday which requires early submittal of time sheets and early distribution (before Friday) of pay checks. This may also occur at the end of the fiscal or calendar year.
- B. The Town shall provide an optional electronic check deposit system for use by employees.

### **Section 18. Paychecks**

Payroll deductions and accruals shall appear on all paychecks.



## Section 19. Deferred Compensation

The Town shall continue to offer a program of deferred compensation to its members in the represented classifications. The Town makes no representation on the merit of the plan nor any of the investment products or instruments which may be offered by the plan. The responsibility for evaluating the options within the plan is the responsibility of the individual participant. The Town shall not be obligated to offer more than one Deferred Compensation carrier.

## Section 20. Overtime

Overtime is time worked beyond any scheduled work shift.

All overtime worked shall be compensated at time and one-half. The employee may choose whether overtime shall be paid in cash or accumulated as Compensatory Time Off (CTO), subject to a maximum accumulated CTO of one hundred and forty (140) hours.

On or before the pay period which includes December 15 of each calendar year, an employee may make an irrevocable election to cash out up to 40 hours of CTO twice per year (paid at the regular rate of pay in whole hour increments) which will be earned in the following calendar year. In the first full pay period of June and December in the following year, the employee will receive cash for the amount of CTO the employee elected to cash out in the prior year. However, if the employee's CTO balance is less than the amount the employee elected to cash out (in the prior calendar year) the employee will receive cash for the amount of the CTO the employee has accrued at the time of the cash out.

Annual review of the impact of those changes will occur to determine if there is any adverse impact on scheduling.

For private duty contracts, officers may only receive pay.

Overtime is to be approved by a supervisor as soon as practical. Overtime payroll sheets are the responsibility of the employee to have approved and forwarded to the division commander by the appropriate payroll deadline.

## Section 21. Duty Extension

Compensation is made for actual time worked and shall be computed in minimum quarter-hour blocks.

Personnel whose work hours would normally terminate within one hour or less from the time of the scheduled court, meeting, or training commencement will be compensated from the termination of their normal work hour through the termination of the scheduled event.

Duty extension is paid at time and one half.

## Section 22. Call Back

Requests that personnel return to duty, attend mandatory meetings, court appearances and training classes are call backs and compensated at a 3-hour minimum or actual time, whichever is greater. Mandatory meetings where a minimum of two weeks' notice has been given are not a call back and will be compensated at a one (1) hour minimum or actual time worked whichever is greater.

Call backs for officers assigned to Watch I (midnight shift) who have worked the night before shall receive a minimum of 4 hours.

Personnel are considered on duty for the duration of a call back.



Court appearances-hearings-depositions: Required off duty attendance at judicial or administrative hearings is compensated at a 3-hour minimum (4 hours for midnight if shift worked the night before appearance), or actual time, whichever is greater. Should there be more than one appearance, including separate court locations, within the 3- or 4-hour time period, only one minimum will be granted.

Call back is paid at time and one half.

### Section 23. Vacation Schedule

The following vacation schedule shall apply to all employees:

Months of Employment_ <u>Experience</u>	Accrual Days Per Year	Accrual Hours Per Pay Period	<u>Accrual</u> <u>Hours Per Year</u>
0 to 36	10	3.08	<u>80</u>
37 to 60	15	4.62	<u>120</u>
61 to 120	20	6.46	<u>160</u>
121 to 180	23	7.08	<u>184</u>
181 months	25	7.70	<u>200</u>

Effective April 1, 2024, the individual rate of accrual for all members and future members shall be increased to account for total years of experience working in a sworn peace officer position that requires possession of a basic POST certificate.

Maximum accrual of vacation hours shall be 344 hours.

On or before the pay period which includes December 15 of each calendar year, an employee may make an irrevocable election to cash out up to 80 hours of vacation twice per year (in whole hour increments) which will be earned in the following calendar year. In the first full pay period of June and December in the following year, the employee will receive cash for the amount of vacation the employee irrevocably elected to cash out in the prior year. However, if the employee's vacation balance is less than the amount the employee elected to cash out (in the prior calendar year) the employee will receive cash for the amount of vacation the employee has accrued at the time of the cash out.

### Section 24. Vacation and Compensatory Time Off Cash-out

Employees who terminate from Town service shall have all accrued vacation and compensatory time off cashed-out. This will terminate their status as an employee of the Town.

### Section 25. Shift and Vacation Selection Procedures

Patrol shift selection and vacation bidding shall commence approximately ten weeks prior to shift change, unless circumstances require otherwise.

The Town agrees to continue efforts to transition to an online mechanism for shift and vacation selection.

~~Due to the Association's concerns regarding changes to the vacation selection procedure that arose due to sworn staffing shortages and its effect on officer access to vacation, the parties agree to meet to discuss shift and vacation selection procedures during the month of July 2022. Upon request by the Union, the parties will promptly meet and confer on the limited issue of the Department's vacation selection procedure. Any changes to the existing vacation selection procedure will be by mutual agreement.~~

## Section 26. Holidays and Holiday Pay

The following holidays will be observed by non-uniform personnel:

- January 1.
- the third Monday in January.
- the third Monday in February.
- the last Monday in May.
- Juneteenth.
- July 4.
- the first Monday in September.
- Thanksgiving Day.
- the Friday following Thanksgiving Day.
- December 25.
- Four hours on December 24 and December 31
- Every day declared a Holiday by the Mayor as a result of a national holiday declared by the President or State Governor.

Holidays which fall on Saturday shall be observed on the Friday prior and holidays which fall on Sunday shall be observed on the following Monday.

~~Uniform personnel assigned to shift work (Patrol and Traffic) shall receive compensation in-lieu of holiday time off equal to eighty (80) hours of base pay annually. Employees shall have the option of taking Holiday leave off equal to eighty hours (80) or receive in-lieu compensation. If the employee selects to receive in-lieu compensation, forty (40) hours of holiday pay will be received in the last payroll of November and the second forty (40) hours will be received in the last payroll of May and will be included on the regular check. In-lieu holiday pay shall cease whenever an employee is reassigned to other than shift work. The employee shall observe holidays as described above. In the event that an additional holiday is observed by the Town during the term of this agreement, the in-lieu compensation shall be increased by the additional hours holiday time made available to non-uniform personnel (the language of this paragraph becomes null and void effective January 1, 2019).~~

~~in the amount of 4.4% of base salary per pay period.~~

~~The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such to CalPERS, pursuant to Title 2 CCR Section 571(a)(5) and 571.1(b)(4) as Holiday Pay.~~

~~Effective the first full pay period of July 2022 or the first full pay period after Council approval of the MOU, whichever is later, in recognition of Juneteenth, holiday in-lieu pay will be increased by 0.4%, to total 4.4%.~~

~~Effective the first full pay period of July 2022 or the first full pay period after Council approval of the MOU, whichever is later, employees will receive a one-time, non-pensionable lump sum payment of one thousand dollars (\$1,000) for foregoing the Juneteenth holiday prior to 2023.~~

## Section 27. Personal Leave

Employees shall have the option of either taking personal leave off equal to twenty-four (24) hours of base pay annually or receiving in-lieu compensation equal to same if the personal leave is not used by the end of November. Employees may use personal leave hours during the month of December; however, employees desiring to receive compensation for those hours shall do so in conjunction with the annual cash out in November.

## Section 28. Sick Leave

Accumulation rate shall be 8 hours per month (3.70 hours per pay period) with a maximum accrual of 1180 hours. The Town may require association represented employees to provide a doctor statement of proof of illness for any use of sick leave beyond one working day.

## Section 29. Sick Leave Cash-Out Program

### 29.1 Annual Sick Leave Cash-Out for Employees Hired Prior to October 1, 2018

On or before the pay period which includes December 15 of each calendar year, employees eligible to cash out under this section may make an irrevocable election to cash out up to 40 hours of their accumulated sick leave at 50% of current salary two times per year (in whole hour increments) which will be earned in the following calendar year. In the first full pay period of June and December in the following year, the employee will receive cash for the amount of sick leave the employee irrevocably elected to cash out in the prior year. However, if the employee's sick leave balance is less than the amount the employee elected to cash out (in the prior calendar year) the employee will receive cash for the amount of sick leave the employee has accrued at the time of the cash out.

### 29.2 Sick Leave Cash-Out Upon Termination for Employees Hired Prior to October 1, 2018

Employees who terminate employment with the Town for any reason other than retirement or disciplinary termination, may cash-out their accumulated sick leave as follows:

Months of Employment	
1-59 months	25%
60-119 months	37.5%
120 months or more	50%

In order to be eligible for the sick leave cash-out program, an employee must have a sick leave accrual balance of at least 200 hours at the time of termination.

### 29.3 Unused Sick Leave Upon Retirement

Upon retirement, eligible employees may choose from the following options:

1. Eligible employees may convert unused sick time to service credit in accordance with provisions established by CalPERS.

2. Sick Leave Cash Out for Employees Hired Prior to October 1, 2018

All eligible employees who retire with a sick leave accrual balance of at least 200 hours may elect to be paid in cash in accordance with the same provisions as Section 28.2 Sick Leave Cash-Out Upon Termination.

3. Sick Leave Conversion for Employees Hired Prior to January 1, 2009

All employees who retire with a sick leave accrual balance of at least 200 hours may convert 100% of this accumulated sick leave to a dollar equivalent at their hourly rate of pay at the time of retirement. This amount shall be held in an account. The employee's portion of the medical insurance premium payment will be withheld from their monthly retirement payment by PERS.

The Town agrees to pay the retiree quarterly in advance on the first pay period of January, April, July, and October of each year after retirement. The first payment will be pro-rated to the nearest quarter.

Retiree's (including dependents of the retiree) portion of medical payments will be paid from this account by the Town until all monies are depleted from the account.

This account will not accrue interest and will not be paid in cash to the retiree or any beneficiaries. The retirees shall be responsible for 100% of their share of future medical insurance premiums once the account is exhausted.

### Section 30. Military Leave

Military leave and benefits shall be granted in accordance with State and Federal Law, including the continuation of employee salary and benefits if applicable.

Generally, employees with more than one year service will receive up to thirty (30) calendar days of paid military leave annually while engaged in military duty ordered for purposes of active military training.

### Section 31. Bereavement/Compassion Leave

Up to 40 hours ~~paid leave upon the death of a family member. For purposes of this section, family member is defined as available per occurrence—use limited to~~ spouse, domestic partner, parent, parent in law, grandparent, grandparent in law, child, grandchild, sibling or or sibling in law by blood or marriage.

Days of bereavement leave need not be consecutive but shall be completed within three months of the date of death of the family member.

If requested by the Town, the employee shall provide documentation of the death of the family member within 30 days of the first day of the leave. Appropriate documentation for this purpose is defined in California Government Code section 12945.7(f).

It is recognized that bereavement/~~compassion~~ leave is separate from employee's accumulated sick leave, vacation or CTO.

### Section 32. Leave Without Pay

Leave without pay shall be subject to approval of the Chief of Police and the Town Manager.

An employee who is on leave without pay shall not earn any employment benefits (including, but not limited to, such benefits as vacation leave, medical benefits, sick leave, retirement, credit for time employed or seniority entitlement of any kind) for the duration of such leave.

Vacation or sick leave or time worked shall not be used intermittently during an extended leave to interrupt a determination that an employee is on leave without pay.

The Town may, at its discretion, approve leave beyond the specific amount provided above.

### Section 33. Accrual of Benefits

Benefits shall not accrue to employees on unauthorized leave, suspension without pay, or leave without pay.

### Section 34. Workers' Compensation

Employees shall be provided benefits in compliance with State law.

### Section 35. Jury Duty

Employee salary and benefits shall be continued during jury duty; employee turns over to the Town any compensation from the courts or other source of jury duty on regular workdays.

### Section 36. Outside Employment

Outside employment shall be subject to approval of the Chief of Police and the Town Manager, subject to the following limitations: no security work within Town limits; no use of Los Gatos uniform, badge, ID, or Los Gatos issued items; vacation or CTO to be used for court appearances resulting from private employment. Approval must be obtained prior to engaging in the outside employment and shall be renewed prior to July 1 of each year. In order to best maintain the safety and integrity of the LGMSPD workforce and its delivery of services to the Los Gatos and Monte Sereno communities, requests for full-time sworn staff to “double-badge” (e.g. temporarily serve as a member of another law enforcement agency) shall be automatically denied unless the requesting employee has at least five (5) years of experience as a sworn peace officer in a position that requires possession of a basic POST certificate and with at least four (4) years of service with the Town

### Section 37. Residency Requirement

There is no residency requirement for represented employees.

### Section 38. Layoff Policy

Association recognizes the right of the Town to determine the resources to be made available to the police department. Although a reduction in force (layoff) is not anticipated, it is recognized that it is the sole right of the Town to determine when such reductions in force are necessary.

Reductions in force shall be by classification with the determination of affected employees by the Town based on seniority counted as total time employed by the Town. Affected employees shall be provided a minimum thirty (30) calendar days' notice of layoff.

Employees in the classification of Police Sergeant and designated for layoff shall have the right to return to positions previously held with the Town and represented by the Association.

### Section 39. ~~Vehicles~~ Paid Family Leave

Upon request from the Association between July and December 2024, the Town and the Association shall meet to agree to identify and implement paid parental leave benefits through Lincoln-Financial via PRISM-EIA, New York Life, or any other provider that are equal to or greater than those provided under the California Paid Family Leave program.

~~Town shall advise POA no later than sixty days prior to Town development of vehicle specifications for patrol vehicles. POA shall submit recommended specifications for vehicle purchase no later than thirty (30) days after receiving the notice from the Town.~~

### Section 40. Promotions

The Town and Association agree that it is in the best interest of both the Town and its employees to foster promotion of incumbent employees.

The Town and Association recognize the Town's sole right to determine the examination process for the selection of Town employees. Qualified employees who are invited to participate in the examination process shall be allowed up to two (2) hours of time-off from regularly scheduled work in order to participate in the examination process if the examination process is scheduled during the employee's normal work period.

To the best of its ability, the Town shall maintain a current promotional list for the positions of Police Corporal and Police Sergeant.

Any opening for Police Corporal or Police Sergeant positions shall be posted for a minimum of three weeks, unless extraordinary circumstances warrant otherwise.

### **Section 41. Probationary Period**

The Town and the Association agree that all original appointments to the rank of Police Officer will include a probationary period of 18 months from date of hire to allow the department to fully evaluate the officer following the academy and FTO training.

Individuals hired as a lateral transfer must have a valid P.O.S.T. Basic Certificate at the time of hire and will be subject to a 12-month probationary period.

Any individual on an 18-month probationary period will be eligible to receive a step increase after 12 months.

All promotional appointments to the positions of Corporal and Sergeant shall be subject to satisfactory completion by the employee of a 12-month probationary period.

The Chief of Police may extend the probationary period of an employee for a period not to exceed an additional six (6) months.

### **Section 42. Performance Evaluations**

Performance evaluations shall take place at least every three (3) months for all probationary employees and shall take place at least annually thereafter on the anniversary of an employee's employment with the Town. Employees eligible for step increases shall receive their performance evaluation no later than fifteen (15) days prior to their employment anniversary date.

All performance evaluations shall be discussed with the employee prior to the evaluation being completed. Employees may sign their individual performance evaluations as evidence of discussion having taken place; employee signature does not necessarily imply agreement with the evaluation. If an employee chooses not to sign an evaluation, the supervisor will note that the employee has read the evaluation and chooses not to sign. An employee may attach separate written comments to their evaluation.

### **Section 43. Reinstatement**

Subject to the approval of the Town Manager, a permanent employee who has resigned from employment with the Town may be reinstated within two (2) years of their resignation to their former position, if vacant. Upon reinstatement, the employee shall be considered as though they had received an original appointment, unless other conditions are made a part of the reinstatement by the Town Manager.

### **Section 44. Re-Employment**

The names of employees affected by layoff shall be placed on appropriate re-employment lists in the order of total continuous cumulative time served in paid status. Such names shall remain thereon for a period of eighteen (18) months unless such persons are sooner re-employed. When a re-employment list is to be used to fill vacancies, the Personnel Officer shall certify from the top of such list the number of names equal to the number of vacancies to be filled, and the appointing power shall appoint such persons to fill the vacancies.

## Section 45. Grievance Procedures

Grievances shall be defined as alleged violations of this agreement or disputes regarding interpretations, application, or enforcement of this agreement to Town ordinances, resolutions, and written policies related to personnel policies and working conditions. Grievances shall not include disagreements, disputes, or activities regarding or pertaining to examinations for employment or promotion, disciplinary action, performance evaluations, and probationary terminations.

No act or activity which may be grievable may be considered for resolution unless a grievance is filed in accordance with the procedure contained herein within sixty (60) calendar days of the date the grievable activity occurred or the date the employee could reasonably have known such activity occurred. ~~The provision for the sixty (60) days "statute of limitations" shall not apply to probationary employees.~~

The parties agree that all grievances will be processed in accordance with the following procedure:

Any employee who has a grievance shall first try to get it settled through discussion with their immediate supervisor without undue delay. Every effort shall be made to find an acceptable solution at the lowest possible level of supervision. If after such discussion the employee does not believe the grievance has been satisfactorily resolved, they may file a formal appeal in writing to the command officer responsible for supervision of the employee's immediate supervisor within ten (10) calendar days after receiving the informal decision of their immediate supervisor. The command officer shall respond within ten (10) calendar days of the filing of the appeal.

If the employee does not believe the grievance has been satisfactorily resolved by the command officer, the employee may then file a formal appeal in writing to the Chief of Police within ten (10) calendar days after receiving the informal decision of the command officer. The Chief of Police shall render his written decision within ten (10) calendar days after receiving the appeal.

If after receipt of the written decision of the Chief of Police, the employee is still dissatisfied, they may appeal the decision of the Chief to the Town Manager. Such appeal shall be made by filing a written appeal to the Town Manager within five (5) days after the receipt of the written decision of the Chief. The Town shall render a written decision within twenty (20) working days after the appeal is made.

If after receipt of the written decision of the Town Manager the employee is still dissatisfied, he/she/they may appeal the decision of the Town Manager to the Personnel Board. Such appeal shall be made by filing a written appeal to the Chair of the Personnel Board within five (5) days after receipt of the written decision of the Town Manager.

The Personnel Board shall establish a hearing date within 30 days of receipt of the written appeal. The Personnel Board shall conduct a closed hearing giving opportunity for presentation by the employee or their representative and the Town Manager. The Personnel Board shall render a written decision within 30 days after the appeal is made. If after receipt of the written decision of the Personnel Board, the employee is still dissatisfied, they may appeal the decision of the Personnel Board to the Town Council. Such appeal shall be made by filing a written appeal with the Mayor. The Mayor shall schedule a closed hearing with the Town Council within 30 days after receipt of the appeal. At this hearing, the employee and the Town Manager may make presentations. The Town Council decision shall be final. The Town Council shall render a decision within 30 days after the hearing. An open hearing may be conducted by the Personnel Board or Town Council with mutual consent of the Town and person(s) filing the grievance.

The time limitations for filing and responding to grievances may be waived or extended by mutual agreement of the parties. If either party to the grievance so requests, an informal hearing shall be conducted at the Chief of Police or Town Manager appeal levels. Employees may be represented by counsel or other person at any stage in the grievance process.

## Section 46. Attendance

Employees shall be in attendance at their work in accordance with the rules regarding hours of work, holidays and leave.

An employee whose absence is not authorized will not receive pay or benefits for the absent period and shall be subject to discipline. Failure on the part of an employee absent without leave to return to duty shall be grounds for discharge. It shall be the responsibility of an employee absent without leave to notify the department head of the reason the employee is absent and of the employee's availability for duty.

## Section 47. Completeness of MOU

The Town and the Association acknowledge and agree to abide by the provisions of the Meyers-Milias-Brown Act.

## Section 48. Association Notification or Communications

The Town and the Department will make every reasonable effort to keep the Association President informed on issues related to the working conditions of the Association members.

## Section 49. Labor-Management Committee

As part of a continuing effort to promote healthy labor relations, the Department and the Association shall establish a Police Labor-Management Committee to meet on at least a quarterly basis to promote open communication and the sharing of information. It is the intent of the parties that the Chief or designee and the Association President or designee will attend these meetings.

Upon request from the Town, the Association agrees to meet to agree with the Town on Department shift schedules.

## Section 50. Catastrophic Time Bank

If an employee is catastrophically ill or injured, or if the spouse or child of such employee becomes catastrophically ill or injured, the employee may request of the Town Manager that a catastrophic time bank be established. This request should be in writing. The catastrophic time bank will enable other employees to donate accrued CTO, holiday credits, or vacation credits to the requesting employee in accordance with departmental policies.

Specific procedures for the administration of the catastrophic time bank will be developed by the department.

## Section 51. Me Too Clause

The Town shall not enter into an agreement with another bargaining unit, local union or management unit so that unit, local or bargaining unit can receive any compensation related to any salary or total compensation increase obtained by the POA.



SALARY SCHEDULE EXHIBIT A (New schedules inserted)

**Town of Los Gatos POA Classifications**  
**Salary Schedule for Fiscal Year 2023/24 and Fiscal Year 2024/25**  
**Effective pay period containing April 1, 2024**

Class Code	Classification Title	Range	Step	Hourly Rate
2521	Police Sergeant <i>Appointment after 03/01/2015</i>	05-0721	1	\$76.7013
			2	\$80.5364
			3	\$84.5632
			4	\$88.7914

Class Code	Classification Title	Range	Step	Hourly Rate
7500	Police Corporal	03-0715	1	\$63.6338
			2	\$66.8155
			3	\$70.1563
			4	\$73.6641
			5	\$77.3473

Class Code	Classification Title	Range	Step	Hourly Rate
7510	Police Officer	02-0711	1	\$60.6198
			2	\$63.6508
			3	\$66.8333
			4	\$70.1750
			5	\$73.6838

Class Code	Classification Title	Range	Step	Hourly Rate
9519	Police Trainee *	01-0710	1	\$57.5888
	<i>* 95% of Step 1 of Police Officer Classification (Provisional Employee with Misc PERS)</i>			

*Reflects General Increase of 6.5%.*

**Town of Los Gatos POA Classifications  
Salary Schedule for Fiscal Year 2025/26  
Effective the first full pay period in July 2025**

Class Code	Classification Title	Range	Step	Hourly Rate
2521	Police Sergeant	05-0721	1	\$80.5364
	<i>Appointment after 03/01/2015</i>		2	\$84.5632
			3	\$88.7914
			4	\$93.2310

Class Code	Classification Title	Range	Step	Hourly Rate
7500	Police Corporal	03-0715	1	\$66.8155
			2	\$70.1563
			3	\$73.6641
			4	\$77.3473
			5	\$81.2147

Class Code	Classification Title	Range	Step	Hourly Rate
7510	Police Officer	02-0711	1	\$63.6508
			2	\$66.8333
			3	\$70.1750
			4	\$73.6838
			5	\$77.3680

Class Code	Classification Title	Range	Step	Hourly Rate
9519	Police Trainee *	01-0710	1	\$60.4683
	<i>* 95% of Step 1 of Police Officer Classification (Provisional Employee with Misc PERS)</i>			

*Reflects General Increase of 5%.*

**Town of Los Gatos POA Classifications  
Salary Schedule for Fiscal Year 2026/27  
Effective the first full pay period in July 2026**

Class Code	Classification Title	Range	Step	Hourly Rate
2521	Police Sergeant <i>Appointment after 03/01/2015</i>	05-0721	1	\$83.7579
			2	\$87.9458
			3	\$92.3431
			4	\$96.9603

Class Code	Classification Title	Range	Step	Hourly Rate
7500	Police Corporal	03-0715	1	\$69.4881
			2	\$72.9625
			3	\$76.6106
			4	\$80.4411
			5	\$84.4632

Class Code	Classification Title	Range	Step	Hourly Rate
7510	Police Officer	02-0711	1	\$66.1968
			2	\$69.5066
			3	\$72.9819
			4	\$76.6310
			5	\$80.4626

Class Code	Classification Title	Range	Step	Hourly Rate
9519	Police Trainee *	01-0710	1	\$62.8870
	<i>* 95% of Step 1 of Police Officer Classification (Provisional Employee with Misc PERS)</i>			

*Reflects General Increase of 4%.*

**Town of Los Gatos POA Classifications**  
**Salary Schedule for Fiscal Year 2023/24 and Fiscal Year 2024/25**  
**Effective pay period containing April 1, 2024**

Class Code	Classification Title	Range	Step	Hourly Rate
2521	Police Sergeant	05-0721	1	\$76.7013
	<i>Appointment after 03/01/2015</i>		2	\$80.5364
			3	\$84.5632
			4	\$88.7914

Class Code	Classification Title	Range	Step	Hourly Rate
7500	Police Corporal	03-0715	1	\$63.6338
			2	\$66.8155
			3	\$70.1563
			4	\$73.6641
			5	\$77.3473

Class Code	Classification Title	Range	Step	Hourly Rate
7510	Police Officer	02-0711	1	\$60.6198
			2	\$63.6508
			3	\$66.8333
			4	\$70.1750
			5	\$73.6838

Class Code	Classification Title	Range	Step	Hourly Rate
9519	Police Trainee *	01-0710	1	\$57.5888
<i>* 95% of Step 1 of Police Officer Classification (Provisional Employee with Misc PERS)</i>				

**Reflects General Increase of 6.5%.**

**Town of Los Gatos POA Classifications  
Salary Schedule for Fiscal Year 2025/26  
Effective the first full pay period in July 2025**

Class Code	Classification Title	Range	Step	Hourly Rate
2521	Police Sergeant <i>Appointment after 03/01/2015</i>	05-0721	1	\$80.5364
			2	\$84.5632
			3	\$88.7914
			4	\$93.2310

Class Code	Classification Title	Range	Step	Hourly Rate
7500	Police Corporal	03-0715	1	\$66.8155
			2	\$70.1563
			3	\$73.6641
			4	\$77.3473
			5	\$81.2147

Class Code	Classification Title	Range	Step	Hourly Rate
7510	Police Officer	02-0711	1	\$63.6508
			2	\$66.8333
			3	\$70.1750
			4	\$73.6838
			5	\$77.3680

Class Code	Classification Title	Range	Step	Hourly Rate
9519	Police Trainee *	01-0710	1	\$60.4683
<i>* 95% of Step 1 of Police Officer Classification (Provisional Employee with Misc PERS)</i>				

***Reflects General Increase of 5%.***

**Town of Los Gatos POA Classifications  
Salary Schedule for Fiscal Year 2026/27  
Effective the first full pay period in July 2026**

Class Code	Classification Title	Range	Step	Hourly Rate
2521	Police Sergeant <i>Appointment after 03/01/2015</i>	05-0721	1	\$83.7579
			2	\$87.9458
			3	\$92.3431
			4	\$96.9603

Class Code	Classification Title	Range	Step	Hourly Rate
7500	Police Corporal	03-0715	1	\$69.4881
			2	\$72.9625
			3	\$76.6106
			4	\$80.4411
			5	\$84.4632

Class Code	Classification Title	Range	Step	Hourly Rate
7510	Police Officer	02-0711	1	\$66.1968
			2	\$69.5066
			3	\$72.9819
			4	\$76.6310
			5	\$80.4626

Class Code	Classification Title	Range	Step	Hourly Rate
9519	Police Trainee *	01-0710	1	\$62.8870
<i>* 95% of Step 1 of Police Officer Classification (Provisional Employee with Misc PERS)</i>				

**Reflects General Increase of 4%.**



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 12.

MEETING DATE: 04/16/2024

---

DATE: April 10, 2024  
TO: Mayor and Town Council  
FROM: Gabrielle Whelan, Town Attorney  
SUBJECT: Adopt a Resolution Rescinding the Land Use and Community Design Elements of the 2040 General Plan

**RECOMMENDATION:**

Adopt a resolution rescinding the Land Use and Community Design Elements of the 2040 General Plan.

**BACKGROUND:**

The Town adopted the 2040 General Plan in 2022. Proponents of a referendum to rescind the Land Use Element and Community Design Element of the 2040 General Plan circulated a petition to place a referendum on the ballot at the next general municipal election and obtained sufficient signatures. The next general municipal election is scheduled for November 2024. Elections Code Section 9241 provides the Town Council with the option to either rescind the referended legislation or place the referended legislation on the ballot. At its April 2, 2024 meeting, the Town Council provided direction to rescind the Land Use and Community Design Elements of the 2040 General Plan.

**DISCUSSION:**

Attached is a draft resolution 1) rescinding the Land Use and Community Design Elements of the 2040 General Plan and 2) providing that the Land Use and Community Design Elements of the 2020 General Plan, as amended since October 2022, will remain in effect.

**CONCLUSION:**

The resolution would take effect upon adoption.

---

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

---

SUBJECT: Adopt a Resolution Rescinding 2040 Land Use and Community Design Elements

DATE: April 10, 2024

COORDINATION:

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

FISCAL IMPACT:

Adoption of the draft resolution will not have a fiscal impact.

ENVIRONMENTAL ASSESSMENT:

The environmental impacts of the previous Land Use and Community Design Elements were previously analyzed in the Environmental Impact Report (EIR) prepared for the 2020 General Plan. In addition, the environmental impacts of the 2040 General Plan were analyzed in an EIR prepared for the 2040 General Plan. Both the impacts of the 2020 Land Use Element and Community Design Element and the remaining General Plan Elements are addressed in the EIR prepared for the 2040 General Plan.

Attachment:

1. Draft Resolution



**DRAFT RESOLUTION**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
RESCINDING THE 2040 LAND USE AND COMMUNITY DESIGN ELEMENTS**

**WHEREAS**, the Town of Los Gatos (“Town”) adopted the 2040 General Plan by Resolution 2022-047 on June 30, 2022; and

**WHEREAS**, proponents of a referendum to rescind the Land Use Element and the Community Design Element of the 2040 General Plan (the “Referendum Proponents”) have circulated a petition; and

**WHEREAS**, the Referendum Proponents gathered a sufficient number of signatures on the petition to warrant certification of the signatures by the County Registrar of Voters; and

**WHEREAS**, the County Registrar of Voters has certified the petition signatures; and

**WHEREAS**, accordingly, the referendum has qualified for inclusion on an upcoming ballot; and

**WHEREAS**, Elections Code Section 9241 provides that, when a referendum has qualified for inclusion on the ballot, the legislative body shall decide whether to rescind the referended legislation or place the legislation on the ballot at the next general municipal election; and

**WHEREAS**, the Town Council has elected to rescind the referended legislation; and

**WHEREAS**, the previously adopted General Plan 2020 Land Use Element and Community Design Element, as amended after October 2022, will remain in place;

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES HEREBY RESOLVE:**

1. The 2040 Land Use Element and Community Design Element are rescinded.
2. The previously adopted Land Use Element and Community Design Element from the 2020 General Plan will apply, including all amendments adopted since October 2022 for consistency with the Housing Element.
3. The remaining Elements of the 2040 General Plan remain in effect.
4. The environmental impacts of the previous Land Use and Community Design Elements were previously analyzed in the Environmental Impact Report (EIR) prepared for the 2020 General Plan. In addition, the environmental impacts of the 2040 General Plan were analyzed in an EIR prepared for the 2040 General Plan. Both the impacts of the 2020 Land Use Element and Community Design Element and the remaining General Plan Elements are addressed in the EIR prepared for the 2040 General Plan.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the \_\_\_ day of \_\_\_\_\_, 2024, 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: \_\_\_\_\_



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 13.

MEETING DATE: 04/16/2024

---

DATE: April 11, 2024  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Adopt a Resolution Rescinding Resolution Nos. 2024-003, 2024-004, and 2024-005 Regarding the Transportation Impact Fee

**RECOMMENDATION:**

Adopt a Resolution rescinding Resolution Nos. 2024-003, 2024-004, and 2024-005 Regarding the Transportation Impact Fee, leaving the Town’s previously adopted Traffic Impact Mitigation Fees in effect pending further review.

**REMARKS:**

On January 16, 2024, the Town Council adopted resolutions relating to an updated transportation impact fee (TIF), which was intended to replace the Town’s prior traffic impact mitigation fee. These resolutions included Resolution 2024-003 (adopting the nexus study for the 2023 Update to the Transportation Impact Fee), Resolution 2024-004 (formally updating the Transportation Impact Fee and amending the 2023-2024 Master Fee Schedule to include the updated fee), and Resolution 2024-005 (amending the Town’s Traffic Impact Policy).

In addition, the Town Council also introduced a proposed new ordinance that would have amended Town Code Section 15, Article VII, entitled “Traffic Impact Mitigation Fees,” to instead provide for the Town’s imposition of the proposed updated “Transportation Impact Fee,” as contemplated in the three resolutions.

Public comment on the January agenda item raised a question regarding the methodology used in the nexus study in support of the updated fee. Staff is gathering information regarding the methodology used. In the meantime, the proposed ordinance has not yet been brought back to the Council for a second reading and final adoption, and the Town’s existing Code provisions relating to its Traffic Impact Mitigation Fees have remained in effect. The Resolutions updating the fee, nonetheless, took effect on March 15, 2024. Since this date, any new transportation impact fees collected have been set aside and have not been allocated to capital projects.

---

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

---

PAGE 2 OF 3

SUBJECT: Resolution Rescinding Resolutions Regarding the Transportation Impact Fee

DATE: April 11, 2024

REMARKS (continued):

On March 19, 2024, the Town Council discussed the possible suspension of the TIF and deferred action until April 2, 2024. On April 2, 2024, the Town Council discussed several options for potentially modifying the nexus study that was used to determine the fee. The Council provided direction to explore a couple of the options and return to Town Council with the results. The Council did not consider suspension or rescission at the early April meeting.

Also on April 2, 2024, the Town Council adopted a Resolution approving the Comprehensive Fee Schedule for Fiscal Year 2024/25. The updated fee schedule retains the former Traffic Impact Mitigation Fees (rather than the updated Transportation Impact Fee reflected in the three Resolutions).

To avoid confusion, staff recommends that the Council rescind the Resolutions that established the updated Transportation Impact Fee, to be reconsidered after Town staff returns to the Council with the additional analysis and options. (Attachment 1).

ALTERNATIVES:

Alternatively, the Council may prefer to suspend rather than fully rescind the Resolutions regarding the TIF (Attachment 2) or retain the new fee. If Council decides to retain the new fee, it will still need to adopt the related Ordinance that was introduced last January, and the 2024/25 fee schedule would need to be amended by future Council action.

If a Council Member would like to consider one of these alternatives, this agenda item will need to remove this item from the Consent Calendar. If the Council approves the Consent Calendar without removing this item, the Council would be rescinding the three resolutions as contemplated in the draft resolution included as Attachment 1.

NEXT STEPS:

If the January 16<sup>th</sup> resolutions are rescinded or suspended, the former traffic impact fee will come back into effect immediately. Again, the Comprehensive Fee Schedule for Fiscal Year 2024/25 as approved by the Council on April 2 already contemplates this.

COORDINATION:

This report was coordinated with the Department of Parks and Public Works, Town Attorney, and outside legal counsel.

SUBJECT: Resolution Rescinding Resolutions Regarding the Transportation Impact Fee

DATE: April 11, 2024

FISCAL IMPACT:

As recommended, this action would result in a return to the former traffic impact fee.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Resolution Rescinding Resolution Nos. 2024-003, 2024-004, and 2024-005
2. Resolution Suspending Resolution Nos. 2024-003, 2024-004, and 2024-005

**RESOLUTION 2024-xx****RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS RESCINDING  
RESOLUTION NOS. 2024-003, 2024-004, AND 2024-005**

**WHEREAS**, on January 16, 2024, the Town Council adopted Resolution Nos. 2024-003, 2024-004, and 2024-005, to replace the Town's existing Traffic Impact Mitigation Fee with a new updated Transportation Impact Fee; and

**WHEREAS**, the Town received a question regarding the methodology used in the nexus study in support of the updated transportation impact fee; and

**WHEREAS**, on April 2, 2024, the Town Council directed staff to study several options to update the methodology used in the nexus study and return to Town Council with the results; and

**WHEREAS**, staff recommends rescinding Resolution No. 2024-003 Adopting the Nexus Study for the 2023 Update to the Transportation Impact Fee, Resolution No. 2024-004 Updating the Transportation Impact Fee and Amending the 2023-2024 Master Fee Schedule to Include the Updated Fee, and Resolution No. 2024-005 amending the Traffic Impact Policy, which rescissions will have the effect of leaving in place the Town's previous Traffic Impact Mitigation Fee;

**NOW, THEREFORE, BE IT RESOLVED**, the Town Council rescinds Resolution Nos. 2024-003, 2024-004, 2024-005. The Town Council directs that the Traffic Impact Mitigation Fees continue to be collected in the same amounts that existed prior to the adoption of these Resolutions, as previously approved by the Town Council pursuant to Section 15.70.035 of the Town Code.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 16<sup>th</sup> day of April, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTACHMENT 1

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 2024-xx****RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS SUSPENDING  
RESOLUTION NOS. 2024-003, 2024-004, AND 2024-005**

**WHEREAS**, on January 16, 2024, the Town Council adopted Resolution Nos. 2024-003, 2024-004, and 2024-005, to replace the Town's existing Traffic Impact Mitigation Fee with a new updated Transportation Impact Fee; and

**WHEREAS**, the actions associated with the updated transportation impact fee included the Council adoption of Resolution No. 2024-003 Adopting the Nexus Study for the 2023 Update to the Transportation Impact Fee, Resolution No. 2024-004 Updating the Transportation Impact Fee and Amending the 2023-2024 Master Fee Schedule to Include the Updated Fee, and Resolution No. 2024-005 amending the Traffic Impact Policy; and

**WHEREAS**, the Town received a question regarding the methodology used in the nexus study in support of the updated transportation impact fee; and

**WHEREAS**, on April 2, 2024, the Town Council directed staff to study several options to update the methodology used in the nexus study and return to Town Council with the results; and

**WHEREAS**, the Town Council now intends to suspend the three Resolutions pending such further study, which suspension will have the effect of leaving in place the Town's previous Traffic Impact Mitigation Fee.

**NOW, THEREFORE, BE IT RESOLVED**, the Town Council suspends Resolution Nos. 2024-003, 2024-004, 2024-005, pending the results of the additional analysis pertaining to the methodology used in the nexus study and a future Town Council discussion of this topic. The Town Council directs that the Traffic Impact Mitigation Fees continue to be collected in the same amounts that existed prior to the adoption of these Resolutions, as previously approved by the Town Council pursuant to Section 15.70.035 of the Town Code.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 16<sup>th</sup> day of April, by the following vote:

ATTACHMENT 2



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**

ITEM NO. 14.

MEETING DATE: 04/16/2024

---

**DATE:** April 12, 2024  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Authorize the Town Manager to Execute the First Amendment to the Contract with DKS Associates to Modify the Scope of Services and Increase Compensation from \$160,505 to \$166,647

**RECOMMENDATION:**

Authorize the Town Manager to execute the first amendment to the contract with DKS Associates to modify the scope of services and increase compensation from \$160,505 to \$166,647.

**BACKGROUND:**

At its meeting of April 2, 2024 (Item 17), the Town Council directed to staff to evaluate in more detail certain options related to modifying the Transportation Impact Fee. In discussing the item, Councilmembers requested that staff return with two to three options and possibly a recommendation.

**DISCUSSION:**

DKS Associates was contracted by the Town of Los Gatos to conduct the Nexus Study and recommend a Transportation Impact Fee. The April direction provided by Town Council is outside the scope of the original agreement. Attachment 1 is a first amendment to the agreement, outlining the scope of additional analysis directed by Town Council and the associated fee increase.

**PREPARED BY:** Nicolle Burnham  
Parks and Public Works Director

---

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

---

SUBJECT: First Amendment to Agreement with DKS Associates

DATE: April 12, 2024

CONCLUSION:

If approved, this action would enable the requested analysis to proceed in a timely manner and facilitate future Council discussion and action regarding the Transportation Impact Fee.

COORDINATION:

This memorandum was coordinated with the Town Attorney’s Office, outside legal counsel, the Town Manager’s Office, and the Finance Director.

FISCAL IMPACT:

The original agreement with DKS was for services billed at hourly rates based on actual hours worked. The \$160,505 of the original agreement was not expended so the proposed amendment reflects the net change in compensation required. There are sufficient funds in the program budget to cover the additional request.

<b>VMT Mitigation Program CIP No. 812-0133</b>		
	<b>Budget</b>	<b>Costs</b>
GFAR	\$ 250,000	
<b>Total Budget</b>	<b>\$ 250,000</b>	
		<b>Costs</b>
Consultant Services Agreement with DTA		\$ 8,800
Consultant Agreement with DKS Associates <sup>1</sup>		\$ 160,505
First Amendment to Consultant Agreement with DKS Associates (Requested with this Staff Report) <sup>2</sup>		\$ 6,142
Staff Costs		\$ 14,030
<b>Total Costs</b>		<b>\$ 189,477</b>
<b>Available Balance</b>		<b>\$ 60,523</b>

Notes:

1. Original agreement amount is \$160,505; with \$12,298 remaining.
2. New services are valued at \$18,440 for new net funding on \$6,142.

ENVIRONMENTAL ASSESSMENT:

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

PAGE 3 OF 3

SUBJECT: First Amendment to Agreement with DKS Associates

DATE: April 12, 2024

ITEM NO. 14.

Attachment:

1. First Amendment with Exhibit A – Original Agreement for Consultant Services with DKS Associates and Exhibit B – Scope of Services for First Amendment

## AMENDMENT TO AGREEMENT

This AMENDMENT TO AGREEMENT is dated for identification this 17<sup>th</sup> day of April 2024 and amends that certain (AGREEMENT DESCRIPTION) dated March 1<sup>st</sup>, 2022 made by and between the Town of Los Gatos, ("Town,") and the DKS Associates ("Consultant") identified as an S Corporation and whose address is 1970 Broadway, Suite 740 Oakland, CA 94612.

### RECITALS

- A. Town and Consultant entered into a Consulting Agreement on April 17, 2022, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement to complete additional analysis as defined in Exhibit B to this Amendment.

### AMENDMENT

1. Section 2.1 Scope of Services is amended to read as follows:

Consultant shall provide services as described in that certain Proposal sent to the Town on April 12, 2024, which is hereby incorporated by reference and attached as Exhibit B.

2. Section 2.6 Compensation is amended to read as follows:

Additional compensation for Consultant's professional services shall be increased by \$6,142 for a total agreement amount **not to exceed \$166,647** inclusive of all costs. Payment shall be based upon Town approval of each task based on Exhibit B.

3. Section 3.1 Minimum Scope of Insurance is amended to read as follows:

Service Provider agrees to have and maintain, for the duration of the contract, General Liability Insurance policies insuring him/her and his/her firm to an amount not less than two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

4. Section 4.6 Notices is amended to change the Consultant address as follows:

DKS Associates  
1050 SW 6<sup>th</sup> Ave, Suite 600  
Portland, OR 97204

5. All other items and conditions of the Agreement remain in full force and effect.

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

Town of Los Gatos:

Approved as to Consent:

\_\_\_\_\_  
Laurel Prevetti, Town Manager

\_\_\_\_\_  
Carl Springer, Principal DKS

Department Approval:

\_\_\_\_\_  
Nicolle Burnham  
Director of Parks and Public Works

Approved as to Form:

Attest:

\_\_\_\_\_  
Gabrielle Whelan, Town Attorney

\_\_\_\_\_  
Wendy Wood, CMC, Town Clerk

## AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is dated for identification this 1<sup>st</sup> day March 2022, and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and DKS Associates ("Consultant"), whose address is 1970 Broadway, Suite 740 | Oakland, CA 94612. This Agreement is made with reference to the following facts.

### I. RECITALS

- 1.1 The Town desires to engage Consultant to provide services to prepare a Transportation Impact Fee Study to develop a Transportation Impact Fee Program.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

### II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in that certain proposal sent to the Town on March 1, 2022, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect upon execution to February 28, 2025. Consultant shall perform the services described in this agreement as described in Exhibit A.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and

the Consultant shall not make any of the these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$160,505**, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

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

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 2.8 Availability of Records. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.
- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing



for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

### III. INSURANCE AND INDEMNIFICATION

- 3.1 Minimum Scope of Insurance:
- i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
  - ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
  - iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all

certificates and endorsements are to be received and approved by the Town before work commences.

- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.

3.3 Workers' Compensation. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.

- 3.4 Indemnification. The Consultant shall save, keep, hold harmless and indemnify 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 out of or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

#### IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

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

DKS Associates  
720 SW Washington St Suite #500  
Portland, OR 97205

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

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

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

Town of Los Gatos by:

DKS Associates

DocuSigned by:  
*Laurel Prevetti* 4/17/2022  
853FFEA2EB39470...  
\_\_\_\_\_  
Laurel Prevetti, Town Manager

\_\_\_\_\_

Recommended by:

DocuSigned by:  
*Timm Borden* 4/11/2022  
9AC05166650A487...  
\_\_\_\_\_  
Timm Borden  
Interim Director Parks and Public Works

DocuSigned by:  
*Carl Springer* 4/11/2022  
BE072BAA4494498...  
\_\_\_\_\_  
Carl Springer, Principal

Approved as to Form:

DocuSigned by:  
*Robert W. Schultz* 4/16/2022  
2FE0936555B74C...  
\_\_\_\_\_  
Robert Schultz, Interim Town Attorney

Attest:

DocuSigned by:  
*Shelley Neis* 4/18/2022  
B9666F65B1E34E6...  
\_\_\_\_\_  
Shelley Neis, MMC, CPMC, Town Clerk



## MEMORANDUM

DATE: April 11, 2024

TO: Nicolle Burnham | Town of Los Gatos

FROM: Erin Vaca | DKS Associates

SUBJECT: Scope and Budget Amendment for Los Gatos TIF Update

Project #22046-000

### INTRODUCTION

This memorandum summarizes the proposed scope and budget amendment to complete the update of the Los Gatos Transportation Impact Fee (TIF). DKS previously submitted a nexus study which was accepted by Town staff and adopted by the Town Council in January 2024. Subsequently, additional direction was received from the Town Council to significantly rework the analysis using a different methodology.

The proposed scope and budget necessary to respond to the Council’s direction are detailed in the following sections. The task numbers listed below correspond to the existing budget structure.

### SCOPE OF WORK

#### TASK 1 – PROJECT MANAGEMENT

This proposal includes up to two hours for the DKS project manager to meet with Town staff in addition to one Town Council meeting. DKS will review the staff report and assist with presentation materials for the Town Council meeting if required.

*Deliverables: Preparation and attendance at one Council meeting, meeting materials*

#### TASK 3 TRANSPORTATION IMPROVEMENTS PROJECT LIST

DKS will also work with staff to review the supplemental funding amounts available for each project. DKS will also escalate project costs to 2024 dollars using the Engineering News Record Construction Cost Index for the San Francisco Bay Area.

DKS will conduct a fair share traffic analysis of the SR-17 project. The fair share traffic analysis will apply the Santa Clara VTA travel demand model to calculate the future (year 2040) proportion of over-capacity traffic on SR-17 that is associated with growth in Los Gatos. The resulting fair share cost allocation factor will be applied to the full project cost.

*Deliverables: Updated project list (Excel format), fair share traffic calculation summary (Excel format)*

#### **TASK 4 FEE REVENUE ESTIMATION**

---

The DKS team will prepare two new versions of the fee calculations:

Option 1 will apply a growth fair share percentage to total allocated project costs.

Option 2 will apply a growth fair share percentage to all allocated project costs except for the SR-17 project. The SR-17 project costs will be allocated to the fee calculation in proportion to the share of over-capacity traffic associated with growth in Los Gatos.

This task will also include a workshop session to brainstorm alternative methods for assessing the “fair share” percentage. This subtask assumes a two-hour, virtual meeting to be attended by the DKS project manager, the Urban Economics project manager, and one additional senior DKS staff. Recommendations resulting from the workshop will be documented in a brief technical memorandum. Any significant additional work stemming from the workshop recommendations will be delivered under a separate contract amendment.

*Deliverables: “Fair Share” Workshop and Technical Memorandum; Fee calculation workbooks (Excel format).*

#### **TASK 6 DRAFT AND FINAL NEXUS REPORTS**

---

DKS will confirm the recommended option for fee calculation with Town staff. The nexus report will be updated to reflect the recommended approach. DKS will respond to a single set of comments on the administrative draft (to Town staff) and the public draft (to Town Council) to prepare a final nexus report.

*Deliverables: administrative draft, draft, and final nexus reports.*

### **BUDGET**

The proposed budget for the additional scope is \$18,440 as summarized in the attached table.

### **SCHEDULE**

DKS will complete the analysis and public draft nexus report within six weeks of notice to proceed.

**TABLE 1: BUDGET ESTIMATE**  
 ADDITIONAL BUDGET BY TASK

Task	DKS Staff Hours					Labor Cost	Direct Costs	Total Cost
	PIC	PM	Sr. Engineer	Senior Advisor	Admin			
	\$ 272	\$ 251.92	\$ 290	\$ 315	\$ 101			
<b>Task 1 Project Management and Stakeholder Engagement</b>	1	8	0	0	1	\$ 2,389	\$ 50	\$ 2,439
<b>Task 3 Transportation Improvements Project List</b>	0	6	16	0	0	\$ 6,152	\$ -	\$ 6,152
<b>Task 4 Fee Revenue Estimation</b>	2	14	0	2	0	\$ 4,701	\$ 900	\$ 5,601
<b>Task 5 Nexus Study</b>	0	0	0	0	0	\$ -	\$ -	\$ -
<b>Task 6 Draft and Final Nexus Reports</b>	1	14	0	0	0	\$ 3,799	\$ 450	\$ 4,249
<b>Total Hours</b>	<b>4</b>	<b>42</b>	<b>16</b>	<b>2</b>	<b>1</b>			
<b>Cost</b>	<b>\$ 1,089</b>	<b>\$ 10,581</b>	<b>\$ 4,640</b>	<b>\$ 630</b>	<b>\$ 101</b>	<b>\$ 17,040</b>	<b>\$ 1,400</b>	<b>\$ 18,440</b>

DRAFT





**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 15.

MEETING DATE: 04/16/2024

---

DATE: April 11, 2024  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Open the Public Hearing for an Appeal of a Planning Commission Decision to Deny a Request to Eliminate a Housing Unit from the Town's Housing Inventory on Property Zoned R-1D, Located at **501 Monterey Avenue**, and Continue the Matter to May 7, 2024. APN 410-15-052. Categorically Exempt Pursuant to CEQA Guidelines Section 15301: Existing Facilities. Architecture and Site Application S-23-038. Property Owner/Applicant/Appellant: Katrina and Carlos Azucena. Project Planner: Sean Mullin

**RECOMMENDATION:**

Open the public hearing for an appeal of a Planning Commission decision to deny a request to eliminate a housing unit from the Town's Housing Inventory on property zoned R-1D, located at 501 Monterey Avenue, and continue the matter to May 7, 2024.

**REMARKS:**

On February 28, 2024, the Planning Commission denied the request to eliminate a housing unit.

Pursuant to Section 29.20.280 of the Town Code, an appeal of a Planning Commission decision shall be heard by the Town Council within 56 days after the date of the decision was made. In this case, the appeal must be scheduled for the Town Council no later than April 24, 2024. The Council must at least open the public hearing for the item, and it may continue the matter to a date certain.

The appellant requests that the Council continue their appeal to a date certain of May 7, 2024, based on their availability.

**PREPARED BY:** Sean Mullin, AICP  
Senior Planner

---

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

---

***This Page  
Intentionally  
Left Blank***



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 16.

MEETING DATE: 04/16/2024

---

DATE: April 2, 2024  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Establish a Town Council Policy Governing Town Board, Commission, and Committee Budgets

**RECOMMENDATION:**

Establish a Town Council Policy governing Town Board, Commission, and Committee Budgets.

**BACKGROUND:**

During the Fiscal Year (FY) 2023/24 Budget process, the Council approved \$2,500 for each of the following Commissions: Arts and Culture, Community Health and Senior Services, Complete Streets and Transportation, Library, Parks and Sustainability, and Youth. The funds were intended to support Commission activities in the community, such as Spring into Green.

During the Mid-Year Budget process, the Town Council also allocated \$2,500 to the Diversity, Equity, and Inclusion Commission.

The Proposed FY 2024/25 Budget intends to continue this funding for these seven bodies. Given recent Commission discussions about the appropriate use of the funds, staff is recommending that the Town Council establish a Policy to govern a Commission's budget.

**DISCUSSION:**

Attachment 1 contains a draft Town Council Policy entitled Commission Budgets. The Policy sets forth specific criteria for the appropriate use of the funds, should the Town Council decide to allocate them. The proposed Policy works in concert with the Town's Purchasing Policy and other procedures.

The Policy identifies the appropriate use of a Commission's budget, including:

1. Purchasing supplies and materials for Commission activities
2. Printing flyers or other materials for distribution to the community

---

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

---

PAGE 2 OF 2

SUBJECT: Establish a Town Council Policy Governing a Commission's Budget

DATE: April 2, 2024

DISCUSSION (continued):

3. Purchasing give away items at Town events (e.g., the Youth Commission giving away succulents at Spring into Green)
4. Paying for the registration for a table or booth at a non-Town event
5. Attending relevant workshops (the eligible expense is registration)

Under the proposed Policy, inappropriate uses would include:

- Hiring a vendor to perform services
- Paying Town employees or other individuals
- Granting or donating funds to a third-party organization(s), including being a sponsor or financially supporting a third-party organization's activities and/or events

Given the Town's need to comply with State laws as well as local regulations, any new use for a Commission's use of its Town funds should be brought to the Town Council for discussion, public comment, and decision. All decisions should be incorporated as modifications to this Policy.

The proposed Commission Budget Policy also sets forth the procedure for expenditures that are deemed appropriate under this Policy.

CONCLUSION:

Staff recommends that the Town Council approve the Commission Budgets Town Council Policy to establish consistency and clear guidelines for the appropriate use of funds by Town Commissions.

COORDINATION:

The preparation of this report has been coordinated with the Town Attorney, and the Finance Department, Library Department, Police Department, Parks and Public Works Department.

FISCAL IMPACT:

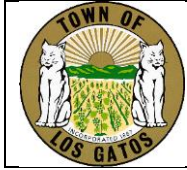
The establishment and implementation of a Town Council Policy has no fiscal impact.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Proposed Town Council Policy 5-03: Commission Budgets



<b>TITLE: COMMISSION BUDGETS</b>		<b>POLICY NUMBER: 5-03</b>
<b>EFFECTIVE DATE: 04/17/2024</b>		<b>PAGES: 2</b>
<b>ENABLING ACTIONS:</b>	<b>REVISED DATES:</b>	
<b>APPROVED:</b>		

I. **PURPOSE:**

The Town Council may allocate funding to Town Boards, Commissions, and/or Committees (hereafter, Commissions) for the purpose of communicating the work of the Commission to the Los Gatos community. This Policy sets forth the criteria for the use of these funds, should they be allocated.

This Policy works in concert with the Town’s Purchasing Policy and other procedures.

II. **USE OF COMMISSION BUDGET**

- A. **Appropriate Uses:** Appropriate uses of a Commission’s budget, include:
  1. Purchasing supplies and materials for Commission activities
  2. Printing flyers or other materials for distribution to the community
  3. Purchasing give away items at Town events (e.g., the Youth Commission giving away succulents at Spring into Green)
  4. Paying for the registration for a table or booth at a non-Town event
  5. Attending relevant workshops (registration only)
  
- B. **Inappropriate Uses:** Inappropriate uses of a Commission’s budget, include:
  1. Hiring a vendor to perform services
  2. Paying Town employees or other individuals
  3. Granting or donating funds to a third-party organization(s), including being a sponsor or financially supporting a third-party organization’s activities and/or events
  
- C. **Modification of Appropriate Uses:** Should a Commission identify a new use for its Town funds, this Policy must be updated by the Town Council.

III. **PROCEDURE FOR EXPENDITURES**

- A. **Prior to Expenditure:** Prior to any expenditure that is an appropriate use, the following procedure must be followed:
  - 1. The request for use of the Commission’s budget must be agendized for Commission consideration.
  - 2. The staff liaison to the Commission would verify that the intended use of the funds meets this Policy.
  - 3. The staff liaison would verify available funds for the expenditure.
  - 4. If approved by the Commission, the staff liaison would explain how the purchase would occur.
  
- B. **Expenditure:** The staff liaison would be responsible for the expenditure, following the Town’s Procurement Policy, State law, and local regulations.
  
- C. **Post-Expenditure:** The staff liaison would be responsible for submitting all receipts and documentation associated with the expenditure to the Finance Department, and retaining the documentation consistent with Town policies, procedures, and practices.

APPROVED AS TO FORM:

---

Gabrielle Whelan, Town Attorney



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 17.

MEETING DATE: 4/16/2024

---

DATE: April 4, 2024  
TO: Mayor and Town Council  
FROM: Gabrielle Whelan, Town Attorney  
SUBJECT: Discuss Future Adoption Development Agreement Procedures and Provide Direction to Staff

**RECOMMENDATION:**

Discuss future adoption of development agreement procedures and provide direction to staff.

**BACKGROUND:**

Government Code Section 65954 provides that, upon request of an applicant for a planning entitlement that a local jurisdiction adopt development agreement procedures, a public agency shall adopt procedures for the processing of development agreements.

**DISCUSSION:**

A development agreement is a voluntary contract between a local jurisdiction and a person who owns or controls property within the jurisdiction, detailing the obligations of both parties and specifying the standards and conditions that will govern development of the property. Development agreements will often provide for payments or dedications of land in exchange for vesting to current development standards. Jurisdictions are never obligated to enter into development agreements; it is a voluntary agreement that must be of benefit to the jurisdiction.

Government Code Sections 65864 and following address development agreement requirements. Section 65865 requires that the Town develop and adopt development agreement procedures upon request of an applicant for a planning entitlement. The Town has received a verbal request that the Town adopt development agreement procedures from counsel for an applicant for a planning entitlement. As a result, Government Code Section 65865 requires that the Town adopt procedures for the consideration and processing of development agreements.

---

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

---

PAGE 2 OF 2

SUBJECT: Discuss Potential Adoption of Development Agreement Procedures and Provide Direction to Staff

DATE: April 4, 2024

DISCUSSION (continued):

Development agreement procedures typically include the following:

- A statement of purpose/findings concerning the public benefits of development agreements
- Application requirements
- Notice and hearing procedures
- Planning Commission and Governing Body Review
- Recordation Requirements
- Procedures for Amendment or Termination
- Procedures for Periodic Review

A sample of development agreement procedures is included as Attachment 1. Such procedures may be adopted by ordinance or resolution. State law allows local agencies to recover the direct costs of developing development agreement procedures.

The Town Council's direction is sought on the following topics:

- 1) Should development agreements be considered for all types of land uses? Or just residential?
- 2) Should the consideration of development agreements be limited to projects of a certain size (e.g., minimum acreage, minimum square footage, minimum number of units)?
- 3) Should the consideration of development agreements be limited to projects in which the applicant will be expending a minimum dollar amount on public infrastructure?

CONCLUSION:

Staff recommends that the Town Council authorize staff to draft proposed development agreement procedures for the Town Council's consideration at a future meeting.

FISCAL IMPACT:

The potential adoption of development agreement procedures could result in payments to the Town in exchange for vesting of development standards applicable to development projects.

ENVIRONMENTAL ASSESSMENT:

Discussion of potential development agreement procedures is not a project subject to CEQA and no environmental assessment is required.

Attachment:

1. Sample Development Agreement Procedures



RESOLUTION NO. 120 (1990)

ESTABLISHING PROCEDURES AND REQUIREMENTS  
FOR THE CONSIDERATION OF  
DEVELOPMENT AGREEMENTS

RESOLVED by the Council of the City of San Mateo,  
California.

WHEREAS, the State Legislature has found and declared  
that:

"(a) The lack of certainty in the approval of  
developmental projects can result in a waste of resources,  
escalate the cost of housing and other development to the  
consumer, and discourage investment in and commitment to  
comprehensive planning which would make maximum efficient  
utilization of resources at the least economic cost to the  
public.

(b) Assurance to the applicant for a development  
project that upon approval of the project, the applicant may  
proceed with the project in accordance with existing policies,  
rules and regulations, and subject to conditions of approval,  
will strengthen the public planning process, encourage private  
participation in comprehensive planning and reduce the economic  
costs of development.

(c) The lack of public facilities, including, but not  
limited to, streets, sewerage, transportation, drinking water,  
school and utility facilities, is a serious impediment to the  
development of new housing. Whenever possible, applicants and  
local governments may include provisions in agreements whereby  
applicants are reimbursed over time for financing public  
facilities." (Government Code Section 65864); and

WHEREAS, the Legislature therefore adopted Government  
Code sections 65864 through 65869.5 authorizing cities to enter  
into development agreements; and

WHEREAS, Government Code Section 65865(c) requires  
that cities shall, if requested by an applicant, establish  
procedures and requirements for consideration of development  
agreements; and

WHEREAS, the City of San Mateo has received a request  
to establish such procedures and requirements.

NOW THEREFORE, IT IS DETERMINED and ORDERED as follows:

Section 1. Authorization for adoption. These  
procedures are adopted under the authority of Government Code  
sections 65864 - 65869.5.

ORIGINAL

## Section 2. Authorization.

(a) The City may enter into a development agreement with a person having a legal or equitable interest in real property within the City for the development of the property as provided in this resolution.

(b) The City may enter into a development agreement with a person having a legal or equitable interest in real property in unincorporated territory within the City's sphere of influence for the development of the property as provided in this resolution. However, the agreement shall not become operative unless annexation proceedings annexing the property to the City are completed within the period of time specified by the agreement.

If the annexation is not completed within the time specified in the agreement or any extension of the agreement, the agreement is null and void.

Section 3. Application. Application for a development agreement shall be made to the Department of Community Development. An application for a development agreement may not be filed prior to an application for a development project on the same property. The application shall be accompanied by the fee prescribed by the City fee schedule, established pursuant to the San Mateo Municipal Code, and shall be accompanied by the form of development agreement proposed by the applicant. When the application is determined to be complete, the Director of Community Development or designee shall, at the applicant's expense, review the application and transmit it, together with staff recommendations, to the Planning Commission.

Section 4. Contents. A development agreement shall specify the land subject to the agreement, the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time.

The agreement may also include terms and conditions relating to applicant financing of necessary public facilities in conjunction with the phasing of the development project.

Section 5. Rules, regulations and official policies. Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent the City, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth in the development agreement, nor shall a development agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

Section 6. Public hearing and notice of intention to consider adoption. A public hearing on an application for a development agreement shall be held by the Planning Commission and by the City Council. Notice of intention to consider adoption of a development agreement shall be given as provided in California Government Code sections 65090 and 65091, and San Mateo Municipal Code section 27.06.050, in addition to any other notice required by law for other actions to be considered concurrently with the development agreement.

Section 7. Legislative act. A development agreement is a legislative act which shall be approved by ordinance and is subject to referendum. This resolution only establishes procedures for consideration of development agreements; the City Council retains discretion to approve or disapprove any proposed development agreement. A development agreement shall not be approved unless the City Council finds that the provisions of the agreement:

- (a) are consistent with the City's General Plan and any applicable specific plan,
- (b) are compatible with the requirements of the Zoning Ordinance, and
- (c) provide substantial public benefits to persons residing or owning property outside the boundaries of the development project, beyond the exactions for public benefits required in the normal development review process under federal, state or local law.

Section 8. Amendment or termination.

(a) Periodic review. The Planning Commission shall review the development agreement at least every 12 months, at which time the applicant or successor in interest thereto,

shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the Planning Commission determines that, on the basis of substantial evidence, the agreement has been complied with in good faith, such decision shall be subject to appeal in accordance with procedures set forth in San Mateo Municipal Code Section 27.08.090. If, as a result of such periodic review, the Planning Commission determines that, on the basis of substantial evidence, the agreement has not been complied with in good faith, or that the failure of the City to terminate or modify the provisions of the development agreement would place the residents of the territory subject to the development agreement, or the residents of the City, or both, in a condition dangerous to their health or safety, or both, the City Council shall hold a public hearing to consider terminating or modifying the agreement. Notice of such hearing shall be given as set forth in Section 6 of this resolution. If the City Council determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with the terms or conditions of the agreement, or that the failure of the City to terminate or modify the provisions of the development agreement would place the residents of the territory subject to the development agreement, or the residents of the City, or both, in a condition dangerous to their health or safety, or both, the Council may terminate or modify the agreement.

(b) Mutual consent. A development agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Notice of a public hearing regarding an intention to amend or cancel any portion of the agreement shall be given and held in the manner provided in Section 6 of this resolution. An amendment to a development agreement shall be subject to the provisions of Section 7 of this resolution.

(c) State or federal laws and regulations. In the event that state or federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, such provisions of the agreement shall be modified or suspended as may be necessary to comply with such state or federal laws and regulations.

Section 9. Enforcement. Unless amended or canceled pursuant to Section 8 herein, a development agreement shall be enforceable by any party thereto, notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations, or policies specified in Section 5 herein.

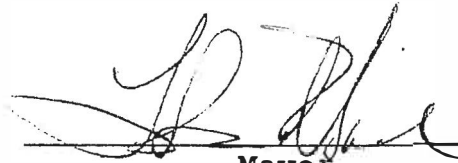
Section 10. Execution and Recordation.

- (a) No development shall be executed by the Mayor until it has been executed by the applicant. If the applicant has not executed the agreement, as approved by the City Council, within thirty days of the City Council approval, the application for development agreement shall be deemed withdrawn, and a Mayor shall not execute the agreement.
- (b) No later than 10 days after the City enters into a development agreement, the City shall record with the County Recorder a copy of the agreement, which shall describe the land subject thereto. From and after the time of such recordation, the agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this state. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

Section 11. Environmental Finding. The Council finds that the adoption of this resolution is not a project for the purposes of the California Environmental Quality Act, and therefore, no environmental impact assessment is necessary.


Section 12. Effective Date. This resolution shall become effective sixty days after its adoption, together with its companion resolution adopting a fee for the processing of development agreements.

Dated: October 15, 1990



\_\_\_\_\_  
Mayor

ATTEST:



\_\_\_\_\_  
City Clerk

\* \* \*

Resolution adopted by the City Council of  
the City of San Mateo, California, at a  
regular meeting held on October 15, 1990,  
by the following vote of the Council  
members:

AYES: Council Members POWELL, MACK,  
RHOADS, BAKER and GUMBINGER

NOES: NONE

ABSENT: NONE



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 04/16/2024

---

**DATE:** April 11, 2024  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Adopt a Resolution, Based on Planning Commission Recommendations, Modifying the Height Pole and Netting Policy for Additions and New Construction. The Proposed Modifications to Town Policy are Not Considered a Project Under the California Environmental Quality Act. Project Location: Town Wide. Applicant: Town of Los Gatos.

**RECOMMENDATION:**

Adopt a Resolution (Attachment 14), based on Planning Commission recommendations, modifying the Height Pole and Netting Policy for Additions and New Construction.

**BACKGROUND:**

On August 1, 2023, Town Council provided direction on modifications to the Town’s Height Pole and Netting Policy for Additions and New Construction (Story Pole Policy) based on the Planning Commission recommendations made in spring 2023. On December 5, 2023, Town Council reviewed the revised policy based on the August 1, 2023 direction, and provided direction to make the following additional modifications:

- Not require story poles for projects over 55 feet in height, but to provide requirements for signage and visual renderings;
- Require visual renderings prepared by a Town consultant, paid for through a deposit from applicant;
- Allow as an option to provide visual renderings and signage instead of story poles for multi-family and mixed-use projects with a residential component;

**PREPARED BY:** Jennifer Armer, AICP  
Planning Manager

---

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

---

PAGE 2 OF 3

SUBJECT: Story Pole Policy Modifications

DATE: April 11, 2024

BACKGROUND (continued):

- Modify the timeframe for story pole removal to be 60 days after the first public hearing or once final action has been taken and the appeal period is over;
- Include a QR code, email contact, and website link on signage, and require signage within 30 days of initial staff technical review of the project; and
- Retain the existing exception process.

DISCUSSION:

Attachment 13 is a revised Draft Story Pole Policy showing in track changes all modifications approved by Town Council on August 1, 2023, and December 5, 2023.

In addition, staff has added specific requirements for signage for projects that involve only a Conditional Use Permit, as the revised Policy would now require signage for those Permits.

The Draft Resolution (Attachment 14) also includes language to allow projects that are already under review to choose to use this updated Policy. The goal of this language is to reduce governmental constraints on the development of housing.

PUBLIC COMMENT:

Public comment received since the discussion of this item on December 5, 2023 is included as Attachment 15.

CONCLUSION:

Staff recommends that the Town Council adopt a resolution to adopt the revised Story Pole Policy document (Attachment 14 with Exhibit 1), with findings that the project is not subject to the California Environmental Quality Act [Section 15061(b)(3)] and is consistent with the General Plan; and include any specific changes agreed upon by the majority of the Town Council.

ALTERNATIVES:

Alternatively, the Town Council may:

1. Continue this item to a date certain with specific direction to staff;
2. Refer this item back to the Planning Commission with specific direction; or
3. Take no action, leaving the Policy unchanged.



ATTACHMENTS:

Previously received with the August 1, 2023 Staff Report:

1. Draft Revised Story Pole Policy with Changes Red-Lined
2. Draft Resolution with Exhibit 1
3. April 26, 2023 Planning Commission Staff Report with Exhibits 1-2
4. April 26, 2023 Planning Commission Addendum Report with Exhibit 3
5. April 26, 2023 Planning Commission Verbatim Minutes
6. May 24, 2023 Planning Commission Staff Report with Exhibit 4
7. May 24, 2023 Planning Commission Addendum Report with Exhibit 5
8. May 24, 2023 Planning Commission Desk Item Report with Exhibits 6
9. May 24, 2023 Planning Commission Verbatim Minutes

Previously received with the August 1, 2023 Desk Item:

10. Public Comment received between 11:01 a.m., Monday, July 31, 2023, and 11:00 a.m., Tuesday, August 1, 2023

Previously received with the December 5, 2023 Staff Report:

11. Revised Draft Story Pole Policy with Changes Red-Lined
12. Revised Draft Resolution with Exhibit 1

Received with this Staff Report:

13. Revised Draft Story Pole Policy with Changes Red-Lined
14. Revised Draft Resolution with Exhibit 1
15. Public Comment

***This Page  
Intentionally  
Left Blank***

## **Height Pole, Flagging, and Netting, and Signage Policy For Additions and New Construction**

### **I. Purpose:**

It is a policy of the Town of Los Gatos Town Council to have story poles and project identification signs installed on the sites of an active development application. The placement of story poles is extremely helpful and important during the course of Town's review of applications for new development. Proper and accurate placement of story poles demonstrates the planned rooflines and heights and provides some indication of the potential massing of the proposed structure. Story poles enhance understanding of the project for Town residents, staff, advisory bodies, and decision making bodies. Story poles also provide a visual notice to the community of a forthcoming land use public hearing.

Project identification signs present both written and graphical information that will further communicate the proposed project to the community as well as provide the public hearing dates for the development application.

This policy is for the benefit of the Town and community and is not intended to create a requirement under the California Environmental Quality Act (CEQA).

### **II. Height Poles and Netting/Flagging:**

Height story poles and netting/flagging shall be used for the following types of Community Development Department, Planning Division, land use applications:

#### For single-family and two-family residential projects:

- If proposed project is a two-story house or second story addition where the adjacent properties on the same side of the street both contain only single-story houses.
- If proposed project includes a variance or exception to the physical characteristics development standards for ~~of~~ the primary structure.

#### For non-residential projects:

- New primary structures ~~that exceed 50,000 square feet.~~
- Non-residential additions exceeding ~~100 square feet~~ 20 percent of the existing building floor area.
- If proposed project includes a variance or exception to the physical characteristics development standards for ~~of~~ the primary structure.

#### For properties in the Historic Resource Inventory:

- New residential (excluding single-story accessory structures) and non-residential buildings.

ATTACHMENT 13

- Residential second story additions.
- Non-residential additions exceeding 100 square feet.

For properties in the Hillside Area as defined in the Hillside Development Standards and Guidelines:

- New primary structures.
- New second story additions.

Exemptions/Alternatives (per Section II.G below):

- Affordable housing projects where 30 percent of the housing units are deed restricted to be Below Market Price, or 20 percent are deed restricted to be Low or Very Low Income shall comply with alternative/video rendering requirements in place of story poles.
- Buildings over 55 feet in height shall comply with alternative/video rendering requirements in place of story poles.
- Multi-family and mixed-use projects that include residential may choose to comply with alternative/video rendering in place of story poles.

The terms height poles and story poles are used interchangeably.

#### **A. Procedure:**

When it is determined that story poles are required, the applicant's engineer, architect, or building designer may, but is not required to, be required to prepare a "Story Pole Plan" to indicate the locations where the poles will be installed. If submitted, tThe Story Pole Plan shall be approved by the project planner prior to the placement of the poles on the site. Once approved, the applicant shall inform the project planner when the placement of the story poles is complete, the applicant shall inform the project planner and submit photographs showing installation. The story poles shall be installed consistent with the following requirements:

~~Residential:~~ The height poles and netting/flagging shall be installed prior to the neighborhood notification process and shall remain in place until 60 days after the first public hearing on the project, or end of final appeal period, whichever is first the project has been acted upon and the appeal period has ended. ~~If the project is appealed, the height poles and netting shall remain until final action is taken. If final consideration of the project is substantially delayed or the project is substantially modified, staff may direct removal or modification of the story poles.~~

~~Projects that Require Planning Commission or Town Council Action:~~ The height poles and netting shall be installed prior to the public noticing of the matter and shall be kept in place until the project has been acted upon and the appeal period has ended. ~~If the project is appealed, the height poles and netting shall remain until~~

~~final action is taken. If final consideration of the project is substantially delayed or the project is substantially modified, staff may direct removal or modification of the story poles.~~

#### **B. Timing**

Public notices will not be mailed and/or application(s) shall not be advertised until a ~~Story Pole Plan has been approved by the project planner,~~ the height poles and netting/flagging have been installed, and photographs have been submitted to the project planner, as required in Section II.A.

#### **C. Location and Number:**

The number of story poles may vary with each specific project. ~~At the discretion of the project planner,~~ Story pole locations shall adequately demonstrate the height, mass, and bulk of the project requiring review. At a minimum, story poles shall be placed at all outside building corners of the building wall (excluding eaves) and along the rooflines of the proposed structure(s) or addition. Architectural elements such as towers, spires, elevator and mechanical penthouses, cupolas, mechanical equipment screening and similar elements not used for human activity or storage which are visible from the streetscape shall be represented by the story poles. For multi-building developments, story poles shall only be required for the tallest structures and those along the perimeter of the site.

While guy wires may sometimes be attached to existing fencing or similar onsite structures, ~~p~~Pursuant to Section 29.10.1005 of the Tree Protection Ordinance, the attachment of wires, signs, or ropes to any protected tree is prohibited. Trees may not be "flagged" or used as a substitute for the erection of story poles.

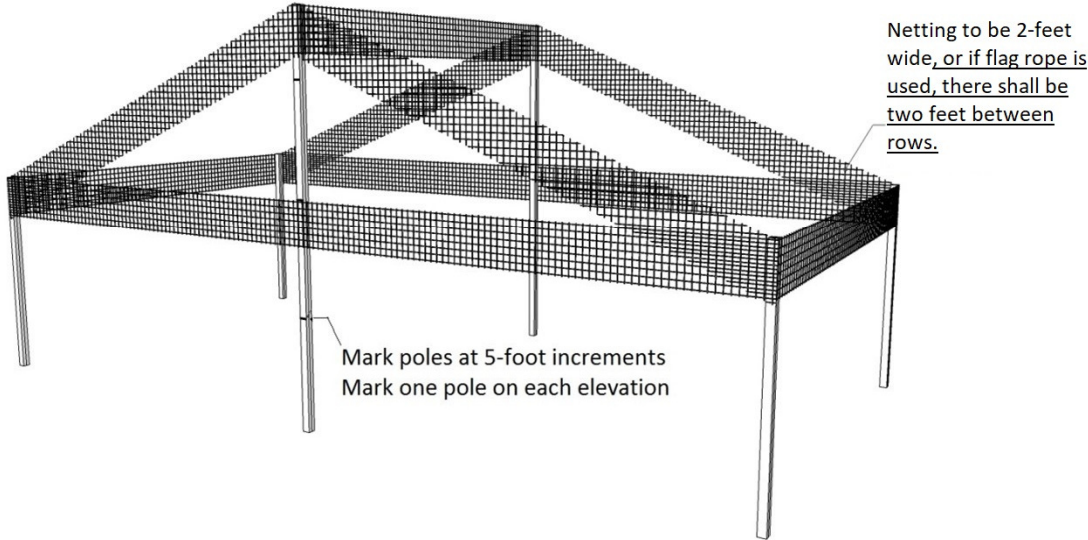
After the placement of the story poles on-site, the applicant shall provide the project planner with photographs of the story poles taken from a variety of vantage points. The vantage point from where the photograph was taken shall be indicated on each photograph.

A licensed surveyor or civil engineer shall submit written verification that the height and position of the poles and netting/flagging accurately represents the height and location of the proposed structure(s) or addition.

#### **D. Materials:**

The material of the story poles shall be indicated on the Story Pole Plan. Story poles shall be constructed of 2"x4" lumber, metal poles, or other sturdy building material acceptable to the project planner. Telephone poles; mechanical equipment, such as cranes; or other materials may be acceptable for higher structures if the Community

Development Director determines that the material will adequately portray the height, bulk, and mass of the proposed structure(s) or addition and withstand the wind and weather. Either a double row of orange flag rope/flagging, or At least two foot (2') wide orange woven plastic snow fencing (netting) must be erected to represent the rooflines of the proposed structure(s) or addition. If flagging is chosen, the two rows shall be placed with one located two feet below the other. If netting is used, it shall be at least two foot (2') wide. For projects over 35 feet in height, flag rope may be allowed instead of netting. Netting/flagging rope must be supported by height poles that are strong enough to accurately maintain the outlines and height of the structure(s). One of the height poles on each elevation must be clearly marked and labeled in five foot (5') increments measured from existing or finished grade, whichever creates a higher profile, ~~and consistent with the approved Story Pole Plan on file at the Community Development Department.~~



**E. ~~Story Pole Plan and Public Safety:~~**

All story poles shall be placed, braced, and supported to ensure the health, safety, and general welfare of the public. ~~The Story Pole Plan shall include the methods used to secure the poles.~~ Applicants shall sign an agreement that holds the Town harmless for any liability associated with the construction of, or damage caused by the story poles. If at any time, the Town determines the story poles to be unsafe, they shall be repaired and reset immediately by the project applicant or, at the Town's discretion, removed. Depending on the scope of the poles, the applicant may be requested to verify with the Building Division of the Community Development Department that no permits and/or inspections are required for the poles.

## F. Exceptions:

In the event there are justifiable reasons why story poles cannot be accommodated for all structures proposed to be constructed on the project site, the applicant shall submit a letter to the Community Development Director no later than 45 days prior to the required installation date, clearly articulating the reasons why an exception to the Story Pole requirement is warranted. Requests for an exception and alternative plan will only be considered if the applicant can clearly demonstrate to the Town, and the Town agrees, that the installation of the story poles would: (1) cause a threat to public health and safety or (2) would impair the use of existing structure(s) or the site to the extent it would not be able to be occupied and the business or residential use would be infeasible. Some form of poles and netting/flagging and/or on-site physical representation of the project will be required, even if an exception is granted.

Planned Development applications with multiple detached commercial structures and/or residential units may request to erect story poles on the locations where the key structures will be placed. The deciding body will take into account the density of the development when considering an exception request. The story poles shall be installed on all corner structures and the structures with the greatest height and mass. An exception to providing story poles for all structures in a Planned Development application with multiple commercial structures and/or residential units shall follow the same procedures as outlined below.

The Town Manager will review all justifiable requests for an exception to the Story Pole requirement within 14 days of receipt of the request and shall place the matter on the next available Town Council agenda for consideration by the Council. Written notice of the exception request shall be mailed to property owners and residents of properties within 300 feet of the project site. All requested and approved exceptions shall be posted on the Town's Web site under "What's New," in agenda posting locations at Town Hall and the Library, and in the online development activity report when established.

If an exception is approved, the applicant will be required to demonstrate the proposed structure height and mass using alternative means as outlined in Section II.G.H.

- G. Alternatives/Visual Renderings:** If an alternative is allowed (Section II) or an exception is granted (Section II.F) to the Story Pole requirements, ~~the applicant shall provide~~ digital imagery simulations, computer modeling, built to-scale models or other visual techniques shall be required in-lieu of the Story Pole requirements. Simulations ~~may either~~ shall be prepared by ~~the applicant for technical review by the Town's consultant or the applicant may elect to have the Town's consultant prepare the materials.~~ The applicant shall be responsible for all technical

review(s), materials, and cost of the Town's evaluation and/or preparation process. To ensure accuracy, visual simulations shall comply with the following standards:

- ~~Establishing accuracy of the visual simulation:~~ The applicant shall demonstrate that the dimension and scale of the visual simulation and project setting are equivalent. This is accomplished by examining screen views of the model in plan and elevation views for accurate scaling. The visual simulation must also include reference objects corresponding to known objects in the simulated scene, such as buildings, curbs, utility poles, trees, or any other reference points visible in the simulated scene, whose location is known from surveys or, at a minimum aerial imagery. There shall be a minimum of two reference objects outside of the project in different parts of the photo frame.
- ~~Establishing the equivalence of the virtual and actual camera focal setting:~~ The camera lens focal setting or angle of view for each simulation base photo shall be stated. The camera model shall be provided since the angle of the focal view varies with different cameras. The preparer of the photo simulations shall provide the manufacturer specifications indicating the 35 mm film SLR lens correspondence, or other means to calculate the angle of view.
- ~~Depict the accurate location of the photo and establish the correspondence of the virtual camera with the visual simulation:~~ The photo location shall be indicated accurately on a map or aerial photo, and the correspondence within the visual simulation should be demonstrated. Simulated views should not employ cropping, or if they must, the original, uncropped rendered image shall be provided. Once the images are cropped, it is impossible to validate their accuracy.
- ~~Other Information:~~ The Town's consultant may require other information to assess the accuracy of the visual simulation.

#### H. Removal:

Story poles and netting/flagging may be removed 60 days after the first public hearing on the project or once a final action has been taken and the appeal period is over. Once a final action has been taken and the appeal period is over, the height poles and netting/flagging shall be removed at the applicant's expense within 30 days. If not removed, the height poles and netting/flagging will be considered rubbish and will be in violation of Section 11.10.020 of the Town Code and the matter will be forwarded to Code Compliance for enforcement action.

#### III. Project Identification Signs:



All development applications that ~~must comply with the story pole and netting requirements~~ include public notification shall also provide project identification signs on the development site consistent with the following requirements.

**A. Timing:**

Project identification signs shall be installed within 30 days of the first staff review. Public notices will not be mailed and/or application(s) shall not be advertised until project identification sign(s) have been installed. ~~The location of the project identification sign(s) shall be shown on the Story Pole Plan. The applicant shall submit a signed declaration confirming that the project identification sign(s) were installed.~~ The applicant shall ~~also~~ submit a photo showing the on-site sign(s) installed on the subject property prior to the distribution of the public notices.

**B. Size:**

- New Single-Family or Duplex Residential Structures Projects: One, 2'x2' sign placed on the street frontage. The top of the sign shall be five feet (5') from existing grade and visible from the main street frontage. The sign shall indicate the scheduled public hearing date and the availability of plans for review at the Community Development Department.
- Multi-Family, Mixed-Use, Commercial/Industrial Remodels or New Construction Projects: One 4'x8' sign on each of the property frontages that are visible to surrounding public right of ways, including pedestrian trails such as the Los Gatos Creek Trail. The top of the signs shall be six feet (6') from existing grade. The Community Development Director may require additional signs for development sites that have large frontages.
- Conditional Use Permit (CUP) Only Projects: One 2' by 3' vertical sign on or inside the window of a building, provided the sign is visible from public locations outside the building.
- Downtown (C-2 Zone) Remodels or New Commercial Development: One 2' by 3' vertical sign constructed of metal frame with water resistant plastic or laminated face. In cases where it is infeasible to install a free-standing sign, the posting of a durable, all weather sign on or inside the window of a building is permitted, provided the sign is visible from public locations outside the building. Requests for an exception to the free-standing sign requirements shall be made to the Community Development Department in writing no less than 30 days prior to the public hearing for the project.

**C. Number and Placement of Signs:**

With ~~one~~ two exceptions, on-site signs shall be placed on each street frontage of the site. The first exception is for permits related to an individual new single family dwelling, ~~where. In this case,~~ only one sign on the street frontage is required. The signs shall be oriented towards the street, within one foot (1') of the front property line or two feet (2') of the back of the sidewalk. The second exception is for projects that involve only a Conditional Use Permit for use of an existing building, where only one sign located at the business frontage is required.

#### **D. Materials:**

Signs shall be constructed of durable materials, such as foam core or plywood, and shall be laminated during the rainy season (October through April) if posted outdoors. The sign colors shall be a white background with black printing, and color graphics (excluding single family, which may have black and white graphics). As noted under Section III.B., signs in the Downtown C-2 Zone shall be constructed of higher grade materials, including a metal frame and a plastic or laminated poster board face.

#### **E. Sign Content:**

Up to 75 ~~percent~~ % of the overall sign area must be used to provide a general description of the project; including number of residential units or commercial buildings and square footage; a color perspective drawing, three-dimensional image or photographic simulation and the name and contact information of the project applicant. Signage designs that are visually striking are encouraged. Single family remodel projects are not required to provide a rendering on the sign. Projects that do not include review of exterior changes to an existing building are not required to provide drawing or building image. The public notice portion of the sign message must constitute 25 percent of the overall sign area and notify the community of the public hearing date and time and contain the following message, "For more information about this project, please contact the Town of Los Gatos Planning Division at 110 E. Main Street, Los Gatos, (408) 354-6872. Plans can be reviewed on the Town's website at: [www.losgatosca.gov/2216/Pending-Planning-Projects](http://www.losgatosca.gov/2216/Pending-Planning-Projects)." The project address, ~~and~~ application number, applicant email contact information, and a QR code shall be included on the notice sign.

#### **F. Duration of Sign Posting:**

Project identification signs shall be placed on site within 30 days of the first staff review of the proposed project consistent with the timing of installation of the story poles (See Section II.B.) and shall be removed within 30 days of the final actions ~~(See Section II.H.)~~.

#### **G. Maintenance:**

The applicant is responsible for replacement of any missing, damaged, or vandalized signs within five days of request by the Town. The Town may cease processing of the application if the signs are not replaced and/or maintained.

#### IV. Definitions:

Height: As defined by the Zoning Ordinance, height is determined by the plumb vertical distance from the natural or finished grade, whichever is lower and creates a lower profile, to the uppermost point of the roof edge, wall, parapet, mansard, or other point directly above that grade. For portions of a structure located directly above a cellar (refer to Section 29.10.020 of the Zoning Ordinance for definition of cellar), the height measurement for that portion of the structure shall be measured as the plumb vertical distance from the existing natural grade to the uppermost point of the structure directly over that point in the existing natural grade.

Roofline or edge: The contour or shape of a roof.

*This policy was adopted by Town Council on April 2, 2024~~August 5, 2013~~ (Resolution 2024-13-~~2013-~~  
032)*

***This Page  
Intentionally  
Left Blank***

**DRAFT RESOLUTION****RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING THE HEIGHT POLE AND NETTING POLICY FOR ADDITIONS  
AND NEW CONSTRUCTION**

**WHEREAS**, the Town's Height Pole and Netting Policy for Additions and New Construction was adopted by the Planning Commission in July of 1998 requiring two-foot wide orange netting for all new buildings and second story additions, and a requirement for posting of a small sign (2 feet by 2 feet) indicating the public hearing date and approving body was added in September 2002;

**WHEREAS**, a comprehensive review of the policy was conducted in 2012. On August 5, 2013, the Town Council approved an updated policy, and minor additions relating to tree protection were made in 2017 to create the current policy;

**WHEREAS**, the use of story poles and project identification signs installed on the sites of an active development application has been found to be extremely helpful and important during the course of the Town's review of applications by demonstrating the planned rooflines and heights, and also provides a visual notice to the community of a forthcoming land use public hearing;

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearings on April 26, 2023, and May 24, 2023;

**WHEREAS**, on April 26, 2023, and May 24, 2023, the Planning Commission held public hearings to consider modifications to the Height Pole and Netting Policy for Additions and New Construction. The Planning Commission received and considered public comments, reviewed the document, and provided input to staff on recommended modifications;

**WHEREAS**, on May 24, 2023, the Planning Commission recommended that the Town Council make specific recommended modifications to the Height Pole and Netting Policy for Additions and New Construction; and

ATTACHMENT 14

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on August 1, 2023; December 5, 2023; and April 2, 2024.

**NOW, THEREFORE, THE TOWN COUNCIL FINDS AND RESOLVES:**

1. The revised Height Pole and Netting Policy for Additions and New Construction is consistent with the Town's General Plan.
2. The revision of the Height Pole and Netting Policy for Additions and New Construction is exempt from CEQA in that it can be seen with certainty that there will not be an impact to the physical environment. [CEQA Guidelines Section 15061(b)(3).]
3. The revised Height Pole and Netting Policy for Additions and New Construction attached hereto as Exhibit 1 is adopted and shall apply to development projects currently under review by the Town.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

DRAFT

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 1

### **Height Pole, Flagging, Netting, and Signage Policy For Additions and New Construction**

#### **I. Purpose:**

It is a policy of the Town of Los Gatos Town Council to have story poles and project identification signs installed on the sites of an active development application. The placement of story poles is extremely helpful and important during the course of Town's review of applications for new development. Proper and accurate placement of story poles demonstrates the planned rooflines and heights and provides some indication of the potential massing of the proposed structure. Story poles enhance understanding of the project for Town residents, staff, advisory bodies, and decision making bodies. Story poles also provide a visual notice to the community of a forthcoming land use public hearing.

Project identification signs present both written and graphical information that will further communicate the proposed project to the community as well as provide the public hearing dates for the development application.

This policy is for the benefit of the Town and community and is not intended to create a requirement under the California Environmental Quality Act (CEQA).

#### **II. Height Poles and Netting/Flagging:**

Height story poles and netting/flagging shall be used for the following types of Community Development Department, Planning Division, land use applications:

For single-family and two-family residential projects:

- If proposed project is a two-story house or second story addition where the adjacent properties on the same side of the street both contain only single-story houses.
- If proposed project includes a variance or exception to the physical development standards for the primary structure.

For non-residential projects:

- New primary structures.
- Non-residential additions exceeding 20 percent of the existing building floor area.
- If proposed project includes a variance or exception to the physical development standards for the primary structure.

For properties in the Historic Resource Inventory:



- New residential (excluding single-story accessory structures) and non-residential buildings.
- Residential second story additions.
- Non-residential additions exceeding 100 square feet.

For properties in the Hillside Area as defined in the Hillside Development Standards and Guidelines:

- New primary structures.
- New second story additions.

Exemptions/Alternatives (per Section II.G below):

- Affordable housing projects where 30 percent of the housing units are deed restricted to be Below Market Price, or 20 percent are deed restricted to be Low or Very Low Income shall comply with alternative/video rendering requirements in place of story poles.
- Buildings over 55 feet in height shall comply with alternative/video rendering requirements in place of story poles.
- Multi-family and mixed-use projects that include residential may choose to comply with alternative/video rendering in place of story poles.

The terms height poles and story poles are used interchangeably.

#### **A. Procedure:**

When it is determined that story poles are required, the applicant's engineer, architect, or building designer may, but is not required to, prepare a "Story Pole Plan" to indicate the locations where the poles will be installed. If submitted, the Story Pole Plan shall be approved by the project planner prior to the placement of the poles on the site. Once the placement of the story poles is complete, the applicant shall inform the project planner and submit photographs showing installation.

The height poles and netting/flagging shall be installed prior to the neighborhood notification process and shall remain in place until 60 days after the first public hearing on the project, or end of final appeal period, whichever is first. If the project is substantially modified, staff may direct removal or modification of the story poles.

#### **B. Timing**

Public notices will not be mailed and/or application(s) shall not be advertised until the height poles and netting/flagging have been installed and photographs have been submitted to the project planner, as required in Section II.A.

**C. Location and Number:**

The number of story poles may vary with each specific project. Story pole locations shall adequately demonstrate the height, mass, and bulk of the project requiring review. At a minimum, story poles shall be placed at all outside building corners of the building wall (excluding eaves) and along the rooflines of the proposed structure(s) or addition. Architectural elements such as towers, spires, elevator and mechanical penthouses, cupolas, mechanical equipment screening and similar elements not used for human activity or storage which are visible from the streetscape shall be represented by the story poles. For multi-building developments, story poles shall only be required for the tallest structures and those along the perimeter of the site.

While guy wires may sometimes be attached to existing fencing or similar onsite structures, pursuant to Section 29.10.1005 of the Tree Protection Ordinance, the attachment of wires, signs, or ropes to any protected tree is prohibited. Trees may not be "flagged" or used as a substitute for the erection of story poles.

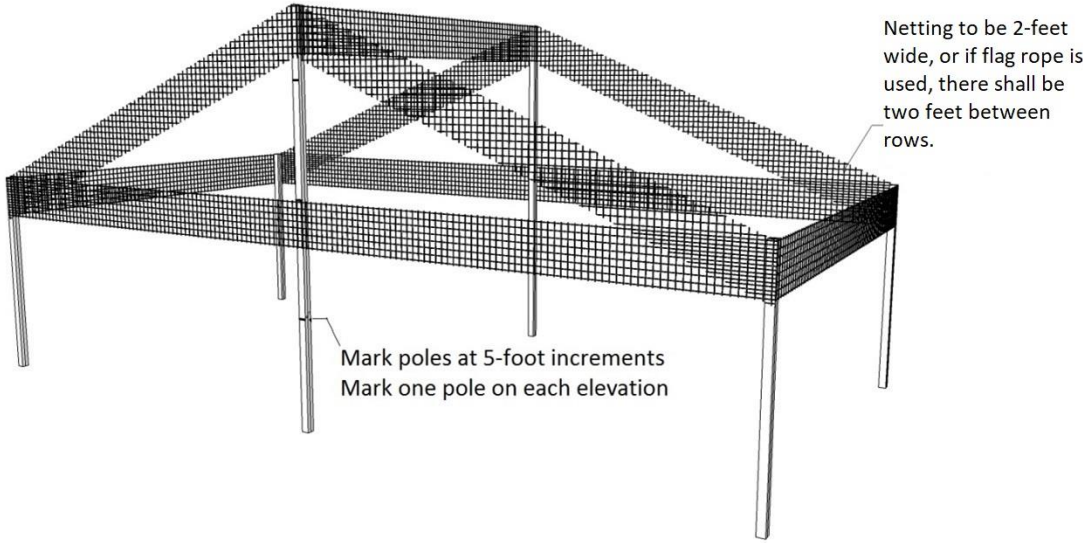
After the placement of the story poles on-site, the applicant shall provide the project planner with photographs of the story poles taken from a variety of vantage points. The vantage point from where the photograph was taken shall be indicated on each photograph.

A licensed surveyor or civil engineer shall submit written verification that the height and position of the poles and netting/flagging accurately represents the height and location of the proposed structure(s) or addition.

**D. Materials:**

The material of the story poles shall be indicated on the Story Pole Plan. Story poles shall be constructed of 2"x4" lumber, metal poles, or other sturdy building material acceptable to the project planner. Telephone poles; mechanical equipment, such as cranes; or other materials may be acceptable for higher structures if the Community Development Director determines that the material will adequately portray the height, bulk, and mass of the proposed structure(s) or addition and withstand the wind and weather. Either a double row of orange flag rope/flagging, or orange woven plastic snow fencing (netting) must be erected to represent the rooflines of the proposed structure(s) or addition. If flagging is chosen, the two rows shall be placed with one located two feet below the other. If netting is used, it shall be at least two foot (2') wide. Netting/flagging must be supported by height poles that

are strong enough to accurately maintain the outlines and height of the structure(s). One of the height poles on each elevation must be clearly marked and labeled in five foot (5') increments measured from existing or finished grade, whichever creates a higher profile.



**E. Public Safety:**

All story poles shall be placed, braced, and supported to ensure the health, safety, and general welfare of the public. Applicants shall sign an agreement that holds the Town harmless for any liability associated with the construction of, or damage caused by the story poles. If at any time, the Town determines the story poles to be unsafe, they shall be repaired and reset immediately by the project applicant or, at the Town's discretion, removed. Depending on the scope of the poles, the applicant may be requested to verify with the Building Division of the Community Development Department that no permits and/or inspections are required for the poles.

**F. Exceptions:**

In the event there are justifiable reasons why story poles cannot be accommodated for all structures proposed to be constructed on the project site, the applicant shall submit a letter to the Community Development Director no later than 45 days prior to the required installation date, clearly articulating the reasons why an exception to the Story Pole requirement is warranted. Requests for an exception and alternative plan will only be considered if the applicant can clearly demonstrate to the Town, and the Town agrees, that the installation of the story poles would: (1) cause a threat to public health and safety or (2) would impair the use of existing structure(s)

or the site to the extent it would not be able to be occupied and the business or residential use would be infeasible. Some form of poles and netting/flagging and/or on-site physical representation of the project will be required, even if an exception is granted.

Planned Development applications with multiple detached commercial structures and/or residential units may request to erect story poles on the locations where the key structures will be placed. The deciding body will take into account the density of the development when considering an exception request. The story poles shall be installed on all corner structures and the structures with the greatest height and mass. An exception to providing story poles for all structures in a Planned Development application with multiple commercial structures and/or residential units shall follow the same procedures as outlined below.

The Town Manager will review all justifiable requests for an exception to the Story Pole requirement within 14 days of receipt of the request and shall place the matter on the next available Town Council agenda for consideration by the Council. Written notice of the exception request shall be mailed to property owners and residents of properties within 300 feet of the project site. All requested and approved exceptions shall be posted on the Town's Web site under "What's New," in agenda posting locations at Town Hall and the Library, and in the online development activity report when established.

If an exception is approved, the applicant will be required to demonstrate the proposed structure height and mass using alternative means as outlined in Section II.G.

**G. Alternatives/Visual Renderings:** If an alternative is allowed (Section II) or an exception is granted (Section II.F) to the Story Pole requirements, digital imagery simulations, computer modeling, built-to-scale models or other visual techniques shall be required in-lieu of the Story Pole requirements. Simulations shall be prepared by the Town's consultant. The applicant shall be responsible for all technical review(s), materials, and cost of the Town's evaluation and/or preparation process.

**H. Removal:**

Story poles and netting/flagging may be removed 60 days after the first public hearing on the project or once a final action has been taken and the appeal period is over. Once a final action has been taken and the appeal period is over, the height poles and netting/flagging shall be removed at the applicant's expense within 30 days. If not removed, the height poles and netting/flagging will be considered rubbish and will be in violation of Section 11.10.020 of the Town Code and the matter will be forwarded to Code Compliance for enforcement action.

### III. Project Identification Signs:

All development applications that include public notification shall also provide project identification signs on the development site consistent with the following requirements.

#### A. Timing:

Project identification signs shall be installed within 30 days of the first staff review. Public notices will not be mailed and/or application(s) shall not be advertised until project identification sign(s) have been installed. The applicant shall submit a photo showing the on-site sign(s) installed on the subject property prior to the distribution of the public notices.

#### B. Size:

- Single-Family or Duplex Residential Projects: One, 2'x2' sign placed on the street frontage. The top of the sign shall be five feet (5') from existing grade and visible from the main street frontage. The sign shall indicate the scheduled public hearing date and the availability of plans for review at the Community Development Department.
- Multi-Family, Mixed-Use, Commercial/Industrial Projects: One 4'x8' sign on each of the property frontages that are visible to surrounding public right of ways, including pedestrian trails such as the Los Gatos Creek Trail. The top of the signs shall be six feet (6') from existing grade. The Community Development Director may require additional signs for development sites that have large frontages.
- Conditional Use Permit (CUP) Only Projects: One 2' by 3' vertical sign on or inside the window of a building, provided the sign is visible from public locations outside the building.
- Downtown (C-2 Zone) Remodels or New Commercial Development: One 2' by 3' vertical sign constructed of metal frame with water resistant plastic or laminated face. In cases where it is infeasible to install a free-standing sign, the posting of a durable, all weather sign on or inside the window of a building is permitted, provided the sign is visible from public locations outside the building. Requests for an exception to the free-standing sign requirements shall be made to the Community Development Department in writing no less than 30 days prior to the public hearing for the project.

**C. Number and Placement of Signs:**

With two exceptions, on-site signs shall be placed on each street frontage of the site. The first exception is for permits related to an individual new single family dwelling, where, only one sign on the street frontage is required. The signs shall be oriented towards the street, within one foot (1') of the front property line or two feet (2') of the back of the sidewalk. The second exception is for projects that involve only a Conditional Use Permit for use of an existing building, where only one sign located at the business frontage is required.

**D. Materials:**

Signs shall be constructed of durable materials, such as foam core or plywood, and shall be laminated during the rainy season (October through April) if posted outdoors. The sign colors shall be a white background with black printing, and color graphics (excluding single family, which may have black and white graphics). As noted under Section III.B., signs in the Downtown C-2 Zone shall be constructed of higher grade materials, including a metal frame and a plastic or laminated poster board face.

**E. Sign Content:**

Up to 75 percent of the overall sign area must be used to provide a general description of the project; including number of residential units or commercial buildings and square footage; a color perspective drawing, three-dimensional image or photographic simulation and the name and contact information of the project applicant. Signage designs that are visually striking are encouraged. Single family remodel projects are not required to provide a rendering on the sign. Projects that do not include review of exterior changes to an existing building are not required to provide drawing or building image. The public notice portion of the sign message must constitute 25 percent of the overall sign area and notify the community of the public hearing date and time and contain the following message, "For more information about this project, please contact the Town of Los Gatos Planning Division at 110 E. Main Street, Los Gatos, (408) 354-6872. Plans can be reviewed on the Town's website at: [www.losgatosca.gov/2216/Pending-Planning-Projects](http://www.losgatosca.gov/2216/Pending-Planning-Projects)." The project address, application number, applicant email contact information, and a QR code shall be included on the notice sign.

**F. Duration of Sign Posting:**

Project identification signs shall be placed on site within 30 days of the first staff review of the proposed project and shall be removed within 30 days of the final action.

**G. Maintenance:**

The applicant is responsible for replacement of any missing, damaged, or vandalized signs within five days of request by the Town. The Town may cease processing of the application if the signs are not replaced and/or maintained.

**IV. Definitions:**

Height: As defined by the Zoning Ordinance, height is determined by the plumb vertical distance from the natural or finished grade, whichever is lower and creates a lower profile, to the uppermost point of the roof edge, wall, parapet, mansard, or other point directly above that grade. For portions of a structure located directly above a cellar (refer to Section 29.10.020 of the Zoning Ordinance for definition of cellar), the height measurement for that portion of the structure shall be measured as the plumb vertical distance from the existing natural grade to the uppermost point of the structure directly over that point in the existing natural grade.

Roofline or edge: The contour or shape of a roof.

*This policy was adopted by Town Council on April 2, 2024 (Resolution 2024-\_\_\_)*

***This Page  
Intentionally  
Left Blank***

DRAFT



Direct No.: 415.655.8114  
ephillips@bwslaw.com

March 29, 2024

Mayor Mary Badame and  
Los Gatos Town Council  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

**Re: April 2 Agenda Consent Item 16: Height Pole and Netting Policy**

Dear Honorable Mayor and Council Members:

Our firm represents Grosvenor USA Limited (“Grosvenor”) in connection with housing and land use matters for development of the North Forty Specific Plan Area in the Town of Los Gatos (the “Town”). Since our last correspondence to you on this issue, Grosvenor has advanced beyond the preliminary application stage and has submitted its formal development application to the Town for a housing development project on the North Forty Phase II site that is consistent with the density and unit count allocated to the site in the Town’s 2023-2031 Housing Element.

While Grosvenor’s application remains pending, we have continued to monitor the Town’s progress towards implementing Housing Element Program AW (Story Poles and Netting Policy). We previously commented on the Housing Element to identify the Town’s current policy regarding height pole and netting requirements (collectively, the “Story Pole Policy”) as a constraint on development generally and a particular constraint for the review and approval of Grosvenor’s proposed housing development project. In its December 1, 2023 letter to the Town, the California Department of Housing and Community Development (“HCD”) directed the Town to strengthen Program AW to modify the Story Pole Policy in order to eliminate this constraint on housing production.

On March 18, 2024, the Town submitted a revised 2023-2031 Housing Element to HCD that incorporated revisions to Program AW. In its latest submittal, the Town committed to update the Story Pole Policy by March of 2024 to exempt affordable housing projects and to give all multifamily housing applicants the “option to provide visuals, video rendering, or other visual methods in place of story poles for all multi-family and mixed-use projects” An item related to the Story Pole Policy was agendized for March 19; however, the Town Council continued the item to April 2. Based on the

Los Gatos Town Council  
March 29, 2024  
Page 2

April 2 agenda, the Town Council intends to continue the item again, meaning the earliest it would act on the Story Pole Policy would be April 16.

We urge you to avoid continued delay and take up the Story Pole Policy on April 16. Moreover, we respectfully request that the revised Story Pole Policy expressly apply to Grosvenor's housing development application, consistent with the commitment the Town has made in the revised Housing Element Program AW to allow all multi-family and mixed-use projects to use alternative visualizations to story poles.

As we have written previously, amending the Story Pole Policy as applied to Grosvenor's housing development application is an important step towards helping the Town achieve its housing production goals. The Town has already committed to these revisions in its latest Housing Element submitted to HCD, and we encourage the Town Council to follow through and implement the identified revisions in a timely manner.

Thank you for your prompt attention and action. The Grosvenor team looks forward to continuing its work with the Town to deliver much needed housing during the planning period.

Sincerely,



Eric S. Phillips

cc: Gabrielle Whelan, Los Gatos Town Attorney  
Steve Buster, Senior Vice President, Grosvenor  
Whitney Christopoulos, Senior Development Manager, Grosvenor  
Don Capobres, Principal, Harmonie Park Development  
Paul McDougall, HCD Senior Program Manager  
Jose Armando Juaregui, HCD Housing Policy Analyst



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 19.

MEETING DATE: 4/16/2024

---

**DATE:** April 5, 2024  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Discuss and Provide Direction Regarding the Finance Commission Recommendation to Issue a Request for Qualification (RFQ) for the Preparation of the Annual Comprehensive Financial Report (ACFR).

**RECOMMENDATION:**

Discuss and provide direction regarding the Finance Commission recommendation to issue a Request for Qualification (RFQ) for the preparation of the Annual Comprehensive Financial Report (ACFR).

**BACKGROUND:**

At the December 11, 2023 Finance Commission meeting, the Commissioners passed a motion to recommend that the Town Council adopt a practice to hire a separate entity to perform work necessary for the preparation of the Town's ACFR. The work includes preparing the financial statements, notes disclosures, supplemental information, the Management Discussion and Analysis (MD&A) template and tables, and statistical schedules that are derived from the financial statements. Currently, this work is performed by the Town's external auditor, Chavan & Associates, LLP.

**DISCUSSION:**

Based on staff research, most municipalities within Santa Clara County, with the exception of the City of San José, use their current audit firm to assist with compiling and preparing their Annual Comprehensive Financial Report. While management is responsible for the financial statements, the production of the Annual Comprehensive Financial Report involves the synchronization of the actual financial statements with the footnotes, supporting statistical and required supplementary data, Letter of transmittal, and the MD&A. This is a very time intensive effort for staff and can be done more efficiently through the use of a third party who has

**PREPARED BY:** Gitta Ungvari  
Finance Director

---

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

---

PAGE 2 OF 2  
SUBJECT: ACFR Preparation Services  
DATE: April 5, 2024

DISCUSSION (continued):

software dedicated for this purpose and has expertise providing ACFR preparation service to multiple local government clients. This approach is most time and cost efficient, taking advantage of economies of scale, allowing for lower cost of production, and saving staff resources for other Council and Finance Commission priorities.

If Council directs staff to hire a different firm to assist with the ACFR preparation, staff recommends that Council authorize the Town Manager to prepare and issue a Request for Qualifications (RFQ) for ACFR preparation. Staff anticipates the contract amount being within Town Manager's contract authority and would not need to return to Council to approve the consultant selection.

CONCLUSION:

Discuss and provide direction regarding the Finance Commission's recommendation to issue a Request for Qualification (RFQ) for the preparation of the Annual Comprehensive Financial Report (ACFR).

FISCAL IMPACT:

If Council approves the Finance Commission's recommendation, any additional cost beyond using our current external auditor (Chavan & Associates, LLP) will be included in the Proposed FY 2024/25 Operating Budget. The potential cost of the additional services is estimated at approximately \$10,000 to \$15,000 for the fiscal year FY 2023/24 ACFR, pending results of the RFQ submittals.

ENVIRONMENTAL ASSESSMENT:

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



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

ITEM NO. 20.

MEETING DATE: 04/16/2024

---

**DATE:** April 2, 2024  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Authorize the Town Manager to Negotiate an Animal Services Agreement between the Town of Los Gatos and the Silicon Valley Animal Control Authority (SVACA), and Direct Staff to Bring Back an Agreement for the Town to Become a Member of the SVACA.

**RECOMMENDATION:**

Authorize the Town Manager to negotiate an Animal Services Agreement between the Town of Los Gatos and the Silicon Valley Animal Control Authority (SVACA), and direct staff to bring back an agreement for the Town to become a member of the SVACA.

**BACKGROUND:**

On July 1, 2004, the Town of Los Gatos and City of San Jose Animal Care Services (SJACS) entered into a twenty- year agreement (Attachment 1) for animal control services for the Town. At the time, the Town Council decided to terminate the existing agreement with SVACA and leave this Joint Powers Authority (JPA). The Council was interested in entering into contract negotiations with the City of San Jose due to rising costs of the proposed shelter plan by SVACA and the withdrawal of the City of Cupertino from the SVACA JPA, which also contributed to increased costs to the Town’s cost sharing for animal services under the SVACA JPA.

In 2004, SJACS required the Town to pay a one-time contribution for capital costs of \$300,000 plus an initial annual operating cost payment of \$164,000. At the term end (June 2024) of the twenty-year agreement, the Town’s annual FY 23/24 operating costs to the SJACS will be approximately \$262,345.34, an increase of 60% from the original annual service cost payment.

On June 30, 2024, the existing Animal Care Services agreement between the Town of Los Gatos and SJACS will expire. As a part of long-term budget strategies, the Town Council directed staff

**PREPARED BY:** Clinton Tada  
Support Services Captain

---

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

---

PAGE 2 OF 5

SUBJECT: Animal Services Agreement

DATE: April 2, 2024

BACKGROUND (continued):

to explore opportunities for reducing costs and improving operational efficiencies. The Animal Control Services contract provides an opportunity to determine potential cost savings.

DISCUSSION:

The Police Department and Town Manager's Office completed an analysis of available contractual Animal Control Service agencies in the region which identified SVACA as a competitive alternative provider in addition to SJACS.

Animal care services currently being provided to the Town by SJACS require support from the Town Attorney's Office, Code Compliance Officer, and Police Department for qualified cases related to criminal violations and conducting administrative hearings for municipal code violations. These coordinated efforts would continue under both service provider options. As a part of conducting research, staff sought out comparisons related to annual operating service costs, operational capabilities, service delivery models, governance models, and the regionalization of animal services and resources which would improve service levels to the community.

*Operational Cost Comparisons*

At the end of the current term agreement, SJACS provided the Town with a proposed renewal agreement (Attachment 2), which included a revised 3-year initial term and an operating cost for FY 2024/25 of \$289,185, an increase of 10.2% from FY 2023/24. For FY 2025/26 and FY 2026/27, annual operating costs would increase by 4% each year of the initial term which would equal annual costs of \$300,752.40 (FY 2025/26) and \$312,782.50 (FY 2026/27). The Town would not be responsible for paying an initial capital lump sum cost as was required in 2004.

In addition, annual domestic pet licensing fees paid to SJACS are reimbursed to the Town on a quarterly basis based on the Town's fee schedule. For reference, in FY 2023/24 the Town anticipates a reimbursement from SJACS in the amount of approximately \$25,000. See chart below for annual operating costs proposed by the City of San Jose revised agreement renewal options.

DISCUSSION (Continued):

<b>INITIAL TERM</b>	<b>YEARLY COMPENSATION (% Increase from Prior Year)</b>
July 1, 2024 through June 30, 2025	\$289,185.00 (+10.2%)
July 1, 2025 through June 30, 2026	\$300,752.40 (+4%)
July 1, 2026 through June 30, 2027	\$312,782.50 (+4%)
<b>1<sup>st</sup> OPTION TERM</b>	<b>YEARLY COMPENSATION (% Increase from Prior Year)</b>
July 1, 2027 through June 30, 2028	\$325,293.80 (+4%)
July 1, 2028 through June 30, 2029	\$338,305.55 (+4%)
July 1, 2029 through June 30, 2030	\$351,837.77 (+4%)
<b>2<sup>nd</sup> OPTION TERM</b>	<b>YEARLY COMPENSATION (% Increase from Prior Year)</b>
July 1, 2030 through June 30, 2031	\$365,911.28 (+4%)
July 1, 2031 through June 30, 2032	\$380,541.73 (+4%)
July 1, 2032 through June 30, 2033	\$395,769.64 (+4%)

SVACA’s annual operating costs and one-time capital/joint equipment contribution costs are determined by voting members of the JPA Board of Directors on an annual basis. The Town would be a new participating member under the current SVACA JPA. Therefore, the Town would incur an initial one-time contribution towards capital costs or a joint maintenance payment to offset equipment additions or to supplement other contributions made by participating agencies. The initial contribution of capital costs for the Town is anticipated to be less than \$100,000 and SVACA has indicated that the amount would likely be allocated to supplementing costs of a new vehicle or equipment items.

Factors for consideration of annual operating costs for SVACA are established based on jurisdiction size and population, estimated number of field service calls, estimated boarding and intake of animals into the shelter, and other JPA members’ jurisdictional needs and contributions.

SVACA staff provided an initial estimate for the FY 24/25 annual operational cost to the Town in the amount of \$239,000. The estimate was based on the last three years of statistical data from the Town. Future annual operating costs are determined through JPA approval and vote, with anticipated three to four percent Consumer Price Index increases on an annual basis. Annual licensing fees, spay and neuter fees, and adoption fees collected by SVACA from residents in each jurisdiction are applied to each individual participating agency’s annual payments the following year.

The SVACA JPA has demonstrated a capability of controlling costs and limiting the fiscal impact to its member agencies. When comparing the recent history of proportionate costs charged to by SVACA and SJACS based on service level and operations, there is a clear distinction between

PAGE 4 OF 5

SUBJECT: Animal Services Agreement

DATE: April 2, 2024

DISCUSSION (Continued):

the two operations. In addition, if the Town is a member of the JPA, Los Gatos would have a seat on the Board to decide these matters.

*Service Capabilities*

Both SJACS and SVACA provide professional full-service animal control services to jurisdictions in the Santa Clara County. SJACS currently serves the City of San Jose, City of Cupertino, City of Saratoga, and Town of Los Gatos. SVACA serves the City of Campbell, City of Monte Sereno, City of Mountain View, and City of Santa Clara, with each participating agency having at least one appointed member to the JPA Board of Directors.

SJACS and SVACA both operate in a 24/7 capacity to respond to priority one related calls for service. SJACS has limited or delayed response capabilities for priority two and priority three related calls for service (one hour or more) based on staffing resources available, on recognized holidays, and after specific hours of the day. Due to the fact that Monte Sereno and Campbell currently utilize SVACA services, staff believes that field responsiveness and geographical availability for priority calls, follow up investigation, and proactive routine patrols within the Town will increase with SVACA serving neighboring jurisdictions.

*Governance Model*

SVACA has an established JPA agreement (Attachment 3) in which each member agency has a board representative from their respective city/town council. This model gives each jurisdiction direct control by its elected officials over the Authority's operations, including budgetary decisions made related to operational costs, facility improvements, staffing, and SVACA program management. All actions by the JPA require the Board's approval. Currently, Santa Clara receives two votes, and Mountain View, Campbell and Monte Sereno have one vote each. New voting procedures may need to be established if Los Gatos were to join the JPA.

The JPA has successfully maintained effective intergovernmental relationships and coordination of services through its Technical Advisory Committee (TAC). This group is comprised of staff from the member agencies who meet regularly to ensure smooth operations and service delivery to their respective communities and address operational concerns with flexibility and localized respective control. Staff's experience with administering contractual or shared services maintained and operated solely by another single jurisdiction is less desirable based on the limitations to control operations and budgeting, particularly during dynamic and challenging economic times. The JPA model would provide the Town with an active role in animal service from both an operational perspective and in its governance.

CONCLUSION:

After considering the history of the existing long-term contractual relationship, comparing service provided, governance, and costs for the two service providers, staff believes entering



PAGE 5 OF 5

SUBJECT: Animal Services Agreement

DATE: April 2, 2024

CONCLUSION (Continued):

into the SVACA JPA will result in improved operational efficiencies, better services to the community and long-term savings to the Town for animal services.

Staff recommends Town Council approve authorization for the Town Manager to negotiate an animal services agreement between the Town of Los Gatos and the Silicon Valley Animal Control Authority (SVACA), and direct staff to bring back an agreement for the Town to become a member of the SVACA JPA.

FISCAL IMPACT:

The estimated fiscal impact is an estimated \$50,000 reduction in FY 24/25 operating costs for the first year, with increased savings to the Operating Budget in future years. The Town would defer annual revenues from animal licensing under the existing SJACS agreement, estimated at \$25,000 per year which would be applied to SVACA's annual contribution maintenance fund to align with other participating agencies.

Becoming a member of SVACA may incur a one-time capital expense or equipment contribution by the Town to be determined by the SVACA JPA upon approval and acceptance of the Town as a participating member agency. When considering both ongoing operating and one-time capital costs, SVACA would offer the Town net savings in future years of operational costs in comparison to SJACS built-in 4 percent increase annually, with a minimum 3-year optional agreement terms.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. SJACS Original Agreement 2004
2. SJACS Proposed Renewal Agreement 2024
3. SVACA JPA Agreement 2012

RD:RLT  
3/22/2004

EXECUTORY COPY FOR Los Gatos

OFFICE OF THE TOWN CLERK  
AGR. 04.083  
IHH \_\_\_\_\_  
ORD \_\_\_\_\_  
REC \_\_\_\_\_  
RESO \_\_\_\_\_

**ANIMAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF SAN JOSE  
AND  
THE TOWN OF LOS GATOS**

This Animal Services Agreement ("AGREEMENT") is entered into this 29<sup>th</sup> day of June 2004, by and between the TOWN OF LOS GATOS, a municipal corporation (hereinafter "LOS GATOS"), and the CITY OF SAN JOSE, a municipal corporation (hereinafter "SAN JOSE"). LOS GATOS and SAN JOSE are hereinafter collectively referred to as the "PARTIES."

**RECITALS**

WHEREAS, LOS GATOS desires to provide certain animal control services to its residents and citizens; and

WHEREAS, SAN JOSE has the personnel and facilities necessary to provide the animal control services.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this AGREEMENT, the PARTIES hereby agree as follows:

**SECTION 1. SCOPE OF SERVICES.**

SAN JOSE shall perform those services specified in detail in Exhibit A, entitled "SCOPE OF SERVICES" ("Animal Services"), which is attached hereto and incorporated herein.

RD:RLT  
3/22/2004

**SECTION 2. TERM**

The term of this AGREEMENT shall be from July 1, 2004 to June 30, 2024, inclusive. SAN JOSE shall begin providing Animal Services pursuant to this AGREEMENT on July 1, 2004.

**SECTION 3. CAPITAL CONTRIBUTION**

Within thirty-five days of the execution of this AGREEMENT, LOS GATOS shall pay a one-time capital contribution payment to SAN JOSE of Three Hundred Thousand Dollars (\$300,000). The capital contribution is to be used toward the SAN JOSE'S new animal shelter, a new animal control vehicle, and overhead costs related to the expansion of the shelter facility. In the event, LOS GATOS or SAN JOSE terminates the AGREEMENT as specified under SECTION 12 of this AGREEMENT, SAN JOSE shall refund LOS GATOS' capital contribution based on the following schedule for effective date of termination and amount:

July 1, 2004 through June 30, 2005	\$300,000
July 1, 2005 through June 30, 2006	\$200,000
July 1, 2006 through June 30, 2007	\$100,000

If the effective date of the termination is after June 30, 2007, no refund shall be paid.

**SECTION 4. MONTHLY PAYMENT PROVISIONS.**

**A. Payment Schedule**

LOS GATOS shall make payments in equal monthly installments for services provided after execution of this AGREEMENT. All installment payments by LOS GATOS shall be due and payable on the first day of the month and shall be delinquent on the fifteenth (15) business day thereafter without demand or notice to LOS GATOS. SAN

RD:RLT  
3/22/2004

JOSE will provide LOS GATOS an invoice at least fifteen (15) calendar days prior to the payment due date.

**B. Payment Amounts**

For Animal Services provided by SAN JOSE to LOS GATOS under this AGREEMENT, LOS GATOS shall pay SAN JOSE compensation for the period of July 1, 2004 through June 30, 2005 in accordance with Section 4.A. at the following base rate, to be adjusted as described herein:

Field and Shelter Services	\$164,000
----------------------------	-----------

The cost for Field and Shelter services will be based on the number of live domestic animals impounded by SAN JOSE. This cost incorporates all administrative costs, Medical Services, and Dead Animal Services. The PARTIES agree to estimate the number of animals to be impounded at the beginning of each fiscal year. The PARTIES also agree that any overages will be separately billed and any underages separately rebated at the end of each fiscal year. Any adjustments during the Fiscal Year 2004-2005 will be from the base rate of \$164,000.

The compensation for Animal Services under this AGREEMENT shall adjust each fiscal year. The PARTIES agree that the adjusted rate shall be based on the formula detailed in Exhibit B, which is attached hereto and incorporated herein.

In the event SAN JOSE provides services to LOS GATOS prior to execution of this AGREEMENT, LOS GATOS shall compensate SAN JOSE in accordance with the terms set forth in SECTION 4 of this AGREEMENT.

RD:RLT  
3/22/2004

**SECTION 5. INSPECTION OF FINANCIAL BOOKS AND RECORDS.**

During the term of this AGREEMENT, SAN JOSE shall keep its financial books and records directly pertaining to the provision of Animal Services under the AGREEMENT open to inspection and audit by LOS GATOS or LOS GATOS' designated representative(s), upon request of LOS GATOS, and during normal business hours. Any audit of SAN JOSE's financial books and records conducted by LOS GATOS shall be at the expense of LOS GATOS.

**SECTION 6. CONFIDENTIALITY.**

SAN JOSE agrees that to the extent consistent with the California Public Records Act and applicable California law, it shall maintain in confidence and shall not disclose to any third party reports or other documents prepared in connection with the performance of Animal Services under the AGREEMENT.

**SECTION 7. PROJECT MANAGER.**

The PARTIES shall each designate a Project Manager through whom any necessary review of the Animal Services performed under the AGREEMENT will occur.

**SECTION 8. INDEMNIFICATION.**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between SAN JOSE and LOS GATOS pursuant to Government Code section 895.6, SAN JOSE and LOS GATOS agree that all losses or liabilities incurred by a party shall not be shared pro rata as defined in Government Code section 895.6, but instead SAN JOSE and LOS GATOS agree that pursuant to Government Code section 895.4, each of the PARTIES hereto shall fully indemnify and hold the other party, their officers, board members, employees and agents, harmless from any claim, expense or

RD:RLT  
3/22/2004

cost, damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of and only to the extent of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, 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 to the extent any damage or liability occurs by reason of the negligent acts or omissions or willful misconduct of other party hereto, its 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.

**SECTION 9. INDEPENDENT CONTRACTOR RELATIONSHIP.**

This AGREEMENT shall in no way be construed to constitute SAN JOSE as the partner, legal representative, or employee of LOS GATOS or LOS GATOS of SAN JOSE for any purpose whatsoever, or as the agent of LOS GATOS or SAN JOSE, and neither party shall act or attempt to act or represent itself directly or by implication as having such status or relationship. The PARTIES shall have the relationship of independent contractors, and except as specifically provided in this AGREEMENT, each party shall be solely responsible for all obligations and liabilities pertaining to the business, activities, and facilities of that party. As an independent contractor, the PARTIES shall obtain no rights to retirement benefits or other benefits, which accrue, to the PARTIES' respective employees, and the PARTIES hereby expressly waive any claim either of them may have to any such rights.

RD:RLT  
3/22/2004

#### **SECTION 10. ASSIGNABILITY.**

SAN JOSE and LOS GATOS acknowledge and agree that the expertise and experience of SAN JOSE are material considerations inducing LOS GATOS to enter into this AGREEMENT. LOS GATOS acknowledges and accepts that a portion of the services provided under this AGREEMENT shall be provided by a handler of dead deer and livestock, wildlife services, and/or independent veterinary doctors. Neither PARTY shall assign or transfer any interest in this AGREEMENT, or the performance of any obligations hereunder, other than those services provided by the handler of dead deer and livestock, wildlife services, and/or independent veterinary doctors, without the prior written consent of the other, and any attempt by either of the PARTIES to assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

#### **SECTION 11. NONDISCRIMINATION.**

Neither PARTY shall discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT

#### **SECTION 12. TERMINATION OF AGREEMENT.**

##### **A. Termination**

This AGREEMENT may be terminated earlier at any time:

1. Upon the written consent of both SAN JOSE and LOS GATOS;
2. By either SAN JOSE or LOS GATOS immediately upon notice to the other, if the other breaches any material obligation under this AGREEMENT and

RD:RLT  
3/22/2004

such breach remains unremedied for at least thirty (30) days following written notice thereof to the breaching party; or

3. Upon at least one hundred eighty (180) days prior written notice by LOS GATOS to SAN JOSE or SAN JOSE to LOS GATOS of that party's desire to terminate this AGREEMENT. If LOS GATOS does not appropriate the full amounts due to SAN JOSE under this AGREEMENT for any fiscal year on or before June 30 of the year directly preceding the fiscal year for which Animal Services are provided by SAN JOSE, then that action shall, as of the same June 30, constitute the start of the 180-day notice of termination of this AGREEMENT by LOS GATOS pursuant to this SECTION.

**B. Effects of Termination**

Upon the effective date of any termination of this AGREEMENT, SAN JOSE's obligation to provide Animal Services to LOS GATOS under this AGREEMENT shall cease, and LOS GATOS' obligation to make payments hereunder for periods of time after the effective date of termination shall cease, provided that the PARTIES shall have any and all remedies available under law for any breach of this AGREEMENT. The PARTIES may also elect to negotiate a new agreement for the provision of Animal Services at any time after the effective date of termination.

**C. Termination Costs**

In the event LOS GATOS elects to terminate this AGREEMENT, SAN JOSE shall be reimbursed for stray animals that were sheltered for LOS GATOS but not paid for prior to termination for a period of twelve (12) months from the date of termination. The reimbursement will be at the rate per animal agreed upon by the PARTIES for that fiscal year. SAN JOSE shall notify LOS GATOS of the number of animals it shelters during the twelve (12) month period through and in a monthly report provided by SAN JOSE in the same format and manner as the monthly impound



RD:RLT  
3/22/2004

report. LOS GATOS shall pay SAN JOSE for shelter services in accordance with SECTION 4.A.

**SECTION 13. COMPLIANCE WITH LAWS.**

Each PARTY shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**SECTION 14. GIFTS.**

- A. LOS GATOS is familiar with SAN JOSE's prohibition against the acceptance of any gifts by a SAN JOSE officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.
- B. LOS GATOS agrees not to offer any SAN JOSE officer or designated employee gifts prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of the AGREEMENT by LOS GATOS. In addition to any other remedies SAN JOSE may have in law or equity, SAN JOSE may terminate this AGREEMENT for such breach as provided in Section 12.A.2 of this AGREEMENT.

**SECTION 15. RETROACTIVE SERVICES PROVIDED.**

It is understood and agreed that SAN JOSE may have provided services pursuant to the provisions of this AGREEMENT, but prior to the execution of this AGREEMENT by the PARTIES, in anticipation of this execution. LOS GATOS shall compensate SAN JOSE for those services in accordance with the terms of this AGREEMENT. However, in no instance shall SAN JOSE be compensated under this AGREEMENT for work performed for LOS GATOS prior to July 1, 2004.

RD:RLT  
3/22/2004

**SECTION 16. INSURANCE.**

SAN JOSE shall, at its own expense, maintain a program of self-insurance and/or insurance as specified in EXHIBIT C "INSURANCE," which is attached hereto and incorporated herein.

**SECTION 17. NOTICES AND INVOICES.**

All notices and invoices required or permitted hereunder shall be deemed to have been received when delivered in person or if mailed, on the third (3<sup>rd</sup>) business day after the date on which mailed, postage prepaid, and addressed to each party as follows:

To SAN JOSE:	Director San Jose Animal Care and Services 1821 Zanker Road San Jose, CA 95112
--------------	---

To LOS GATOS:	Chief of Police Los Gatos/Monte Sereno Police Department Town of Los Gatos 110 E. Main Street Los Gatos, CA 95032
---------------	--

The PARTIES agree to notify each other in writing of any change in the address no later than thirty (30) days prior to the change in location for receipt of notice.

**SECTION 18. VENUE.**

In the event that suit shall be brought by either party to this AGREEMENT, the PARTIES agree that venue shall be exclusively vested in the state courts of the State of

RD:RLT  
3/22/2004

California, County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

**SECTION 19. GENERAL PROVISIONS.**

**A. Entire Agreement**

This AGREEMENT constitutes the entire agreement between the PARTIES hereto relating to the subject matter hereof and supersedes all prior and contemporaneous oral and written commitments, understandings and agreements. No changes or modifications to this AGREEMENT shall be valid or binding unless contained in a written amendment duly executed by the PARTIES.

**B. Waivers**

No delay or failure of either party to exercise or enforce at any time any right or provision of this AGREEMENT shall be considered a waiver of such right or provision or of such party's right thereafter to exercise or enforce each and every right and provision of this AGREEMENT. In order to be valid, any waiver shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver. Neither the acceptance by LOS GATOS of the performance of any work or services performed by SAN JOSE nor the acceptance of compensation by SAN JOSE shall be deemed to be a waiver of any term or condition of this AGREEMENT.

**C. Interpretations**

In construing or interpreting this AGREEMENT, the word "including" shall not be limiting. The PARTIES agree that this AGREEMENT shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party.

RD:RLT  
3/22/2004

**D. Invalid Provisions**

If any provision of this AGREEMENT shall be held illegal, invalid, or unenforceable, in full or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the other provisions of this AGREEMENT shall not be affected thereby.

**E. Further Documents**

The PARTIES agree, upon request, to sign and deliver such other documents as may be reasonably required to carry out the intent and provision of this AGREEMENT.

**F. California Law**

This AGREEMENT shall be governed by and construed and enforced in accordance with the laws of the State of California.

**G. Counterpart Execution**

This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same document.

RD:RLT  
3/22/2004

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of  
29<sup>th</sup> day of June, 2004.

"SAN JOSE"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

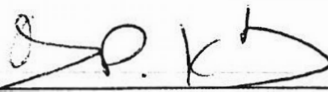
  
\_\_\_\_\_  
ROSAL L. TSONGTAATARII  
Associate Deputy City Attorney

By   
\_\_\_\_\_  
PETER JENSEN  
Assistant to the City Manager

APPROVED AS TO FORM:

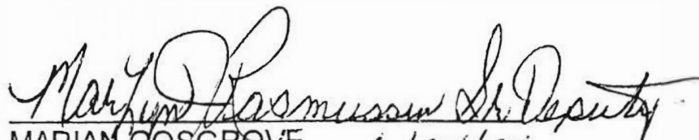
"LOS GATOS"

TOWN OF LOS GATOS, a municipal corporation

  
\_\_\_\_\_  
DORRY P. KORB  
Town Attorney

By   
\_\_\_\_\_  
DEBRA J. FIGONE  
Town Manager

ATTEST:

  
\_\_\_\_\_  
MARIAN COSGROVE 6/24/04  
Clerk of the Town

RD:RLT  
3/22/2004

**EXHIBIT A**  
**SCOPE OF SERVICES**

**SECTION 1. SERVICES PROVIDED.**

For the consideration set forth herein, SAN JOSE shall provide to LOS GATOS Field, Licensing and Sheltering Services. These categories of service are collectively referred to as "Animal Services." Calls for animal related services which are not provided by SAN JOSE shall be referred by SAN JOSE to the appropriate enforcement agency of LOS GATOS in writing or by electronic mail.

**SECTION 2. DEFINITIONS.**

- A. "Critically sick or injured animals" means those animals that have life-threatening conditions.
- B. "Dangerous Animals" means any wild, exotic, or venomous animal, or other animal which because of its size, disposition or other characteristics, would constitute a danger to persons or property as defined in the Los Gatos Town Code §4.10.010(g).
- C. "Emergency Calls" means complaints of animal bites or attacks on humans or domestic animals that are in progress, a high risk animal bite to human or domestic animal, or, where a bite has occurred and the animal remains a threat to humans or domestic animals.
- D. "Holidays" are New Years Day, Martin Luther King Day, President's Day, Caesar Chavez Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Day After Thanksgiving, Christmas Eve Day, Christmas Day and New Years Eve Day.

RD:RLT  
3/22/2004

- E. "Dangerous Dog" or "Potentially Dangerous Dog" means a dog that has attacked, without provocation, humans or other domestic animals or has threatened the safety of humans or domestic animals as defined in the Los Gatos Town Code §4.10.010(r).
- F. "Wildlife" means any animal that is native to this region and recognized as an indigenous species such as opossums, raccoons, skunks or squirrels.

**SECTION 3. FIELD SERVICES.**

**A. FIELD SERVICES**

SAN JOSE shall provide vehicles, communications equipment, hardware and software requirements, office supplies, field and administrative personnel, and any other personnel, supplies and equipment, reasonably required to perform the following services (the "Field Services") upon a request or complaint from LOS GATOS or from a person within the boundaries of LOS GATOS:

- (1) Pick up of confined stray dogs, cats and other small animals, including but not limited to, rabbits, chickens, turkey, geese, birds and ducks, and excluding Wildlife;
- (2) Pick up injured or sick stray dogs, cats, birds, and other small animals that are located on public property or readily accessible on private property with the consent of the property owner or the property owner's authorized agent;
- (3) Pickup of injured or sick Wildlife, and livestock;
- (4) Pick up dead animals in accordance with SECTION 5 of this Exhibit A;
- (5) Investigate complaints of animal bites or attacks on humans, including the preparation of a report, interviewing the parties involved, quarantining animals which have bitten humans, preparing and transporting biting

RD:RLT  
3/22/2004

animals for rabies testing, and investigating alleged violations of a quarantine order;

- a) The investigation contemplated under this SECTION 3.A.5 may be conducted by telephone when the owner and victim are the same person. In all other cases, SAN JOSE will meet and conduct a personal interview(s) with the owner in order to complete the investigation and quarantine the animal as necessary;
- (6) Investigate and refer complaints of Dangerous Dog, Potentially Dangerous Dog, and/or Dangerous Animals to the appropriate enforcement agency of LOS GATOS for resolution. Investigations shall include preparation of a report, interviewing the parties involved, and collecting available historical data;
- (7) Respond to complaints of dogs running at large, attempt to capture them and provide follow-up patrol if appropriate;
- (8) Respond to police assist calls on animal-related issues which may include taking control of an animal at the direction of a police officer on the scene;
- (9) Investigate complaints of activities criminal in nature, such as animal cruelty, neglect and fighting including preparation of a report, interviewing the parties involved, and collecting available historical data for referral to the Santa Clara County District Attorney's Office. SAN JOSE shall provide LOS GATOS a copy of the investigative packet and in each case obtain LOS GATOS' decision and authorization to refer the case to the Santa Clara County District Attorney's Office. If needed or appropriate, SAN JOSE personnel shall appear for court proceedings at no additional cost to LOS GATOS;



RD:RLT  
3/22/2004

- (10) Investigate and refer complaints of animal abuse or neglect, under the Los Gatos Town Code, to the appropriate enforcement agency of LOS GATOS for resolution. Investigations shall include preparation of a report, collecting available historical data, and may include interviewing the parties involved;
- (11) Investigate and refer complaints of excessive animals, under the Los Gatos Town Code, to the appropriate enforcement agency of LOS GATOS for resolution;
- (12) Respond to complaints in progress of domestic animals causing a nuisance, except domestic animals making noise, and provide follow-up patrol if appropriate. SAN JOSE may issue citations for certain nuisances caused by domestic animals, as defined under the Los Gatos Town Code §4.10.070 pursuant to the authority conferred by Los Gatos Town Code §4.10.055; and
- (13) Respond to complaints of venomous or other dangerous snakes and bats that are located on public property or readily accessible on private property with the consent of the property owner or the property owner's authorized agent.

The PARTIES agree that during the course of administering field services, police assistance may be necessary. Upon request from SAN JOSE, LOS GATOS shall provide the police assistance necessary to administer said Field Services.

**B. RESPONSE TIME PERFORMANCE STANDARDS**

SAN JOSE shall make all reasonable efforts to respond to complaints and requests received by LOS GATOS or from persons within the boundaries of LOS GATOS at a performance standard level that is no less than the following during normal business hours:

RD:RLT  
3/22/2004

- (1) PRIORITY 1 – Response to Emergency Calls; police assist; bites to human and/or domestic animal from bats and skunks; at large Dangerous or Potentially Dangerous Dog; at large quarantined animal; critically sick or injured animal; and animals in distress.
  - a) Response shall be on a twenty-four (24) hours per day, seven (7) days per week basis and shall be within one hour or less from the time the call for service is received by SAN JOSE to the time SAN JOSE's personnel arrive on scene.
  
- (2) PRIORITY 2 – Response to complaints of bites; animals on school grounds; animals that pose a traffic hazard on the streets of LOS GATOS; animals in traps; animals suffering from cruelty or neglect; and confined strays.
  - a) Response shall be during normal business hours and shall be within two business hours from the time the call for service is received by SAN JOSE to the time SAN JOSE personnel arrive on the scene Monday through Friday and within four business hours from the time the call for service is received by SAN JOSE to the time SAN JOSE personnel arrives on scene on Saturdays, Sundays and Holidays.
  
- (3) PRIORITY 3 – Response to any calls remaining from PRIORITY 1 and 2; dead animal pick up; and dogs running at large.
  - a) Response shall be during normal business hours and shall be within four business hours from the time the call for service is received by SAN JOSE to the time SAN JOSE personnel arrive on the scene Monday through Friday and within eight business hours from the time the call for service is received by SAN JOSE to the

RD:RLT  
3/22/2004

time SAN JOSE personnel arrives on scene on Saturdays,  
Sundays and Holidays.

**C. RESPONSE AFTER BUSINESS HOURS**

SAN JOSE shall respond to PRIORITY 1 calls during and after normal business hours, twenty-four hours per day, seven days per week including Holidays. SAN JOSE shall make all reasonable efforts to respond to PRIORITY 2 calls received after normal business hours no later than 11:00 a.m. the following business day. SAN JOSE shall make all reasonable efforts to respond to PRIORITY 3 calls received after normal business hours no later than 3 p.m. the following business day.

**D. EXCLUDED SERVICES**

The following services are not included in the services provided by SAN JOSE under this AGREEMENT:

- (1) Removal and disposal of dead marine mammals;
- (2) Pick up and transportation of uninjured or healthy, living Wildlife;
- (3) Pick up animals for surrender at the owner's request except that SAN JOSE may provide these services in SAN JOSE's discretion and charge a fee to be paid by the owner separate and apart from this AGREEMENT;
- (4) Permitting or inspection of events with animals;
- (5) Investigation of complaints that only relate to domestic animals or Wildlife making noise.

RD:RLT  
3/22/2004

#### **SECTION 4. SHELTER SERVICES.**

##### **A. SHELTER SERVICES**

SAN JOSE shall provide the shelter facilities, supplies, animal attendants, supervisors and administrative personnel, and any other personnel, supplies and equipment, reasonably required to perform the following services (the "Shelter Services"):

- (1) Shelter of abandoned, impounded, lost or stray domestic animals brought to the shelter by LOS GATOS, its residents, or SAN JOSE personnel;
- (2) Quarantine of biting animals;
- (3) Rabies testing of suspect animals;
- (4) Provide facilities for surrender and reclaim of abandoned, lost or stray domestic animals during established business hours;
- (5) Euthanization and disposal of abandoned, lost, impounded, or stray domestic animals that are unclaimed by their owners and fail to meet the written SAN JOSE temperament standards for adoption; and
- (6) Provision of animal license to dogs, or other animals to which licensing is applicable, at the animal shelter.

##### **B. MEDICAL SERVICES**

As part of the Shelter Services, SAN JOSE shall provide office facilities, supplies, and professional and trained personnel, employed or under contract, reasonably necessary to perform the following services (the "Medical Services"):

- (1) Providing veterinarian services twenty-four (24) hours per day to treat and provide veterinarian care to stray, injured, or sick dogs, cats, and other impounded animals;
- (2) Monitor impounded quarantined biting animals;
- (3) Provide vaccination services; and
- (4) Have available, free of charge to the public, rabies control information.

RD:RLT  
3/22/2004

### **C. OPERATING SCHEDULES**

SAN JOSE shall also provide Shelter Services for the animals in the facility twenty-four (24) hours a day, seven (7) days a week. SAN JOSE shall provide or under contract provide emergency veterinary services and shall make animals available to the public in accordance with state law.

### **SECTION 5. DEAD ANIMAL SERVICES.**

SAN JOSE shall provide storage facilities, disposal mechanisms, field and administrative personnel, and any other personnel, supplies and equipment reasonably required to perform the following services (the "Dead Animal Services"):

- (1) Pick up of dead animals, including Wildlife, from the streets of LOS GATOS, or from private property within LOS GATOS with the consent of the property owner or the property owner's authorized agent in accordance with this SECTION 3.B.3;
- (2) Handle or refer dead deer and livestock to handler for dead deer and livestock;
- (3) Identification of and notification to the owner of the dead animal, whenever possible;
- (4) Scan each dead animal for microchip identification, if available; and
- (5) Disposal of the body of the dead animal.

### **SECTION 6. RECORDS REGARDING ANIMAL SERVICES.**

#### **A. MAINTENANCE OF RECORDS**

SAN JOSE shall maintain accurate records regarding its performance of Animal Services for a period of three (3) years from the date such records are created. Such records shall include Shelter Services records regarding receipt, care, reclaim, and

RD:RLT  
3/22/2004

disposition of owner surrendered, abandoned, impounded, lost or stray domestic animals, including names and addresses of persons reclaiming animals, Dead Animal Services records regarding receipt and disposal of dead animals, and fees collected for the LOS GATOS.

**B. INSPECTION OF RECORDS**

SAN JOSE shall make available for inspection by LOS GATOS or LOS GATOS' designated representative(s) records regarding Animal Services under this AGREEMENT, upon request of LOS GATOS during SAN JOSE's normal business hours.

**C. MONTHLY REPORT**

SAN JOSE shall provide within 30 days of the end of each month, a monthly Animal Control and Impound Report summarizing Field Services, Shelter Services, Licensing Services, Medical Services and Dead Animal Services provided by SAN JOSE to LOS GATOS. This report shall include, but not be limited to, the following information:

- (1) Total number of calls for service, complaints relating to animal bites or attacks, complaints relating to vicious or dangerous dogs, and other activities;
- (2) Total number of licenses sold to LOS GATOS residents;
- (3) Number of incoming live animals, including Wildlife, brought to the shelter (surrender and field);
- (4) Number of dead animals picked up by SAN JOSE and brought to the shelter; and
- (5) Number and type of animals provided Medical Services along with a brief description of service; and
- (6) Response time performance standard report for Priority 1 through 3 calls.

RD:RLT  
3/22/2004

**D. YEARLY REPORT**

SAN JOSE shall complete and submit to the County of Santa Clara Public Health Department the Annual Report of Local Rabies Control Activities for the Town of Los Gatos. SAN JOSE shall also provide an annual report of activities and accomplishments detailed in SECTION 6.C of this Exhibit A to LOS GATOS.

**SECTION SEVEN. PROGRAM REVENUE.**

**A. FEES COLLECTED BY SAN JOSE**

SAN JOSE shall collect fees, charges, and penalties (the "Program Fees") from the public in connection with a portion of the Animal Services provided under this AGREEMENT, including but not limited to items such as impound, quarantine, and boarding fees. These Program Fees shall be at the rates established by LOS GATOS. If no fee or charge has been established by LOS GATOS, the PARTIES shall mutually determine the appropriate fee or charge for the particular service at issue and shall be imposed by SAN JOSE after it has been duly adopted by LOS GATOS and become effective.

**B. PAYMENT OF PROGRAM FEES TO LOS GATOS**

All Program Fees collected by SAN JOSE in connection with the Animal Services provided to LOS GATOS, except fees collected for emergency veterinary services which are paid to contract veterinary providers by SAN JOSE, shall be paid or credited monthly by SAN JOSE to LOS GATOS by the fifteenth (15th) business day of the month immediately following the month in which the Program Fees were collected.

**C. MONTHLY FEE STATEMENT**

SAN JOSE shall provide to LOS GATOS with each monthly payment of Program Fees, a statement of Program Fees collected that shows the total amount of Program Fees

RD:RLT  
3/22/2004

collected and the total amounts collected in each fee category, such as impound, quarantine and board fees.

**D. ANIMAL LICENSING FEES**

SAN JOSE shall remit licensing fees paid for the licensing of dogs and cats residing in LOS GATOS to LOS GATOS on a monthly basis. The licensing fees shall be at the rates established by LOS GATOS. If no fee has been established by LOS GATOS, the PARTIES shall mutually determine the appropriate fee for the particular license at issue and SAN JOSE shall impose the fee after it has been duly adopted by LOS GATOS and become effective.

**SECTION EIGHT. OTHER RESPONSIBILITIES.**

**A. ADMINISTRATIVE HEARINGS**

SAN JOSE shall not be responsible for nor bear the costs of scheduling or conducting any required hearings regarding Dangerous or Potentially Dangerous Dogs, or any other matter subject to an administrative hearing. If needed or appropriate, SAN JOSE personnel shall appear as a witness at any such hearing at no additional cost to LOS GATOS.



RD:RLT  
3/22/2004

**EXHIBIT B**  
**FORMULA FOR COMPENSATION**

LOS GATOS shall compensate SAN JOSE for Animal Services utilizing the Fiscal Year 2004-2005 base rate of \$164,000 (hereinafter "Base Rate"). The Base Rate shall apply to the first year of this Agreement (i.e. through June 30, 2005). Compensation for Animal Services shall be adjusted once a year effective July 1 of the next fiscal year (i.e. 2005, 2006, 2007 etc.). The PARTIES agree that each increase for Animal Services shall be based on the percentage increase in total compensation provided to all SAN JOSE animal control officers or the February to February Consumer Price Index-Urban Wage Earners and Clerical Workers for San Francisco-Oakland-San Jose, CA (maintained by the Bureau of Labor Statistics) (hereinafter "CPIU") plus 1.5% as set forth in the Calculation Formula below, whichever is less.

The PARTIES agree to estimate the number of animals to be impounded at the beginning of each fiscal year. The PARTIES also agree that any overages will be separately billed and any underages separately rebated at the end of each fiscal year. Any adjustments during the Fiscal Year 2004-2005 will be from the base rate of \$164,000.

**Calculation Formula**

**ANNUAL COST OF LIVING INCREASE IN TOTAL COMPENSATION:**

"Total Compensation" refers to the amount SAN JOSE provides for total compensation (salary and benefits) at top step for a 40-hour per week animal control officer. On July 1<sup>st</sup> of each fiscal year, the percentage change in Total Compensation will be derived from the new Total Compensation amount divided by the Total Compensation effective from July 1<sup>st</sup> of the prior fiscal year (e.g. Total Compensation Percentage Change

RD:RLT  
3/22/2004

(Fiscal Year 2005-2006) = (Total Compensation (Fiscal Year 2005-2006) / Total Compensation (Fiscal Year 2004-2005) – 1).

**The annual projected budget increase in contract costs shall be computed as follows:**

Fiscal Year 2004-2005 Base Year = \$164,000

Fiscal Year 2005-2006 and thereafter = (Animal Services Compensation for Preceding Fiscal Year) x (Percentage Change in Total Compensation for the previous fiscal year) or (CPI-U for the previous fiscal year + 1.5%), whichever is less. In the event the percentage change in CPIU for any given fiscal year is negative, the percentage change in CPIU shall be deemed zero (0).

RD:RLT  
3/22/2004

**EXHIBIT C**  
**INSURANCE**

SAN JOSE represents and warrants that, at SAN JOSE'S sole cost and expense, it will maintain for the duration of this AGREEMENT self-insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by SAN JOSE, its agents, representatives, employees or subcontractors.

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Form Number GL 0002 (Ed. 01/96) covering Commercial General Liability together with Insurance Services Office Form Number GL 0404 covering Broad Form Comprehensive General Liability; or that described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 (Ed. 01/96); and
2. The coverage described in Insurance Services Office Form Number CA 0001 (Ed. 12/93) covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "non-owned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions, when applicable.

**B. Minimum Limits of Insurance**

SAN JOSE self-insurance maintained limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

RD:RLT  
3/22/2004

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors and Omissions \$1,000,000 Aggregate Limit.

C. **Other Insurance Provisions**

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

1. Commercial General Liability and Automobile Liability Coverages
  - a. SAN JOSE self-insured coverage shall apply to LOS GATOS, its officers, employees, agents and contractors as respects: Liability arising out of activities performed by or on behalf of, SAN JOSE; products and completed operations of SAN JOSE; premises owned, leased or used by SAN JOSE; and automobiles owned, leased, hired or borrowed by SAN JOSE. Said self-insurance shall apply fully to any indemnity for LOS GATOS, its officers, employees, agents and contractors.
  - b. SAN JOSE's insurance coverage shall be primary insurance as respects LOS GATOS, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by LOS GATOS, its officers, employees, agents or contractors shall be excess of SAN JOSE's self-insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by SAN JOSE shall not affect coverage provided LOS GATOS, its officers, employees, agents, or contractors.
  - d. Coverage shall state that SAN JOSE's self-insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

D. **Verification of Coverage**

SAN JOSE shall furnish LOS GATOS with Affidavit of insurance affecting coverage required by this AGREEMENT at the time of contracting and upon expiration of each certificate.

E. **Subcontractors**

SAN JOSE shall obtain separate certificates and endorsements for each subcontractor and furnish LOS GATOS with a copy of the certificates and endorsements at the time of contracting or expiration of each certificate.

RD:RLT  
3/22/2004

RD:RLT:ERD  
4/1/2004

Res. No. 72038

RESOLUTION NO. 72038

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AGREEMENTS WITH THE CITIES OF CUPERTINO, LOS GATOS AND SARATOGA FOR ANIMAL SERVICES**

**WHEREAS**, the Animal Care and Services Division of the Parks, Recreation and Neighborhood Services Department of the City of San José ("City") was created in July, 2001, assuming all animal field services, including code enforcement, stray animal removal, vicious dog permits, and animal licensing; and

**WHEREAS**, it is anticipated that construction of the City's new animal care facility will be completed in the summer of 2004, and upon its completion, the City will assume all remaining animal services currently provided by the Humane Society Silicon Valley, which services include sheltering of animals, immunization clinics and public education programs; and

**WHEREAS**, the cities of Cupertino, Los Gatos, and Saratoga have requested that the City provide complete animal services for their jurisdictions, including animal field services and animal sheltering; and

**WHEREAS**, the City desires to negotiate and execute agreements with the cities of Cupertino, Los Gatos, and Saratoga to provide such animal services for a period of 20 years, anticipated to commence in the summer of 2004, which agreements will include annual payments for operations as well as a one-time capital contribution;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

The City Manager is hereby authorized to negotiate and execute the following agreements to provide animal services for a twenty year term commencing July 1, 2004:

1. An agreement with the City of Cupertino in the amount of \$166,000 per annum in operating costs and a one-time capital contribution of \$500,000.
2. An agreement with the City of Los Gatos in the amount of \$164,000 per annum in operating costs and a one-time capital contribution of \$300,000.
3. An agreement with the City of Saratoga in the amount of \$155,000 per annum in operating costs and a one-time capital contribution of \$300,000.

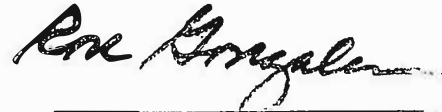
ADOPTED this 6<sup>th</sup> day of April, 2004, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO,  
GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER;  
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE



\_\_\_\_\_  
RON GONZALES  
Mayor

ATTEST:

  
\_\_\_\_\_  
DEANNA J. SANTANA  
Acting City Clerk

**AGREEMENT FOR ANIMAL SERVICES  
BETWEEN THE CITY OF SAN JOSE  
AND THE TOWN OF LOS GATOS**

This AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and is by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter “SAN JOSE”), and the TOWN OF LOS GATOS, a municipal corporation (hereinafter “LOS GATOS”). SAN JOSE and LOS GATOS are sometimes referred to herein individually as “Party” and collectively as “Parties.”

THE PARTIES HEREBY AGREE AS FOLLOWS:

**SECTION 1. SCOPE OF SERVICES.**

SAN JOSE shall perform those services specified in detail in EXHIBIT A, entitled “SCOPE OF SERVICES,” which is attached hereto and incorporated herein.

**SECTION 2. TERM OF AGREEMENT.**

A. Initial Term.

The initial term of this AGREEMENT shall be from July 1, 2024 (“Commencement Date”) through June 30, 2027, inclusive, subject to the provisions of SECTION 8 of this AGREEMENT (“Initial Term”). Regardless of the date of execution of this AGREEMENT, this AGREEMENT is effective as of the Commencement Date.

B. Options to Extend.

The Parties may extend the term of the AGREEMENT in two (2) additional three-year increments (“Option Terms”) through June 30, 2033, subject to the appropriation of funds and to any adjustments for compensation as set forth in EXHIBIT B. The Parties shall exercise any Option Terms by executing a Notice of Exercise of Option in the form set forth in EXHIBIT C no less than one hundred and eighty days (180) days prior to the expiration of the Initial Term or the



expiration of an Option Term, whichever is applicable. All terms and conditions of this AGREEMENT shall remain in full force and effect during any and all Option Terms.

C. Appropriation of Funds.

The Parties' funding of this AGREEMENT shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations by the City Councils of SAN JOSE and LOS GATOS. Accordingly, the Parties agree that the exercise of any option to extend by the Parties is contingent upon the appropriation of funds.

**SECTION 3. COMPENSATION.**

The rate and schedule of payment to be paid to SAN JOSE is set out in EXHIBIT B, entitled "COMPENSATION," which is attached hereto and incorporated herein.

**SECTION 4. INDEPENDENT CONTRACTOR RELATIONSHIP.**

This AGREEMENT shall in no way be construed to constitute SAN JOSE as the partner, legal representative, or employee of LOS GATOS or LOS GATOS of SAN JOSE for any purpose whatsoever, or as the agent of LOS GATOS or SAN JOSE, and neither Party shall act or attempt to act or represent itself directly or by implication as having such status or relationship. The Parties shall have the relationship of independent contractors, and except as specifically provided in this AGREEMENT, each Party shall be solely responsible for all obligations and liabilities pertaining to the business, activities, and facilities of that Party. As an independent contractor, the Parties shall obtain no rights to retirement benefits or other benefits, which accrue, to the Parties' respective employees, and the Parties hereby expressly waive any claim either of them may have to any such rights.

**SECTION 5. ASSIGNABILITY.**

SAN JOSE and LOS GATOS acknowledge and agree that the expertise and experience of SAN JOSE are material considerations inducing LOS GATOS to enter into this AGREEMENT. LOS GATOS acknowledges and accepts that a portion of the services

provided under this AGREEMENT shall be provided by a handler of dead deer and livestock, wildlife services, and/or independent veterinary doctors. Neither Party shall assign or transfer any interest in this AGREEMENT, or the performance of any obligations hereunder, other than those services provided by the handler of dead deer and livestock, wildlife services, and/or independent veterinary doctors, without the prior written consent of the other, and any attempt by either of the Parties to assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

**SECTION 6. INDEMNIFICATION.**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties 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 as defined in Government Code section 895.6, but instead SAN JOSE and LOS GATOS agree that pursuant to Government Code section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Party, 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 and only to the extent of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, board members, 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 to the extent any damage or liability occurs by reason of the negligent acts or omissions or willful misconduct of 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.

**SECTION 7. NONDISCRIMINATION.**

The Parties shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity,

disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

**SECTION 8. TERMINATION.**

**A. Termination**

This AGREEMENT may be terminated earlier at any time:

1. Upon the written consent of both LOS GATOS and SAN JOSE.
2. By either LOS GATOS or SAN JOSE immediately upon notice to the other, if the other breaches any material obligation under this AGREEMENT and such breach remains unremedied for at least thirty (30) days following written notice thereof to the breaching Party.
3. Immediately upon written notice by LOS GATOS to SAN JOSE if SAN JOSE has a receiver appointed for all or substantial part of its business or assets, if a bankruptcy proceeding is brought by or against SAN JOSE as a debtor, or if SAN JOSE ceases its business operations; or
4. Upon at least one hundred eighty (180) days prior written notice by LOS GATOS to SAN JOSE or SAN JOSE to LOS GATOS of that Party's desire to terminate this AGREEMENT. If LOS GATOS does not appropriate the full amounts due to SAN JOSE under this AGREEMENT for FY 2023-2024 or on or before June 30 of the year directly preceding the fiscal year for which Animal Services, as defined in EXHIBIT A, are provided by SAN JOSE; then that action shall, as of the same June 30, constitute the start of the 180-day notice of termination of this AGREEMENT by LOS GATOS pursuant to this SECTION.

**B. Effects of Termination**

Upon the effective date of any termination of this AGREEMENT, SAN JOSE's obligation to provide Animal Services to LOS GATOS under this AGREEMENT shall cease, and LOS GATOS' obligation to make payments hereunder for periods of time after the effective date of termination shall cease, provided that the Parties shall have any and all remedies available under law for any breach of

this AGREEMENT. The Parties may also elect to negotiate a new agreement for the provision of Animal Services upon the effective date of termination.

**C. Termination Costs**

In the event LOS GATOS elects to terminate this AGREEMENT with SAN JOSE, LOS GATOS shall pay SAN JOSE the Contract Amount in EXHIBIT B at a prorated daily rate up to the date of termination.

**SECTION 9. GOVERNING LAW.**

The Parties agree that the law governing this AGREEMENT shall be that of the State of California.

**SECTION 10. COMPLIANCE WITH LAWS.**

The Parties shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**SECTION 11. CONFIDENTIAL INFORMATION.**

All data, documents, discussions or other information developed or received by or for the Parties in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by the Parties, or as required by law.

**SECTION 12. WAIVER.**

No delay or failure of either Party to exercise or enforce at any time any right or provision of this AGREEMENT shall be considered a waiver thereof or of such Party's right thereafter to exercise or enforce each and every right and provision of this AGREEMENT. The Parties agree that waiver of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by LOS GATOS of the performance of any work or services by SAN JOSE shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

**SECTION 13. GIFTS.**

- A. The Parties are familiar with the prohibition against the acceptance of any gift by an officer or designated employee of SAN JOSE or LOS GATOS.
  
- B. SAN JOSE agrees not to offer any LOS GATOS officer or designated employee any gift prohibited by LOS GATOS. LOS GATOS agrees not to offer any SAN JOSE officer or designated employee any gift prohibited by SAN JOSE.
  
- C. The offer or giving of any gift prohibited by SAN JOSE or LOS GATOS shall constitute a material breach of the AGREEMENT. In addition to any other remedies the Parties may have in law or equity, the Parties may terminate this AGREEMENT for such breach as provided in SECTION 8 of this AGREEMENT.

**SECTION 14. NOTICES.**

Any notices or other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective Parties as follows:

To SAN JOSE: San José Animal Care and Services  
2750 Monterey Rd  
San José, CA 95111

To LOS GATOS: Chief of Police  
Los Gatos/Monte Sereno Police Dept  
Town of Los Gatos  
110 E Main Street  
Los Gatos, CA 95032

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

**SECTION 15. VENUE.**

In the event that suit shall be brought by any Party to this AGREEMENT against another Party, the Parties agree that the venue shall be exclusively vested in the state courts of the State of California, County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

**SECTION 16. PRIOR AGREEMENTS AND AMENDMENTS.**

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the Parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this AGREEMENT, the terms specified in the body of this AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the Parties to this AGREEMENT.

**SECTION 17. INTERPRETATIONS.**

In construing or interpreting this AGREEMENT, the word “including” shall not be limiting. The Parties agree that this AGREEMENT shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either Party.

**SECTION 18. INVALID PROVISIONS.**

If any provision of this AGREEMENT shall be held illegal, invalid, or unenforceable, in full or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the other provisions of this AGREEMENT shall not be affected thereby.

**SECTION 19. FURTHER DOCUMENTS.**

The Parties agree, upon request, to sign and deliver such other documents as may be reasonably required to carry out the intent and provision of this AGREEMENT.

**SECTION 20. COUNTERPART EXECUTION.**

This AGREEMENT may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

**SECTION 21. USE OF ELECTRONIC SIGNATURES.**

Unless otherwise prohibited by law or SAN JOSE 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 writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by SAN JOSE.

**WITNESS THE EXECUTION HEREOF** on the day and year first hereinabove written.

APPROVED AS TO FORM:  
{{\_\_signer1}}

TOWN OF LOS GATOS, a municipal  
corporation  
{{\_\_signer2}}

\_\_\_\_\_  
XXXX

By \_\_\_\_\_  
XXXX

APPROVED AS TO FORM:  
{{\_\_signer3}}

CITY OF SAN JOSE, a municipal  
corporation  
{{\_\_signer4}}

\_\_\_\_\_  
ARLENE SILVA  
Senior Deputy City Attorney

By \_\_\_\_\_  
SARAH ZARATE  
Director, Office of the City Manager

**EXHIBIT A**  
**SCOPE OF SERVICES**

For the consideration set forth herein, SAN JOSE shall provide to LOS GATOS the Field Services, Shelter Services, and Dead Animal Services as described in this AGREEMENT. These three categories of service are sometimes collectively referred to herein as the “Animal Services,” and each category of services is sometimes hereinafter referred to as a “Program Unit.” Calls for animal-related services which are not provided by SAN JOSE shall be referred by SAN JOSE to the appropriate code enforcement agency of LOS GATOS, either in writing or by electronic mail. The Animal Services shall be provided by SAN JOSE in accordance with all applicable federal, state and local laws and ordinances.

**SECTION 1. DEFINITIONS**

- A. “Aggressive Bite” means a bite which punctures the skin or tissue of a human or another animal.
- B. “Critically Sick or Injured Animals” means those animals that have life-threatening conditions.
- C. “Dangerous Animal” means any animal which, because of its size, disposition or other characteristics, would constitute a danger to humans or other domestic animals, and includes any dog classified as a Level 3, 4, or 5 dangerous or potentially dangerous dog as defined in the LOS GATOS Municipal Code Chapter 210, or, any dog that is the perpetrator of an unprovoked bite or attack on humans or other domestic animals as documented in an Incident Report by San José Animal Care and Services or the LOS GATOS Police Department.
- D. “Emergency Calls” means complaints of animal bites or attacks on humans or domestic animals that are in progress, or, where a bite or attack has occurred, where the animal remains an immediate threat to humans.
- E. “Holidays” are New Year’s Eve, New Year’s Day, Easter Sunday, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas Day, and the day before and the day after Christmas Day.



- F. "Livestock" means large domesticated agricultural animals, such as a cow, bull, steer, horse, sheep, goat, pig or other large agricultural animals.
- G. "Physical Injury" means an injury suffered as the result of an attack by a dog, including, but not limited to falls, sprains, broken bones, blunt trauma, contusions, hematomas, or other injuries.
- H. "Serious Injury" means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

## **SECTION 2. FIELD SERVICES**

### **A. Field Services**

SAN JOSE shall provide vehicles, communications equipment, office supplies, field and administrative personnel, and any other personnel, supplies and equipment, reasonably required to perform the following services (the "Field Services") upon a request or complaint from LOS GATOS or from a person within the boundaries of LOS GATOS:

1. Pick up of stray dogs, and other small domestic animals, including rabbits, chickens, turkey, geese, and ducks, and excluding wildlife as defined in Section 89.5 of the California Fish and Game Code, such as opossums, raccoons, skunks, or squirrels, that have been confined by LOS GATOS or by a person within the boundaries of LOS GATOS;
2. Pick up of dead animals, including wildlife, in accordance with SECTION 4;
3. Pick up of injured stray dogs or cats and other small domestic animals, without regard to weight, excluding birds, and injured wildlife that weigh fifty pounds (50 lbs.) or less, that are located on public property or readily accessible on private property with the consent of the property owner or the property owner's authorized agent;
4. Response to Emergency Calls;
5. Investigate complaints of animal bites or attacks on humans or other domestic animals, including the preparation of a report, interviewing the parties involved, quarantining animals which have bitten humans, preparing and transporting

biting animals for rabies testing, and investigating alleged violations of a quarantine order. An incident report is to be provided to the designated appropriate LOS GATOS Code Enforcement official within five (5) business days of the incident, including licensing information for the subject animal(s).

- a) SAN JOSE will meet and conduct a personal interview(s) with the owner in order to complete the investigation and quarantine the animal as necessary.
6. Investigate and refer complaints of Dangerous or Potentially Dangerous Dogs to the appropriate Code Enforcement official in LOS GATOS for resolution. Investigations shall include preparation of a report and may include interviewing the parties involved, and collecting available historical data;
7. Investigate and refer complaints of Dangerous Animals to the appropriate Code Enforcement official in LOS GATOS for resolution. Investigations shall include taking a report and may include interviewing the parties involved, and collecting available historical data;
8. Respond to complaints of dogs running at large, attempt to capture them, and provide follow-up patrol if appropriate and subject to the availability of SAN JOSE staff;
9. Respond to complaints in progress of domestic animals causing a nuisance, except domestic animals making noise, and provide follow-up patrol if appropriate and subject to the availability of SAN JOSE staff;
10. Respond to police assist calls on animal-related issues which may include taking control of an animal on the scene; and
11. Investigate and refer to the appropriate Code Enforcement official in LOS GATOS for resolution of complaints regarding the lack of proper care, condition, or attention of domestic animals by their owners.

#### **B. Response Time Performance Standards**

1. SAN JOSE shall make all good faith efforts to respond to complaints and requests received by SAN JOSE at a performance standard level that is no less than the following:

- a) PRIORITY 1 – Response to Emergency, Police Assist, Dangerous Animal, and Critically Sick or Injured Animal calls for assistance.
- 1.) Response shall be twenty-four (24) hours per day, seven (7) days per week. Eighty-five percent (85%) of responses on all PRIORITY 1 calls shall occur within one (1) hour or less from the time the call for service is received by SAN JOSE staff to the time SAN JOSE personnel arrive on the scene.
- b) PRIORITY 2 – Pick up animals that were running at large and that are now confined by LOS GATOS or by a person within the boundaries of LOS GATOS and calls regarding urgent, but not immediately life-threatening animal-related requests for assistance.
- 1.) Eighty percent (80%) of responses on all PRIORITY 2 calls received between 7:00 a.m. and 5:00 p.m. shall be within six (6) hours or less from the time the call for service is received by SAN JOSE staff to the time SAN JOSE personnel arrive on the scene.
- 2.) Response to calls received between the hours of 5:00 p.m. and 7:00 a.m. shall be responded to no later than 7:00 p.m. the following day.
- c) PRIORITY 3 – Response to calls relating to non-emergency attacks, non-critically injured or sick animals, quarantine calls, animals running at large, animals causing a nuisance and pick up of dead animals.
- 1.) Seventy-five percent (75%) of responses on all PRIORITY 3 calls received between 7:00 a.m. and 5:00 p.m. shall be within twelve (12) hours or less from the time the call for service is received by SAN JOSE staff to the time SAN JOSE personnel arrive on the scene.
- 2.) Response to calls received between the hours of 5:00 p.m. and 7:00 a.m. shall be responded to no later than 11:00 p.m. the following day.
- 3.) Response to these complaints will only be after PRIORITY 1 and 2 complaints are met for LOS GATOS. Responding to these complaints may include taking a report, contacting parties and witnesses by telephone, or dispatching personnel to the scene.

**C. Response After Business Hours**

Between the hours of 5:00 p.m. and 7:00 a.m., SAN JOSE shall be required to respond to PRIORITY 1 calls only. The hours between 5:00 p.m. and 7:00 a.m. shall not be included in calculating the response time length for PRIORITY 2 and 3 calls when including these hours would result in a failure by SAN JOSE to meet the performance standards set forth above.

**D. Operating Schedules**

1. SAN JOSE shall be required to respond to all complaints and requests in accordance with SECTION 2.B. and SECTION 2.C., except SAN JOSE shall respond only to PRIORITY 1 calls on Sundays.
2. Except with respect to PRIORITY 1 calls, SAN JOSE shall have no obligation to respond on Holidays or outside of the regularly scheduled shift hours of SAN JOSE. SAN JOSE shall respond to PRIORITY 1 calls twenty-four (24) hours per day, every day, including all Holidays.

**E. Excluded Services**

While SAN JOSE may already perform some of the following services under other authority, the following services are not included in the services to be provided by SAN JOSE under this AGREEMENT:

1. Removal and disposal of dead marine animals;
2. Pick up and transportation of uninjured or healthy, living wildlife;
3. Pick up of alive or dead animals for surrender at an owner's request. SAN JOSE may provide these services and charge a fee therefore as a part of its operations separate and apart from this AGREEMENT;
4. Issuance of citations for violations in accordance with LOS GATOS ordinances;
5. Investigation and resolution of activities that may be criminal in nature, such as neglect, cruelty, and animal fighting, including the preparation of documents for criminal prosecution by the District Attorney's office and testifying in court;
6. Permitting or inspection of events with animals; and
7. Investigation of complaints that only relate to domestic animals making noise.

### **SECTION 3. SHELTER SERVICES**

#### **A. Shelter Services**

SAN JOSE shall provide or under contract provide shelter facilities, supplies, animal attendants, supervisors and administrative personnel, and any other personnel, supplies and equipment, reasonably required to perform the following services (“Shelter Services”):

1. Shelter of abandoned, impounded, lost, or stray domestic animals brought to the shelter by LOS GATOS, its residents, or SAN JOSE personnel;
2. Quarantine of biting animals;
3. Rabies testing of suspect animals;
4. Provision for reclaim of abandoned, lost or stray domestic animals during established business hours; and
5. Euthanization and disposal of abandoned, lost, impounded, or stray domestic animals that are unclaimed by their owners and fail to meet the written health and temperament standards of San José Animal Care and Services.

#### **B. Medical Services**

As part of the Shelter Services, SAN JOSE shall provide or under contract provide office facilities, supplies, and professional and trained personnel, employed or under contract, necessary to perform the following services (“Medical Services”):

1. Provision of veterinarian services twenty-four (24) hours per day to treat and provide veterinarian care to stray, injured, or sick dogs, cats, and other impounded animals;
2. Monitor quarantined animals;
3. For a fee conduct vaccination clinics and have available, free of charge to the public, rabies control information; and
4. For a fee at the same rate established for San José residents, provide access to the SAN JOSE low cost spay and neuter clinic, if such a clinic is made available to San José residents.

### **C. Operating Schedules**

SAN JOSE shall provide or under contract shall provide Shelter Services for the animals twenty-four (24) hours a day, seven (7) days a week. SAN JOSE shall provide or under contract provide emergency veterinary services in accordance with Section 597 of the California Penal Code.

### **SECTION 4. DEAD ANIMAL SERVICES**

SAN JOSE shall provide or under contract provide vehicles, storage facilities, disposal mechanisms, field and administrative personnel, and any other personnel, supplies and equipment reasonably required to perform the following services (“Dead Animal Services”):

1. Pick up of dead animals, including wildlife and except livestock, from streets and public property within LOS GATOS, or from private property within LOS GATOS with the consent of the property owner, or the property owner’s authorized agent in accordance with SECTION 2.B.1.(c);
2. Identification of and notification to the owner of the dead animal, whenever possible; and
3. Disposal of the body of the dead animal.

### **SECTION 5. RECORDS REGARDING ANIMAL SERVICES**

#### **A. Monthly Report**

SAN JOSE shall deliver to LOS GATOS during the term of this AGREEMENT, and within thirty (30) days of the end of each month, a monthly Animal Control and Impound Report summarizing monthly and year-to-date services provided by SAN JOSE for LOS GATOS. This report shall include, but not be limited to, the following information:

1. The total number of calls for service provided by SAN JOSE under this AGREEMENT, separated by type of service call established by SAN JOSE, so long as the numbers for the different types of PRIORITY service calls are each shown separately and as a subgroup;
2. Field Services Calls

- a) Complaints relating to animal bites or attacks, including property address.
- b) Complaints relating to Dangerous or Potentially Dangerous Dogs, including property address.

## **B. Additional Reporting**

SAN JOSE shall deliver to LOS GATOS during the term of this AGREEMENT, and within thirty (30) days of the end of each quarter, a report summarizing monthly and quarterly response times provided by SAN JOSE for LOS GATOS. This report shall include, but not be limited to, the following information:

1. Monthly Response Times:
  - a) The average response time, the shortest and longest response times for calls in each of the following PRIORITIES. For PRIORITY 1, 2 and 3 calls, SAN JOSE shall report average response times, and shortest and longest response times by each type of call within that priority.
  - b) Response times for PRIORITY 1 calls shall be in minutes, rounded off to the nearest minute. Response times for PRIORITY 2 calls shall be in hours and minutes, rounded off to the nearest minute. Response times for PRIORITY 3 calls shall be in hours, rounded off to the nearest hour.
  - c) The percentage of calls grouped by PRIORITY 1, 2, and 3, that met the response time performance standards, along with the total number of responses in each priority category.
2. Other Reports, as determined by LOS GATOS.

## **SECTION 6. OTHER RESPONSIBILITIES**

### **A. Delivery of Animals to SAN JOSE**

Animals to be impounded by SAN JOSE that are taken into custody by LOS GATOS shall be promptly delivered to SAN JOSE's shelter or held in a humane way at a designated holding area until such animals can be picked up by SAN JOSE; provided however, that any such animal may be reclaimed as appropriate from LOS GATOS by its owner.

**B. Responsibility for Administrative Hearings**

SAN JOSE shall not be responsible for nor bear the costs of scheduling and conducting any required hearings regarding Dangerous or Potentially Dangerous Dogs. If needed or appropriate, SAN JOSE personnel shall appear at any such hearing at no additional cost to LOS GATOS.

**C. Licensing**

SAN JOSE shall maintain a license database and administer license processing, issuance, and renewals on behalf of LOS GATOS. Licensing information shall be included on all Incident Reports and, additionally, provided to LOS GATOS on an as requested basis. SAN JOSE shall collect all associated license fees on behalf of LOS GATOS, at the fee amounts set by LOS GATOS. Any license fees or late fees collected from dog and cat owners in LOS GATOS shall be remitted to LOS GATOS on a monthly basis.



**EXHIBIT B**  
**COMPENSATION**

**A. Payment Amounts**

For all Animal Services to be provided by and for the performance of all other obligations of SAN JOSE to LOS GATOS under this AGREEMENT, LOS GATOS agrees to pay SAN JOSE after the execution of this AGREEMENT the sum of Two Hundred Seventy Two Thousand Eight Hundred Fifty Dollars (\$289,185) for the period of July 1, 2024 through June 30, 2025 per the payment schedule below . Thereafter, the annual Contract Amount shall increase by four percent (4%) each fiscal year, subject to the appropriation of funds and the execution of a Notice of Exercise of Option to Extend Term in the form of Exhibit C, as follows:

<b>INITIAL TERM</b>	<b>YEARLY COMPENSATION</b>
July 1, 2024 through June 30, 2025	\$289,185.00
July 1, 2025 through June 30, 2026	\$300,752.40
July 1, 2026 through June 30, 2027	\$312,782.50

<b>1<sup>ST</sup> OPTION TERM</b>	<b>YEARLY COMPENSATION</b>
July 1, 2027 through June 30, 2028	\$325,293.80
July 1, 2028 through June 30, 2029	\$338,305.55
July 1, 2029 through June 30, 2030	\$351,837.77

<b>2<sup>ND</sup> OPTION TERM</b>	<b>YEARLY COMPENSATION</b>
July 1, 2030 through June 30, 2031	\$365,911.28
July 1, 2031 through June 30, 2032	\$380,547.73
July 1, 2032 through June 30, 2033	\$395,769.64

**B. Payment Schedule**

LOS GATOS shall pay SAN JOSE the Contract Amount in twelve (12) monthly installments each fiscal year. All monthly installment payments by LOS GATOS shall

be due and payable on the first day of the month and shall be delinquent on the tenth (10th) business day thereafter without demand or notice to LOS GATOS. SAN JOSE will provide LOS GATOS an invoice in advance at least fourteen (14) calendar days before the date that the payment is due.

**EXHIBIT C**  
**NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

<b>AGREEMENT TITLE and DATE:</b>	AGREEMENT FOR ANIMAL SERVICES BETWEEN THE CITY OF SAN JOSE AND THE TOWN OF LOS GATOS  DATE: _____
<b>PARTIES Name and Address:</b>	CITY OF SAN JOSE ("SAN JOSE") San José Animal Care and Services ATTN: _____ 2750 Monterey Rd San José, CA 95111  TOWN OF LOS GATOS ("LOS GATOS") 110 E Main Street Los Gatos, CA 95032
<b>DATE OF OPTION:</b>	

*(date the notice is sent must be consistent with the time for exercise set forth in Agreement)*

Pursuant to Section 2 of the Agreement referenced above, the Parties hereby exercise the option to extend the term under the following provisions:

**OPTION NO. \_\_\_\_ of 2**

**NEW OPTION TERM**

Begin date:	
End date:	

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
<b>TOTAL MAXIMUM COMPENSATION:</b>	

For the option term exercised by this Notice, LOS GATOS shall pay SAN JOSE an amount not to exceed the amount set forth above for SAN JOSE's services and reimbursable expenses, if any. The undersigned signing on behalf of LOS GATOS hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

<p>CITY OF SAN JOSE, a municipal corporation</p> <p>By _____ Name: Title:</p>	<p>CITY OF LOS GATOS, a municipal corporation</p> <p>By _____ Name: Title:</p>
---	--

**REVISED SECOND RESTATED AND AMENDED  
JOINT EXERCISE OF POWERS AGREEMENT FOR  
THE SILICON VALLEY ANIMAL CONTROL AUTHORITY**

**THIS AGREEMENT** is made and entered into as of the Effective Date (set forth in Section 2.3) by and among the Member Agencies (defined in Section 1.12 below) signatory hereto, each of which is a public entity duly organized and existing under the Constitution and other laws of the State of California.

**WHEREAS**, Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing at Section 6500) authorizes the Member Agencies to enter into an agreement for the joint exercise of any power common to them and, by that agreement, create an entity that is separate from each of the Member Agencies; and

**WHEREAS**, each of the Member Agencies possess the power to provide for the Animal Control Services (defined in Section 1.3), including animal field services, animal shelter services, and dead animal services within their respective Jurisdictional Area (defined in Section 1.4 herein below); and

**WHEREAS**, the Member Agencies possess the authority to issue bonds, expend bond proceeds, and borrow and loan money for certain public purposes pursuant to the Government Code of the State of California; and

**WHEREAS**, this Agreement is an appropriate means through which the Member Agencies may provide the Animal Control Services because the Jurisdictional Areas of the Member Agencies are in close proximity to one another and are susceptible of being served by the Animal Control Services and related Joint Facilities (defined in Section 1.10) under common administration and management and with the same equipment, resources and personnel; and

**WHEREAS**, the Member Agencies desire to share their animal control expertise and to optimize their expenditures in connection with the provision of the Animal Control Services and related Joint Facilities; and

**WHEREAS**, the separate provision, management and administration of the Animal Control Services and related Joint Facilities in each Jurisdictional Area by each of the respective Member Agencies and using separate facilities, resources and personnel may result in duplication of effort, inefficiencies in administration and excessive costs, all of which, in the judgment of the Member Agencies, can be eliminated or substantially reduced, all to the substantial advantage and benefit of the citizens and taxpayers of all of the Member Agencies, if the provision of the Animal Control Services and the administration and management of the related Joint Facilities employing common equipment, resources and personnel, were to be performed by and through a single public entity and the creation of such a single public entity is the purpose of this Agreement;

**NOW, THEREFORE**, for and in consideration of the facts stated above, the mutual advantages to be derived, and the mutual covenants contained herein, it is agreed by and among the Member Agencies hereto as follows:

**ARTICLE I**

## DEFINITIONS

**Section 1.** Unless the context otherwise requires, the words and terms defined in this Article shall have the meanings specified.

**Section 1.1.** Act. "Act" means Article 1, Article 2, Article 3, and Article 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the California Government Code, as it may be amended from time to time.

**Section 1.2.** Agreement. "Agreement" means this joint exercise of powers agreement as it now exists or as it may from time to time be amended, supplemented or as it may be modified by the addition of signatory parties or by any other supplemental agreement or amendment entered into pursuant to the provisions of this Agreement.

**Section 1.3.** Animal Control Services. "Animal Control Services" means those services enumerated on "Exhibit A," entitled "Animal Control Services," attached hereto and incorporated herein by this reference.

**Section 1.4.** Area. "Area" and "Jurisdictional Area" mean that area within the respective jurisdictions of the Member Agencies.

**Section 1.5.** Authority. "Authority" means the Silicon Valley Animal Control Authority created pursuant to this Agreement.

**Section 1.6.** Board of Directors. "Board of Directors" means the governing board of the Authority referred to in Section 1.5 and more particularly described in Section 2.5 herein below. "Director" means an individual member of the Board of Directors.

**Section 1.7.** Bond Law. "Bond Law" means Article 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code, as the same may have been or may hereinafter be amended from time to time, or any other law hereafter legally available for use by the Authority in the authorization and issuance of bonds to finance needed public facilities. "Bonds" means any bonds issued pursuant to Bond Law.

**Section 1.8.** Executive Director. "Executive Director" means the employee of the Authority directly responsible to the Board of Directors and primarily responsible for the managerial oversight of the operations of the Authority as further described in Section 3.6.

**Section 1.9.** Fiscal Year. "Fiscal Year" means the period from July 1st to and including the following June 30th.

**Section 1.10.** Joint Facilities. "Joint Facilities" means the animal control facilities, equipment, resources, and property to be owned, leased, managed and operated by the Authority pursuant to Article V and Section 7.1, and, if and when acquired or constructed, any improvements and additions thereto.

**Section 1.11. Legislative Bodies.** "Legislative Bodies" means the city or town councils of the Member Agencies of the Authority. "Legislative Body" means any such individual city or town council.

**Section 1.12. Member Agencies or Member Agency.** "Member Agencies" means all of the public agencies signatory to this Agreement, which, as of the initial Effective Date of this Agreement, are the City of Campbell, the City of Monte Sereno, the City of Santa Clara, and the City of Mountain View. "Member Agency" means any such individual public entity. "Originating Member Agency" refers to City of Campbell, the City of Monte Sereno, and the City of Santa Clara.

**Section 1.13. Quorum.** Except as may otherwise be required hereunder or by law, "quorum" means the presence of the Santa Clara Director and two Directors of the other Member Agencies.

**Section 1.14. Rules of the Board.** "Rules of the Board" means the bylaws, rules, regulations and other operational and organizational directives of the Board of Directors for the conduct of its meetings and other affairs as further described in Section 2.9.

**Section 1.15. Secretary.** "Secretary" means the Secretary of the Board of Directors as further described in Section 3.2.

**Section 1.16. Treasurer.** "Treasurer" means the financial director and finance manager of the Authority having the responsibility and accountability for the Authority's funds as further described in Section 3.3.

## ARTICLE II GENERAL PROVISIONS

**Section 2.1. Purpose.** Subject to the terms herein, particularly Section 6.3, the purpose of this Agreement is to create the Authority to provide for the joint exercise of powers by the Member Agencies to own, manage, operate and/or maintain the Joint Facilities and to implement the financing, acquisition and construction of additions and improvements thereto and any additional facilities and property later acquired, owned or managed by the Authority and included in the Joint Facilities and thereafter to manage, operate and maintain the Joint Facilities, as so added to and improved, all to the end that the residents of the Area are provided with a more efficient and economical provision of the Animal Control Services and related services consistent with the purposes of this Agreement, and, if necessary, to issue and repay revenue bonds of the Authority pursuant to the Bond Law. Each of the Member Agencies is authorized to exercise all powers (except the power to issue and repay revenue bonds of the Authority) pursuant to its organic law and the Authority is authorized to issue and provide for the repayment of revenue bonds pursuant to the provisions of the Bond Law.

**Section 2.2. Creation of Authority.** Pursuant to the Act, there is hereby created a public entity to be known as the "Silicon Valley Animal Control Authority," to be called the "Authority" pursuant to Section 1.5. The Authority, which shall administer this Agreement, is a public entity separate and apart from the Member Agencies and each of them.

**Section 2.3.** Effective Date of Agreement. This Agreement shall become effective when signed and executed by all Member Agencies listed in Section 1.12 (the "Effective Date") and shall supercede any prior agreements executed.

**Section 2.4.** Term. This Agreement shall become effective on the Effective Date set forth in Section 2.3 and shall continue in effect until such time as all Bonds (if any) and the interest thereon issued by the Authority under the Bond Law or the Act shall have been paid in full or provision for such full payment shall have been made, and thereafter until such time as the Authority and the Member Agencies shall have paid all sums due and owing pursuant to this Agreement or pursuant to any contract executed pursuant to this Agreement, and thereafter until terminated pursuant to Article IX.

**Section 2.5.** Governing Board. The Authority shall be administered by a Board of Directors consisting of four (4) Directors, as follows: one (1) Director appointed by each of the Legislative Bodies of the cities of Campbell, Monte Sereno, Mountain View, and Santa Clara.

**Section 2.5.1.** All voting power of the Authority shall reside with the Board of Directors.

**Section 2.5.2.** The Board of Directors shall be called the "Board of Directors of the Silicon Valley Animal Control Authority."

**Section 2.5.3.** Each Director shall be a member of the Legislative Body of the Member Agency that appointed that Director.

**Section 2.5.4.** Each Legislative Body shall appoint an alternate Director for that Member Agency. The alternate Director may act as the Director in the absence of the Director appointed by that Legislative Body. The alternate Director shall also be a member of the Legislative Body that appointed the alternate Director.

**Section 2.5.5.** All Directors and their alternates shall serve at the pleasure of the Member Agency that appointed them.

**Section 2.5.6.** All vacancies on the Board of Directors shall be filled by the respective Legislative Body within thirty (30) days of the effective date of the vacancy or as soon thereafter as the Legislative Body may legally act. Any Director or alternate Director shall cease to be a Director when such person ceases to hold office as a council member of the respective appointing Legislative Body.

**Section 2.5.7.** Each Director may receive reimbursement for the reasonable and necessary expenses incurred in the performance of their duties, as provided in the Rules of the Board.

**Section 2.6.** Meetings of the Board of Directors. All meetings of the Board of Directors shall be public meetings unless a specified closed session is held in accordance with the California Government Code.

**Section 2.6.1.** Regular Meetings. The Board of Directors shall provide for regular meetings at a date, time, and place fixed by the Rules of the Board.



**Section 2.6.2. Special Meetings.** Special meetings and emergency meetings of the Board of Directors may be called in accordance with State law.

**Section 2.6.3. Call, Notice, and Conduct of Meetings.** All meetings of the Board of Directors, including without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of Section 54950, *et seq.*, of the California Government Code, as may be amended from time to time.

**Section 2.7. Required Votes; Approvals.** For all actions except those specified in Section 2.8, the Director from Santa Clara will have three (3) votes at each meeting and the Directors from Campbell, Monte Sereno, and Mountain View shall each have one (1) vote. Four (4) affirmative votes of the Board of Directors shall be required for the Board of Directors to take any action other than those described in Section 2.8 provided a quorum is present as set forth in Section 1.13.

**Section 2.8. Weighted Voting.** In cases of (a) a tie vote or (b) actions described below requiring a four-fifths (4/5) vote, the Board of Directors will use a weighted voting procedure. Under weighted voting, the Director from the City of Santa Clara shall have five (5) votes, the Directors from the Cities of Campbell and Mountain View will each have two (2) votes, and the Director from the City of Monte Sereno will have one (1) vote. An affirmative four-fifths (4/5) weighted vote, or eight (8) total votes, of the Board of Directors shall be required for the Board of Directors to propose an amendment to or termination of this Agreement; to approve the addition of new Member Agencies to this Agreement; to approve the issuance of any Bonds or the restructuring of any Bond financing; to approve any budget actions requiring increased amounts to be paid by a Member Agency over and above approved budget appropriations; and to modify the Member Agencies' contributions to Operating Costs pursuant to Section 6.3.2 below.

**Section 2.9. Rules of the Board.** The Board of Directors shall adopt and from time to time amend the Rules of the Board as are necessary or convenient in the determination of the Board of Directors to achieve or facilitate the purposes hereof.

**Section 2.10. New Members.** It is the intent of the Originating Member Agencies to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional public entities, organized and existing under the Constitution or laws of the State of California, as may desire to become parties to this Agreement and members of the Authority. The Board shall review all applications for participation in the Authority. Those entities seeking membership must be approved by the affirmative vote of a four-fifths (4/5) majority of the entire Board of Directors. A new Member Agency shall be required to (a) contribute funds commensurate to the expenses incurred by the Authority to accommodate the new Member Agency's inclusion in the Authority. Examples include, but are not limited to, improvements to the facility, additional personnel expenses, marketing expenses, contractual services, and/or vehicles; (b) pay its share of annual Operating Costs and other expenses pursuant to Section 6.3 and (c) contribute to the Capital Fund (see Section 5.4) as determined by the Board. It is the intent of the Originating Member Agencies that any new Member Agency shall proportionally contribute and share in the Authority's operations, but shall not have any proportional ownership in fee of the Authority's real property interests. For entities joining the Authority at other than the beginning of the Authority's fiscal year, cash contributions for Operating Costs and the Capital Fund shall be prorated for the remainder of the fiscal year.

**ARTICLE III  
ORGANIZATIONAL STRUCTURE  
OFFICERS AND EMPLOYEES**

**Section 3.1.** Chairperson and Vice-Chairperson. The Board of Directors shall elect a Chairperson and Vice-Chairperson from among its members. The Chairperson and Vice-Chairperson shall each serve a one year term. In the event of the disqualification or permanent inability of the Chairperson to serve as the Chairperson during their term, the Vice-Chairperson shall assume the duties of the Chairperson for the remainder of that term and the Board of Directors shall elect a new Vice-Chairperson for the remainder of that term.

**Section 3.1.1.** The Chairperson shall be authorized to sign all resolutions of the Board of Directors and all contracts on behalf of the Authority and shall perform such other duties as may be imposed by the Board of Directors, consistent with the terms and provisions of this Agreement and the Rules of the Board.

**Section 3.1.2.** The Vice-Chairperson shall be authorized to act as the Chairperson, exercise all of the powers of the Chairperson, and perform all of the duties of the Chairperson in the temporary absence of the Chairperson.

**Section 3.1.3.** The Board of Directors, as a part of its approval of any contract, may authorize the Executive Director to execute the contract on behalf of the Authority.

**Section 3.2.** Secretary. The Executive Director shall be the Secretary to the Board of Directors, perform such other duties as may be imposed upon the Secretary by the Board of Directors, and cause a copy of this Agreement to be filed with the California Secretary of State and the State of California pursuant to Section 6503.5 of the Act.

**Section 3.3.** Treasurer. The Board shall designate the Treasurer. The Treasurer shall be the depository and shall have custody of all of the accounts, funds and money of the Authority from whatever source. The Treasurer shall have the duties and obligations set forth in Section 6505 and 6505.5 of the Act, and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority.

**Section 3.4.** Officers in Charge of Property. Pursuant to Section 6505 of the California Government Code, the Treasurer shall have charge of, handle, and have access to all accounts, funds, and money of the Authority and all records of the Authority relating to such accounts, funds and money; and the Secretary shall have charge of, handle, and have access to all other records of the Authority, and the Executive Director shall have charge of, handle, and have access to all physical properties of the Authority.

**Section 3.5.** Bonding Persons Having Access to Property. From time to time, the Board of Directors may designate persons, such as the Treasurer or Executive Director, as the Authority officer(s) who shall have charge of, handle, or have access to any property of the Authority. The Board of Directors shall also fix the respective amounts of the official bonds of the Treasurer, Executive Director or such other designated persons pursuant to Section 6505.1 of the Act, which bonds shall be filed with the Secretary of the Authority. The actual cost of such bonds shall be a proper charge against the Authority.

**Section 3.6. Management.** The regular management of the operations and activities of the Authority shall be vested in the Executive Director. The Executive Director shall be appointed by the Board of Directors. Unless otherwise provided by the Rules of the Board or resolution of the Board of Directors, the Executive Director shall have the following powers:

**Section 3.6.1.** To provide for the planning, design, and construction of any additions or improvements to the Joint Facilities; leasing or remodeling of any existing facilities, or any new facilities to be operated by the Authority as authorized by the Board of Directors;

**Section 3.6.2.** Except as otherwise provided in Section 3.6.8, to execute any contracts for capital costs, costs of special services, equipment, materials, supplies, maintenance, or repair that involve an expenditure by the Authority within the limits and in accordance with procedures to be established by the Authority in the manner provided for local agencies pursuant to Article 7, commencing with Section 54201 of Chapter 5 of Part 1 of Division 2 of Title 5 of the California Government Code;

**Section 3.6.3.** To appoint and employ all personnel of the Authority required for maintenance and operation of the Joint Facilities, and all other employees authorized by the Authority's budget and by the Board of Directors;

**Section 3.6.4.** To retain any consultants, including labor relations consultants or certified public accountants, as authorized in the Authority's budget and by the Board of Directors;

**Section 3.6.5.** Subject to approval of the Board of Directors, to appoint and employ all personnel of the Authority or consultants required to be employed or retained in connection with the design of any additions or improvements of the Joint Facilities or construction of new facilities;

**Section 3.6.6.** To expend funds of the Authority and enter into contracts, whenever required, or for the immediate preservation of the public peace, health, or safety, subject to the subsequent ratification of the Board of Directors;

**Section 3.6.7.** To dispose of any personal property of the Authority as may be provided in the Rules of the Board or otherwise authorized by the Board of Directors;

**Section 3.6.8.** To approve and pay demands for payments by the Authority of Ten Thousand Dollars (\$10,000.00), or less, which are authorized in the Authority's budget;

**Section 3.6.9.** To prepare and submit to the Board of Directors in time for revision and adoption by the Authority prior to June 1 of each year, the annual preliminary budget for the next succeeding Fiscal Year referred to in Section 6.1;

**Section 3.6.10.** Generally, to supervise the acquisition, construction, management, maintenance, and operation of the Joint Facilities and personnel of the Authority;

**Section 3.6.11.** To perform such other duties as directed by the Board of Directors and report to the Board of Directors at such times and on such matters as the Board of Directors may direct.

**Section 3.7.** Legal Advisor. The legal advisor of and provider of legal advice and services to the Authority shall be designated by the Board of Directors.

**Section 3.8.** Other Services. The Board of Directors shall have the power to appoint and employ such other consultants and independent contractors as may be necessary for the purposes of and pursuant to this Agreement.

**Section 3.9.** Non-Liability of Agencies. None of the officers, agents, or employees directly employed by the Authority shall be deemed, solely by reason of their employment by the Authority, to be employed by any Member Agency or, by reason of their employment by the Authority, to be subject to any of the requirements of any Member Agency. All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activities of the officers, agents, or employees of Member Agencies when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. Except as expressly provided for in this Agreement, nothing contained in this Article III is intended to nor shall it restrict or limit the rights or abilities otherwise available to the Authority to enter into agreements or other arrangements with any Member Agency in accordance with the terms and conditions of this Agreement and the Rules of the Board regarding the use of employees of the Member Agency in the operations and activities of the Authority.

**Section 3.10.** Indemnity and Insurance. The Authority shall defend, indemnify and save harmless each Member Agency to this Agreement and its respective council members, officers and employees, from all claims, losses, damages, costs, injury and liability arising out of the Authority's performance of its powers, duties and responsibilities under this Agreement. The Authority shall obtain and keep in force policies of insurance with coverage and limits sufficient to protect the Authority and its Member Agencies from claims for damages arising from the activities of the Authority, its Board of Directors, officers and employees. It is the intent of this Section 3.10 that the policies of insurance described herein include coverage for automobile liability, comprehensive general liability, public officials errors and omissions, workers' compensation, and excess liability and other perils as the Board of Directors shall, from time to time, direct and that the coverage limits of these policies be maintained at levels as the Board of Directors shall direct. Each Member Agency shall be named an "additional insured" on the liability coverages or shall receive equivalent treatment or status under the Authority's insurance program.

**Section 3.11.** Agreement Not for Benefit of Third Parties. This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever. Any services performed or expenditures made in connection with this Agreement by any Member Agency shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property in the respective Area of such Member Agency.

## ARTICLE IV POWERS OF THE AUTHORITY

**Section 4.1. General Powers.** The Authority shall exercise in the manner herein provided the powers common to each of the Member Agencies, as provided by the Constitution and laws of the State of California, and all incidental, implied, expressed, or necessary powers for the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 4.4. As provided in the Act, the Authority shall be a public entity separate from the Member Agencies. The Authority shall have the power to finance, acquire, construct, manage, maintain, and operate the Joint Facilities. The Authority shall have all of the powers provided in Article 2 and Article 4 of the Act, unless specifically prohibited or restricted by this Agreement.

**Section 4.2. Specific Powers.** The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers, including but not limited to, any of the following:

**Section 4.2.1.** To make and enter into contracts;

**Section 4.2.2.** To employ agents or employees;

**Section 4.2.3.** To acquire, construct, manage, maintain, or operate any buildings, works or improvements;

**Section 4.2.4.** To acquire, hold, or dispose of property;

**Section 4.2.5.** To sue and be sued in its own name;

**Section 4.2.6.** To incur debts, liabilities or obligations, subject to the provisions of this Agreement, provided that no debt, liability or obligation shall constitute a debt, liability or obligation upon any Member Agency;

**Section 4.2.7.** To apply for, accept, receive, and disburse grants, loans, and other aids from any agency for the United States of America or of the State of California;

**Section 4.2.8.** To invest any money in the treasury pursuant to Section 6505.5 of the Act that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the California Government Code;

**Section 4.2.9.** To carry out and enforce all the provisions of this Agreement.

**Section 4.3. Bonds.** The Authority shall have all of the powers provided in Article 4 of the Act, including the power to issue Bonds under the Bond Law.

**Section 4.4. Restrictions on Exercise of Powers.** The Authority shall exercise in the manner herein provided the powers common to all Member Agencies as appropriate to the accomplishment of the purposes of this Agreement. For purposes of Govt. Code § 6509, the powers of the Authority shall be

exercised subject to the restrictions upon the manner of exercising such powers as are imposed upon the City of Campbell, a general law city.

**Section 4.5.** Obligations of Authority. The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of any Member Agency.

## ARTICLE V METHODS OF PROCEDURE

**Section 5.1.** Reserved.

**Section 5.2.** Delegation of Powers. Each Member Agency hereby delegates to the Authority the power to purchase and the power and duty to maintain, operate, and manage any animal control equipment, resources, and real property acquired and identified by the Member Agencies, including the site of the Authority's animal control facility, and to employ the necessary personnel to do any and all other things necessary or desirable to provide efficient, economical and lawful Animal Control Services to the Member Agencies.

**Section 5.3.** Joint Maintenance and Operation Fund. The Board of Directors shall have a joint maintenance and operation fund (herein called the "Operating Fund"). The Authority shall assume responsibility for the maintenance and operation of the Operating Fund and shall pay the administrative and operational expenses of the Authority and all maintenance and operation costs of the Joint Facilities from said Operating Fund. Each of the Member Agencies shall pay into said Operating Fund its proportionate share of the maintenance and operation costs of the Joint Facilities, computed on the basis set forth in Section 6.3 of this Agreement.

**Section 5.4.** Capital Acquisition, Improvement and Replacement Fund. The Board of Directors may create a capital acquisition and replacement fund ("Capital Fund") for the purpose of creating a fund for the acquisition and construction of the Joint Facilities and any other capital improvements owned or controlled by the Authority, and the replacement and acquisition of capital equipment and property of the Authority. Each Originating Member Agency shall annually pay into said Capital Fund its proportionate share of capital costs, including principal and interest payments on outstanding Bonds, if any, as provided in Section 6.3. If there is a future need for contributions to the Capital Fund by any new Member Agency, all members shall contribute a proportionate share that is commensurate with each member's proportional operating expenses.

## ARTICLE VI BUDGET/COSTS, MAINTENANCE AND OPERATION COSTS AND OTHER COSTS

**Section 6.1.** Annual Budget. The Board of Directors shall adopt a preliminary budget for maintenance and operation costs, capital costs, costs of special services, and debt service payments or redemption expenses on Bonds (if any), annually prior to June 1 of each year and shall adopt a final budget prior to June 30 of each year.

Each Member Agency shall approve the contribution of its allocated proportional share of the total estimated annual costs and expenses in the budget, as set forth in Section 6.3, prior to final adoption of the budget by the Board of Directors on or before June 30 of each year.

**Section 6.2. Records and Accounts.** The Authority shall cause to be kept accurate and correct books of account, showing in detail the capital costs, costs of special services and maintenance, operation costs of the Joint Facilities and the provision of the Animal Control Services, and all financial transactions of the Member Agencies relating to the Joint Facilities and the provision of the Animal Control Services, which books of account shall correctly show any receipts and also any costs, expenses, or charges paid or to be paid by each of the Member Agencies. Said books and records shall be open to inspection at all times during normal business hours by any representative of a Member Agency, or by any accountant or other person authorized by a Member Agency to inspect said books or records. The Controller/Treasurer shall, in accordance with Sections 6505 and 6505.6 of the Act, cause the books of account and other financial records of the Authority to be audited annually by an independent public accountant or certified public accountant.

**Section 6.3. Allocation of Costs and Expenses: Generally.**

**Section 6.3.1. Annual Estimate.** After adoption of the preliminary budget and prior to June 1 of each year, the Authority shall promptly furnish to each of the Member Agencies an estimate of the total annual maintenance and operation costs, capital costs, costs of special services, and debt service payments or redemption expenses on Bonds (if any).

**Section 6.3.2. Operating Costs.** The proportion of Operating Costs to be borne by each Member Agency shall be determined by the Executive Director each year prior to March 1, and the Executive Director shall submit these percentages to the Board of Directors for review, modification and/or approval on or before June 1 of each year. The Board of Directors may modify the manner in which each Member Agency's contribution to Operating Costs is determined or calculated by a four-fifths (4/5) vote of the Board of Directors.

**Section 6.3.3. Capital Acquisition Costs, Costs of Special Services, Bond Expenses.** Costs of acquiring new equipment or constructing new facilities, costs of special services and Bonds interest and redemption expenses (if any) shall be borne by each Member Agency in the same proportion as Operating Costs determined, pursuant to Section 6.3.2, for the Fiscal Year in which the cost is incurred.

**Section 6.3.4. Capital Costs.** The proportion of capital replacement costs to be borne by each Member Agency annually shall be the same proportion as Operating Costs borne by that Member Agency for that Fiscal Year as determined pursuant to Section 6.3.2.

**Section 6.3.5. Insurance Costs.** The premiums for the insurance policies described in Section 3.10 shall be apportioned among the Member Agencies in the same manner as each Member Agency's yearly percentage of Operating Costs, as determined pursuant to Section 6.3.2. In the event of any claim for damages which is not covered by insurance, or which exceeds the limits of any applicable policy of insurance, the Member Agencies agree to allocate among themselves the



uninsured costs of defending such claim, and the uncovered costs of settlement or judgment, if any, in the same proportions as the percentage share of Operating Costs of each Member Agency as established pursuant to Section 6.3.2 at the time the claim is filed with the Authority.

**Section 6.4. Payment of Costs.** Beginning on the Effective Date of this Agreement, and quarterly in advance thereafter for each Fiscal Year, each Member Agency agrees to pay the Authority its allocated proportional share of the total estimated annual costs and expenses, as set forth in Section 6.3.

**Section 6.5. Sources of Funds.** Each Member Agency shall provide the funds required to be paid by it to the Authority under this Agreement from any source of funds legally available to such Member Agency for such purpose.

**Section 6.6. Level of Services and Charges to Member Agencies.** All Member Agencies shall receive the same level of service for their contributions, regardless of the amount of their contribution. The levels of service are reflected in Exhibit A, and these services may be amended from time to time.

**Section 6.6.1. Level of Service Adjustment Due to New Member Agency.** No later than three (3) years after the effective date of this Agreement, the Authority will conduct an internal review of its level of service for any new Member Agency to determine if the initial estimate of the necessary level of service for that jurisdiction is appropriate. In the event a higher or lower level of service is warranted based upon such audit, the Member Agencies may adjust the Operating Costs accordingly, pursuant to Section 6.3.2.

**Section 6.7. New Member Agency Contribution and Payment Terms.** This Agreement was created to accommodate the inclusion of a new Member Agency, the City of Mountain View. Pursuant to Section 2.10, the City of Mountain View will contribute the following amounts pursuant to the terms stated herein as consideration for its Member Agency status. The City of Mountain View will pay a total of up to Three Hundred Thousand Dollars (\$300,000.00), payable to the Authority in the following manner: One Hundred Thousand Dollars (\$100,000.00) due on the Effective Date of this Agreement, and the remainder paid to the Authority no later than the first day of the following fiscal years in Forty Thousand Dollar (\$40,000.00) increments until paid in full. This contribution amount is based upon new construction costs for animal housing spaces at the Authority, as well as one vehicle for Authority staff use. If the costs for construction and purchase of a vehicle are less than Three Hundred Thousand Dollars (\$300,000.00), the City of Mountain View will be responsible to pay the Authority the lesser amount. The difference will be deducted from the final payment(s) owed the Authority. Mountain View agrees that any new asset and/or equipment purchased with these funds are the property of the Authority, not of Mountain View.

**Section 6.7.1. Early Termination.** Mountain View also agrees that in the event its Legislative Body votes to terminate its status as a Member Agency prior to five (5) years from the Effective Date of this Agreement, then Mountain View will be liable for early termination liquidated damages. The Member Agencies agree that, in the event Mountain View terminates this Agreement prior to five (5) years from the Effective Date of this Agreement, the Authority and its remaining Member Agencies will suffer damages and will incur other costs and expenses of a nature and amount which is difficult or impractical to determine. The Member Agencies agree that by way of ascertaining and fixing the amount of damages, costs and expenses, and not by way



of penalty, Mountain View shall pay to the Authority liquidated damages of a sum equivalent to two-thirds (2/3) of its annual contribution for the remaining balance of that five (5) year period and any unpaid initial contribution amount, as described in Section 6.7. In the event that said liquidated damages are not paid, Mountain View agrees that the Authority or any of its remaining Member Agencies may use all available legal remedies to obtain the amount of said unpaid damages. In the event of any litigation resulting from such a dispute as to liquidated damages, Mountain View agrees to waive any affirmative defense as to the reasonableness and/or imposition of the liquidated damages.

## ARTICLE VII ENFORCEMENT

**Section 7.1.** Enforcement by Authority. The Authority is hereby authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law, to enforce this Agreement.

## ARTICLE VIII WITHDRAWAL OF A MEMBER AGENCY

**Section 8.1.** Agreement Continues. Notwithstanding the provisions of Section 9.1, each Member Agency agrees that the withdrawal of a Member Agency pursuant to this Article VIII is not intended to and will not terminate this Agreement or affect the ability of the Board of Directors or the remaining Member Agencies to carry out and fulfill the purposes of this Agreement.

**Section 8.2.** Withdrawal. A Member Agency may withdraw from the Authority and this Agreement by filing written notice thereof with the Authority. Withdrawal will take effect on July 1 of any year provided there is a least six months advance notice. The withdrawal of any Member Agency from the Authority shall in no way affect the rights and obligations of the remaining Member Agencies. A withdrawing Member Agency is still obligated for all payments due from it for the fiscal year of the withdrawal, and in the case of the City of Mountain View, it is also obligated for all payments specified in Section 6.7 in the event of early termination. Further, in the event of withdrawal of a Member Agency, the following terms and conditions will apply:

**Section 8.2.1.** Withdrawal shall not relieve the party of its proportionate share of any debts, liabilities or other contractual commitments incurred by the Authority prior to the effective date of the party's withdrawal; and

**Section 8.2.2.** If Bonds have been issued and the withdrawing Member Agency benefits directly or indirectly from the Bonds issued and outstanding, the Member Agency shall not withdraw from the Authority until such time as all of those Bonds and the interest thereon shall first have been paid in full or provision for such full payment shall first have been contractually made with the Authority and approved by the Board of Directors; and

**Section 8.2.3.** The obligations of the withdrawing Member Agency shall have been paid in full and provision for repayment of any other indebtedness which may exist shall be covered by an agreement made between the Authority and the Member Agency and approved by the Board of Directors.

**Section 8.3.** Non-Distribution of Assets Upon Withdrawal or Subsequent Dissolution. A withdrawing Member Agency will have no entitlement to any Assets or Cash Reserves (See Section 9.3 for definition of term) of the Authority nor any distribution or reimbursement of any kind from the Authority upon withdrawal or in the event of the Authority's subsequent dissolution.

**Section 8.4.** Restrictions. Any withdrawal from participation in this Agreement is subject to the restrictions on withdrawal contained in Sections 8.2 and 8.3, above. In addition, each withdrawing Member Agency, upon its withdrawal, waives any right to seek a judicial apportionment of any interest it may have in the Authority, including any interest in any Assets or Cash Reserves of the Authority.

## ARTICLE IX TERMINATION OF THE AGREEMENT AND DISSOLUTION OF THE AUTHORITY

**Section 9.1.** Termination. This Agreement shall terminate and the Authority shall be dissolved upon an agreement of all Member Agencies. Upon termination of this Agreement, any obligation of the Authority which continues following dissolution shall be borne by the Member Agencies based on the percentages determined pursuant to Section 9.3.

**Section 9.2.** Effective Date of Termination. Termination shall not under any circumstances become effective until June 30 next succeeding a minimum of twelve (12) months following the effective date of a written notice of termination to the Board of Directors approved by all Legislative Bodies of the current Member Agencies.

**Section 9.3.** Disposition of Assets. Upon dissolution of the Authority, each Originating Member Agency shall receive its proportionate share of the assets of the Authority as defined in this Section within a reasonable amount of time after dissolution, and each Originating Member Agency shall contribute its proportionate or otherwise defined share toward the discharge of any enforceable liabilities incurred by the Authority as the same appear on the books of the Authority. Upon the termination of this Agreement, any assets acquired by the Authority during the period of its existence and still on hand and all unencumbered cash reserves (collectively, "Assets and Cash Reserves") shall be distributed to the Originating Member Agencies in the following manner: The total amount of maintenance and operating costs paid by each Originating Member Agency into the Operating Fund during the entire existence of the Authority shall be added together and the percentage which each Agency's total bears to the whole shall be determined. The Assets and Cash Reserves shall be divided among the current Member Agencies based on the above percentage, based on appraised value of the assets at the time of termination. In the event the Originating Member Agencies cannot agree on how the distribution of Assets and Cash Reserves pursuant to the distribution method set forth in this Section should be implemented, the City Managers of all of the Originating Member Agencies, or their respective designees, shall meet promptly to develop a method for distributing the Assets and Cash Reserves among the Originating Member

Agencies. New Member Agency Mountain View shall receive only its proportional cash reserves it contributed to during its membership, if any.

**Section 9.4.** The distribution of assets may be made in kind or assets may be sold and the proceeds thereof distributed to the Member Agencies at the time of dissolution after the discharge of all enforceable liabilities.

**Section 9.5.** Continued Existence of Authority. Upon dissolution, this Agreement and the Authority shall continue to exist as required or necessary for the limited purpose of distributing the Assets and Cash Reserves and winding up and closing out the business, accounts and affairs of the Authority.

## ARTICLE X MISCELLANEOUS

**Section 10.1.** Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing language in the section referred to or to define or limit the scope of any provision of this Agreement.

**Section 10.2.** Consent. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

**Section 10.3.** Law Governing. This Agreement is made under the Constitution and laws of the State of California and is to be so construed.

**Section 10.4.** Amendments. This Agreement may be amended at any time, except as limited by Bond covenants, if any. All amendments to the Agreement must be in writing, and must be approved by the Legislative Bodies of the Member Agencies prior to becoming effective.

**Section 10.5.** Severability. In the event any provision of this Agreement is determined to be illegal or invalid for any reason, all other provisions and articles of this Agreement shall remain in full force and effect unless and until otherwise determined. The illegality of any provision of this Agreement shall in no way affect the legality and enforceability of any other provisions of this Agreement.

**Section 10.6.** Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the respective Member Agencies. No Member Agency may assign any right or obligation hereunder without written consent of the other Member Agencies.

**Section 10.7.** Notice. Any notice required to be given or delivered by any provision of this Agreement shall be personally delivered or deposited in the U.S. mail, postage prepaid, addressed to the Authority and to the Member Agencies at their addresses as reflected in the records of the Authority, and shall be deemed to have been received by the party to which the notice is addressed upon the earlier of receipt or 72 hours after mailing.

**Section 10.8.** Counterparts. This Agreement may be signed in counterparts, which together shall constitute one agreement. If this Agreement is signed in counterparts, no signatory hereto shall be bound

until all Parties named below have duly executed, or caused to be duly executed, a counterpart of this Agreement.

[Signatures on next page.]

EXECUTION OF AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereupon duly authorized and their official seals to be hereto affixed on the dates as shown herein.

MEMBER AGENCIES

APPROVED AS TO FORM:

CITY OF CAMPBELL, a municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

CITY OF MONTE SERENO, a municipal corporation

By: [Signature]  
Its: City Attorney  
Date: 4-3-12

By: [Signature]  
Its: Mayor  
Date: 4-3-12

ATTEST:

By: [Signature]  
Its: City Clerk  
Date: 4-3-12

APPROVED AS TO FORM:

CITY OF SANTA CLARA, a municipal corporation

fn By: [Signature]  
Its: City Attorney  
Date: 6/27/12

By: [Signature]  
Its: City Manager  
Date: 06/26/12 - Council Approved

ATTEST:

By: [Signature]  
Its: City Clerk  
Date: 06/29/12

EXECUTION OF AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereupon duly authorized and their official seals to be hereto affixed on the dates as shown herein.

MEMBER AGENCIES

APPROVED AS TO FORM:

CITY OF CAMPBELL, a municipal corporation

By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

By: [Signature]  
Its: Michael F. Kotowski, Mayor  
Date: 6-3-2012

ATTEST:

By: [Signature]  
Its: City Clerk 6-3-2012  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

CITY OF MONTE SERENO, a municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

CITY OF SANTA CLARA, a municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: [Signature]  
Its: City Attorney  
Date: 6/20/12

CITY OF MOUNTAIN VIEW, a municipal corporation

By: [Signature]  
Its: City Manager  
Date: 6-19-12

ATTEST:

By: [Signature]  
Its: City Clerk  
Date: 6/20/12

FINANCIAL APPROVAL:

[Signature]  
FINANCE AND ADMINISTRATIVE  
SERVICES DIRECTOR

**EXHIBIT "A"**  
**ANIMAL CONTROL SERVICES**

The term "Animal Control Services" in the Agreement to which this Exhibit "A" is attached means all of the following services:

A. Field Services

Field services means all of the following services, including any vehicles, communications equipment, office supplies, field and administrative personnel, and any other personnel, supplies and equipment, reasonably required to perform the following services (the "Field Services"):

- Pick up of confined stray dogs, cats, and other small animals, including, rabbits, chickens, turkey, geese, and ducks, and excluding confined wildlife as defined in Section 711.2 of the California Fish and Game Code, such as opossums, raccoons, skunks, or squirrels
- Pick up confined stray livestock, including horses, pigs, goats, sheep, and donkeys
- Pick up of deceased animals, including wildlife, as described in more detail below under the description of Deceased Animal Services
- Pick up of injured stray dogs or cats and other small animals, without regard to weight, and injured wildlife weighing fifty pounds (50 lbs.) or less, that are located on public property or readily accessible on private property with the permission of the property owner or occupant or the property owner's or occupant's authorized agent
- Respond to emergency calls such as animals requiring rescue or animals attacking people
- Investigating complaints of animal bites or attacks on humans, including the completion of a report interviewing the parties involved, quarantining animals which have bitten humans, preparing and transporting biting animals for rabies testing, and investigating alleged violations of a quarantine
- Response to calls for removal of venomous snakes in a private residence and on private property
- Investigating complaints of vicious dogs and provide administrative hearings
- Investigating complaints of dangerous animals and provide administrative hearings
- Responding to complaints of animals running at large
- Responding to complaints of domestic animals causing a nuisance, except domestic animals making noise, and provide follow-up patrol



- Respond to police assist calls on animal-related issues, which service may include taking control of an animal on the scene
- Investigate complaints regarding the lack of proper care, condition, or attention of domestic animals by their owners
- Investigate complaints regarding cruelty to animals
- Investigate complaints regarding exceeding the limit of the maximum number of animals
- Investigate complaints regarding unsanitary conditions
- Provide Community Outreach Humane Education programs to local schools as well as presenting programs to civic groups and organizations, Neighborhood Watch, homeowners groups and more
- Provide animal safety training for service workers (i.e. postal employees, meter readers)
- Issue administrative and criminal citations as necessary
- Participate in Santa Clara County Disaster Preparedness Team

B. Shelter Services

Shelter Services means all of the following services, including shelter facilities, supplies, animal care specialists, supervisors and administrative personnel, and any other personnel, supplies and equipment reasonably required to perform the following services (the "Shelter Services"):

- Shelter of abandoned, impounded, lost or stray domestic animals brought to the shelter by a Member Agency, a resident residing in a Jurisdictional Area, or shelter personnel
- Quarantine of biting animals
- Rabies testing of suspect animals
- Provision for surrender and reclaim of abandoned, lost or stray domestic animals during established business hours
- Provide adoption program to include offsite adoption events
- Provide after hours receiving kennels for stray healthy animals
- Save all healthy or treatable animals by return to owner, placement with a placement partner, or adoption
- Hold periodic adoption events at the animal care center

- Euthanasia and disposal of unhealthy domestic animals that fail to meet the written health and temperament standards of the shelter

C. Medical Services

Medical Services means all of the following services, including office facilities, supplies, and professional and trained personnel necessary to perform the following services (the "Medical Services") by staff or through contracts:

- Provision of veterinarian services by staff or through contracts twenty-four (24) hours per day to treat and provide veterinarian care to stray dogs, cats, and other impounded animals that may be sick or injured
- Monitor quarantined biter animals
- Conduct vaccination clinics and have available, free of charge to the public, rabies control information.
- Operate public low cost spay/neuter clinic

D. Deceased Animal Services

Deceased Animal Services means all of the following services, including any vehicles, storage facilities, disposal mechanisms, field, and administrative personnel, and any other personnel, supplies, contracts and equipment required to perform the following services (the "Deceased Animal Services"):

- Pick up of deceased animals, including wildlife and except livestock, from streets and public property within Jurisdictional Areas, or from private property within Jurisdictional Areas with the permission of the property owner, occupant or a representative of the property owner or occupant
- Identification of and notification to the owner of the deceased animal, whenever possible
- Disposal of the body of the deceased animal

E. Animal Licensing Services

Animal Licensing Services means all of the following services, including any vehicles, office facilities, supplies, equipment and personnel necessary to perform the following services (the "Animal Licensing Services"):

- Computerized animal licensing including up to two delinquent notices on license renewals

- Animal Control Officer contact for delinquent licenses when necessary
- Provide licenses at animal care center
- Comprehensive community outreach program, to include issuing licenses at vaccination and spay/neuter clinics
- Distribute licensing information through local veterinarians and on web site
- Issue assistance animal identification tags to qualified residents as required by state law

F. Other Services For Which a Fee May Be Charged

- Pick up owned animals
- Provide humane traps to the public to capture sick, injured, or nuisance domestic animals
- Provide volunteer opportunities
- Provide onsite dog training